

**MINUTES of the meeting of Regulatory Sub Committee held at Meeting Room 22a, Brockington, 35 Hafod Road, Hereford on Tuesday 29 May 2012 at 10.00 am**

**Present:** Councillor JW Hope MBE (Chairman)

**Councillors:** BA Durkin and RC Hunt

**1. ELECTION OF CHAIRMAN**

Councillor JW Hope MBE was elected as Chairman for the Regulatory Sub-Committee hearing.

**2. APOLOGIES FOR ABSENCE**

Apologies were received from Councillor Brig. P Jones CBE.

**3. NAMED SUBSTITUTES (IF ANY)**

Councillor BA Durkin attended the meeting as a substitute for Councillor Brig. P Jones CBE.

**4. DECLARATIONS OF INTEREST**

There were no declarations of interest made.

**5. APPLICATION FOR A PUBLIC PATH DIVERSION ORDER 'FOOTPATH AP29 IN THE PARISH OF ASHPERTON'**

The Parks, Countryside and Leisure Development Manager presented a report about an application under Section 119 of the Highways act 1980 to divert part of Footpath AP29 in the Parish of Ashperton. It was noted that the current footpath went through the applicant's garage after he was incorrectly advised of its route by Malvern Hills District Council some years ago.

The Parks, Countryside and Leisure Development Manager felt that the proposed route would provide a more sensible line for users and he advised that the Local Ward Member, parish council and consultees were in agreement with it. He added that the applicant had agreed to meet all the costs associated with the diversion. The proposal also met the criteria set out in the legislation and in particular that:

- it benefited the owner of the land;
- it was not substantially less convenient to the public; and
- it would be expedient to proceed with the proposal given the benefits it will provide for public enjoyment of the footpath.

Having considered all aspects of the application, the Sub-Committee concurred with the view of the Parks, Countryside and Leisure Development Manager that the application should be approved.

**RESOLVED**

**THAT a Public Path Diversion Order be made under section 119 of the Highways Act 1980 in respect of part of Footpath AP29 in the parish of Ashperton.**

**6. APPLICATION FOR A PUBLIC PATH DIVERSION ORDER 'FOOTPATH GR6 IN THE PARISH OF GOODRICH'**

The Parks, Countryside and Leisure Development Manager presented a report about an application under Section 119 of the Highways act 1980 to divert part of Footpath GR6 in the Parish of Goodrich. He advised that the application had been submitted by the parish council to enable a safe route to the primary school.

The Parks, Countryside and Leisure Development Manager felt that the proposed route would provide a more sensible line for users and he advised that the Local Ward Member, parish council and consultees were in agreement with it. He added that the applicant had agreed to meet all the costs associated with the diversion. The proposal also met the criteria set out in the legislation and in particular that:

- it benefited the owner of the land;
- it was not substantially less convenient to the public; and
- it would be expedient to proceed with the proposal given the benefits it will provide for public enjoyment of the footpath.

Having considered all aspects of the application, the Sub-Committee concurred with the view of the Parks, Countryside and Leisure Development Manager that the application should be approved.

**RESOLVED**

**THAT a Public Path Diversion Order be made under section 119 of the Highways Act 1980 in respect of part of Footpath GR6 in the parish of Goodrich.**

**Adjournment**

The meeting was adjourned for 45 minutes for further discussions between the police, the Licensing Officer, and the Legal Advisor for McDonald's.

**7. APPLICATION FOR A NEW PREMISES LICENCE 'MCDONALDS RESTAURANT, 46 COMMERCIAL STREET, HEREFORD, HR1 2DJ.'** (Pages 7 - 8)

The Regulatory Sub Committee was convened in order to determine an application for a new premises licence in respect of the McDonald's Restaurant, 46 Commercial Street, Hereford. The application was submitted in accordance with Section 17 of the Licensing Act 2003.

Prior to the application being considered the Sub-Committee received a request to adjourn the meeting for 45 minutes in order for further discussions between the applicant, the police, and the licensing authority to continue. The request was granted.

The Chairman introduced the Members and Officers and asked any interested parties to introduce themselves. The following attendees were noted:

- Mr Andrew Evans (Applicant's Legal Advisor)
- Mr Dean Henton (Area Manager)
- Mr James Mooney (West Mercia Police)
- Chief Inspector Martin Taylor (West Mercia Police)

The Acting Principal Lawyer advised the Sub-Committee that the authority had not received a notice of intention for any party to speak in support of the application. He also advised that the decision would be made in accordance with the 2010 Licensing Act guidance which was relevant at the time the application was received.

The Licensing Officer presented the report and advised that the local residents who had made a representation against the application could not be present as they were out of the country on holiday although they wished it to be noted that their objections still remained. The Licensing Officer read out a joint letter from the two members of the public. As a point of clarification the Licensing Officer confirmed that the premises was outside of the Cumulative Impact Zone (CIZ) but would still have an impact on it. He requested that the Sub-Committee dismiss the additional papers they had received as they related to the new licensing guidance and legislation.

The Committee heard from Mr James Mooney, the Licensing Officer from West Mercia Police, who had objected to the application. He advised Members that the application would lead to an increase in crime and antisocial behaviour in the area. He noted that the premises was 20 metres outside of the CIZ, which contained a further 14 licenced premises, 2 nightclubs, 3 restaurants, 3 fast food restaurants and 2 sandwich/cold food takeaways. He added that the 3 fast food restaurants were currently licensed until 1:30 am and the cold food takeaways remained open until 4:00 am. He drew Members attention to paragraph 13.25 of the October 2010 Home Office Guidance in respect of the Licensing Act 2003 which set out the issues which could arise with a large concentration of licenced premises in a small area. He added that the applicant's premises was not currently a concern to the police but that this could change with the increased hours due to the drunken nature of the clientele in the early hours of the morning. In summing up he drew Members' attention to the statistics contained within his representation which supported West Mercia Police's objection to the application.

Chief Inspector Martin Taylor also addressed the Sub-Committee on behalf of West Mercia Police. He advised Members in respect of the Police's vision in respect of late night economy in Hereford. He stated that he wanted a late night economy that was safe for all and added that this had now been achieved with a reduction in late night disorder in Hereford City Centre on weekends. He advised the Sub-Committee that granting the application would have a significant impact on frontline policing.

Mr Andrew Evans, the applicant's legal advisor, queried the statistics presented by the police and advised that a number of the offences highlighted took place after 11pm when McDonald's was closed. He added that a McDonald's would be referred to when people were reporting incidents to the police due to it being a recognisable and well known landmark on the high street.

In response to a question from Mr Evans, Mr Mooney confirmed that some of the other late night food establishments did use SIA registered doorstaff.

In response to a question from the Licensing Officer, Mr Mooney confirmed that Union Street and Commercial Street were linked by an alleyway which ran alongside McDonalds.

Mr Evans, the applicant's legal advisor, addressed the Sub-Committee in support of the application. He advised Members that the application was for late night refreshment on two nights of the week, namely Friday night and Saturday night. He accepted that the site was within, or at least within close proximity to, the cumulative impact zone however he disputed West Mercia Polices view that granting the application would result in an increase in crime and disorder within the CIZ. He advised Members that the premises would operate to protect the licensing objectives and drew their attention to the good

history of the premises, which had received no complaints within the last 18 months. He was concerned that the public representation had been accepted as it was not based on real evidence.

Mr Evans advised the Sub-Committee that McDonalds would be happy to adopt conditions from the Council's model conditions in respect of CCTV, No alcohol permitted on the premises, the provision of SIA door staff, the provision of an incident log and the provision of appropriate signage requesting people leave the premises quietly. He considered that these conditions would address any concerns raised by the police and added that if there were issues in the future these could be dealt with through the review procedure.

The Sub-Committee retired to make their decision, the Acting Principal Lawyer and the Democratic Services Officer also retired to offer legal and procedural advice.

When the meeting was reconvened the Chairman requested that the Acting Principal Lawyer read out the decision of the Sub-Committee.

**RESOLVED:**

**THAT the application for a new premises licence in respect of McDonalds Restaurant, 46 Commercial Street, Hereford, HR1 2DJ, be rejected for the following reasons:**

- 1. The Sub-Committee has heard from both representatives of West Mercia Police and the applicant and it is mindful of the statistical evidence put before it by the police and comments made by the applicant upon it. The Sub-Committee appreciates that direct evidence concerning a premises which is not currently in late night operation must necessarily be scant. However it was clear that the police had presented a clear case of the levels of late night relevant incidents and relevant crimes in the area which it had considered.**
- 2. It is no reflection upon the management methods adopted by the applicants that this rejection is made. Rather, the Sub-Committee has needed to take a broader view and in particular consider the Special Cumulative Impact Policy at Annex 1 and in particular paragraphs A10 and A11. The Sub-Committee took the view that the applicant had not comprehensively demonstrated that granting the application would not add to extra problems in the area.**
- 3. While the point was not argued by either party the Sub-Committee notes that the premises is marginally outside the cumulative impact zone. However it is clear that any decision made by the Sub-Committee in respect of the premises would have an impact on the cumulative impact zone.**
- 4. Further the Sub-Committee considered the findings of H.H. Ouseley J. In *Luminar Leisure Ltd v Wakefield Magistrates' Court* and others in 2008, to be of significance as it was made clear that it would take into account issues remote from the premises if it was proved that these constituted to a cumulative impact on crime and disorder. The Sub-Committee, also with a view to the *Luminar Leisure* decision, considers it is a proportionate response to reject the application rather than to impose conditions, an option that it considered carefully.**

5. It is with reference to Luminar Leisure at paragraph 16 of his Honours judgement it found the conclusions provided by the Police to be rational and evidence based.
6. The Sub Committee compliments all parties on a clear expression of their case which it found of great assistance.

The meeting ended at 12.27 pm

**CHAIRMAN**



**HEREFORDSHIRE COUNCIL**
**REGULATORY COMMITTEE DECISION NOTICE  
(THE LICENSING ACT 2003)**

<b>PREMISES</b>	McDonalds
<b>APPLICANT'S NAME</b>	Kemco Ltd
<b>APPLICATION TYPE</b>	New Premises Licence
<b>PANEL MEMBERS</b>	Councillor JW Hope (Chairman) Councillor RC Hunt Councillor BA Durkin
<b>DATE OF MEETING</b>	29 May 2012

Members of the Licensing Panel of the Council's Regulatory Committee considered the above application, full details of which appeared before the Members in their agenda and the background papers plus additional papers that had been served on all parties present by the Licensing Authority.

Prior to making their decision, the Members heard a written representation from Mr Firth, a local resident and business owner who had been unable to attend the hearing as well as Mr Mooney and Chief Inspector Taylor, representing West Mercia Police, and Mr Evans, the applicant's legal advisor.

Having heard the representations and considered all of those matters brought before them, the Panel decided to **REJECT** the said application on the following basis:-

- The Sub-Committee has heard from both representatives of West Mercia Police and the applicant and it is mindful of the statistical evidence put before it by the police and comments made by the applicant upon it. The Sub-Committee appreciates that direct evidence concerning a premises which is not currently in late night operation must necessarily be scant. However it was clear that the police had presented a clear case of the levels of late night relevant incidents and relevant crimes in the area which it had considered.
- It is no reflection upon the management methods adopted by the applicants that this rejection is made. Rather, the Sub-Committee has needed to take a broader view and in particular consider the Special Cumulative Impact Policy at Annex 1 and in particular paragraphs A10 and A11. The Sub-Committee took the view that the applicant had not comprehensively demonstrated that granting the application would not add to extra problems in the area.
- While the point was not argued by either party the Sub-Committee notes that the premises is marginally outside the cumulative impact zone. However it is clear that any decision made by the Sub-Committee in respect of the premises would have an impact on the cumulative impact zone.
- Further the Sub-Committee considered the findings of H.H. Ouseley J. In *Luminar Leisure Ltd v Wakefield Magistrates' Court* and others in 2008, to be of significance as it was made clear that it would take into account issues remote from the premises if it was proved that these constituted to a cumulative impact on crime and disorder. The Sub-Committee, also with a view to the *Luminar Leisure* decision, considers it is a proportionate response to reject the application rather than to impose conditions, an option that it considered carefully.

**HEREFORDSHIRE COUNCIL****REGULATORY COMMITTEE DECISION NOTICE  
(THE LICENSING ACT 2003)**

- It is with reference to Luminar Leisure at paragraph 16 of his Honours judgement it found the conclusions provided by the Police to be rational and evidence based.
- The Sub Committee compliments all parties on a clear expression of their case which it found of great assistance.

**APPEAL INFORMATION**

Under Schedule 5 Section 2, the applicant or any party making representation may appeal against the decision. Section 9 states that such an appeal must be made to the Magistrates Court within a period of 21 days from the date that the applicant is notified in writing of the decision.

Should you wish to appeal this decision then it is recommended that you obtain your own legal advice or contact the Magistrates Court at Bath Street, Hereford.