

Minutes of the meeting of the LICENSING AND
APPEALS HEARINGS PANEL held at 10.30 am
on Thursday, 4th August, 2016 at Main Committee
Room, Civic Centre, Stone Cross, Northallerton

Present

Councillor Mrs I Sanderson (in the Chair)

Councillor P Bardon

Councillor S Watson

LAHP.6 **APPLICATION FOR THE GRANT OF A PREMISES LICENCE, ODANA CAFE AND TAKEAWAY, NORTHALLERTON**

The subject of the decision:

The Executive Director submitted a report seeking consideration of an application for a premises licence in respect of Odana Café and Takeaway, 6 Friarage Street, Northallerton DL6 1DP. The application sought to authorise the provision of late night refreshment between the hours of 11pm and 2am every day.

Alternative options considered:

- (1) To reject the whole or part of the application.
- (2) To grant the licence as applied for.
- (3) To grant the licence subject to alternative conditions.

The Panel was satisfied that the licensing objectives were not likely to be adversely affected provided appropriate conditions were imposed. Therefore, it was not appropriate to reject the application or to impose any alternative conditions other than those detailed below.

The reason for the decision:

The Panel considered the relevant representations of the parties both written and oral, the Licensing Act 2003 as amended, the Council's Statement of Licensing Policy and the guidance issued under section 182 of the Licensing Act 2003.

The Panel gave appropriate weight to the representation relating to the licensing objectives, namely; the prevention of crime and disorder; public safety; the prevention of public nuisance and the protection of children from harm. The representations related to concerns in respect of child protection, public order, anti-social behaviour, noise nuisance, littering and the applicant's ability to carry out licensable activities without causing significant adverse effect on the licensing objectives.

Child Protection

The Panel gave appropriate weight to representations submitted by North Yorkshire Police in relation to child protection.

The Panel concluded that many of the concerns in this regard were not related to licensable activities.

The Panel considered representations made in respect of children travelling in the applicant's delivery vehicle. The Panel was satisfied that such activities would have a likely adverse effect on the protection of children from harm objective. The Panel was satisfied that the licensing objectives could be adequately promoted by imposing a condition to prohibit persons under the age of 18 years being carried as passengers in a delivery vehicle.

The Panel considered representations relating to children congregating at the premises. The Panel concluded that the issue of congregation of children gave rise to concern. However, the Panel noted that there was no evidence to suggest the congregation of children was likely after 11pm. The Panel was satisfied that the likelihood of adverse effects on the protection of children from harm objective would be reduced from 11pm onwards (the time at which late night refreshment becomes licensable). The Panel was satisfied that any concerns relating to the congregation of children after 11pm could be addressed by imposing a condition that no person under the age of 18 years shall work at the premises after 11pm. The Panel was satisfied that this condition would ensure that children are not further encouraged to congregate at the premises after 11pm.

Public Order and Anti-Social Behaviour

The Panel gave appropriate weight to representations submitted by North Yorkshire Police in relation to public order and anti-social behaviour.

The Panel was not satisfied that a negative inference could be drawn against the applicant in relation to incidents where damage had allegedly been caused to the exterior of the premises and the delivery vehicle by members of the public.

The Panel considered evidence of alleged public order incidents involving fighting and disputes between members of the public and members of staff inside and outside the premises. The Panel noted that there was no evidence that formal action had been taken in respect of these alleged incidents. Although the Panel was not satisfied that sufficient evidence had been provided to demonstrate culpability on the part of the applicant and his staff, the Panel had concerns regarding these allegations. The Panel was satisfied that conditions could be imposed to alleviate these concerns when licensable activities are carried out.

The conditions include:

- the use of CCTV equipment to cover inside the public area of the premises and the immediate frontage of the premises;
- restrictions on public access to parts of the premises;
- the requirement for all the seating in the customer area of the premises to be non-moveable furniture; and
- the frontage of the premises to be lit during hours of darkness.

The Panel was satisfied in light of the evidence relating to public order and anti-social behaviour that it was appropriate to require the installation of a colour digital CCTV system with time and date generation with coverage of all public areas and the frontage of the property. The Panel was also satisfied that a condition restricting the access to non-public parts of the premises was appropriate to give practical effect to the CCTV requirements. The Panel was not satisfied that daily accuracy checks needed to be carried out (as proposed by North Yorkshire Police) and that regular checks would be sufficient. The Panel was satisfied that the recordings should be retained for a minimum of 28 days. The Panel was not satisfied that conditions relating to the

disclosure of images would be appropriate because the conditions relating to CCTV are imposed to prevent crime and disorder rather than to detect crime or apprehend offenders. The Panel also noted that existing legislation makes provision for the relevant authorities to make requests for data and therefore additional conditions in this respect would not be appropriate.

The Panel was satisfied that any seating in the customer waiting area should be fixed non-moveable structures in order to reduce the risk to public safety.

The Panel was satisfied that the frontage of the premises should be lit in order to increase visibility in and around the premises thereby reducing the risk to public safety.

Noise Nuisance and Littering

The Panel considered representations submitted in relation to noise nuisance and littering.

Representations were made in respect of potential noise nuisance in the vicinity of the premises from customers and the use of delivery vehicles. The Panel concluded that there was insufficient evidence to indicate a significant adverse effect on the prevention of public nuisance objective. The Panel was satisfied that the proposed hours for licensable activities would not create an unacceptable level of nuisance during the weekend but in light of the proximity to residential properties the Panel concluded that it would be appropriate to restrict licensable activities on weekdays.

The Panel was satisfied that the licensing objectives would be adequately promoted by only permitting the provision of late night refreshment from 11pm to midnight Sunday to Thursday and 11pm to 2am Friday and Saturday.

The Panel considered representations made in respect of littering outside the premises. The Panel noted that the applicant's operating schedule made reference to the issue of littering and the Panel was therefore satisfied that the prevention of public nuisance objective would be adequately promoted by imposing a condition to keep the frontage of the premises clear of litter during trading hours.

Applicant's Suitability

The Panel considered representations made in respect of the applicant's ability to carry out licensable activities without causing significant adverse effects on the licensing objectives.

The Panel concluded that many of the concerns in this regard were not related to licensable activities.

The Panel was not satisfied that a negative inference could be drawn against the applicant in relation to the incident where a missing child was located in the premises.

The Panel considered representations relating to the alleged purchase of age restricted products on behalf of underage children. The Panel noted that no formal enforcement action had been taken in this regard. The Panel gave little weight to the evidence in relation to this matter as it was not considered to be of great significance to an application seeking to authorise the provision of late night refreshment.

The Panel noted that the Licensing Act 2003 places an obligation on the premises licence holder to ensure compliance with all conditions attached to his/her premises

licence. On that basis the applicant will be required to ensure compliance with the licence conditions and therefore it would not be appropriate to impose additional conditions in relation to staff training as proposed by North Yorkshire Police. However, the Panel did acknowledge the benefits of staff training and recommended that the applicant implement a documented staff training programme in respect of licence conditions and objectives with such records being kept for one year. Compliance with this recommendation will not be mandatory.

THE DECISION:

The Panel resolved to grant the application for licence subject to amended hours as follows:

The provision of late night refreshment:

Friday and Saturday between 11pm and 2am (the following day)

Sunday to Thursday between 11pm and 12am (midnight)

Opening hours:

Friday and Saturday between 3pm and 2am (the following day)

Sunday to Thursday between 3pm and 12am (midnight)

The Panel resolved to impose the following conditions:

- 1) A colour digital CCTV system shall be installed at the premises and be operational and recording at all times when licensable activities take place.
- 2) The CCTV equipment shall have constant time and date generation which must be checked on a regular basis for accuracy.
- 3) CCTV cameras shall be installed to provide adequate coverage of all public areas inside the premises and the frontage immediately outside the premises.
- 4) Recordings must be retained for a minimum of 28 days.
- 5) Customers and members of the public shall only be permitted entry to the 'customer waiting area' as defined on the premises plan.
- 6) All seating in the 'customer waiting area' shall be fixed non-moveable structures.
- 7) Persons under the age of 18 years shall not be carried as passengers either in or on vehicles being used by the business for food delivery purposes.
- 8) No persons under the age of 18 years shall work at the premises when licensable activities take place.
- 9) The frontage of the premises shall be lit during the hours of darkness (trading hours only).
- 10) The premises owner is responsible for keeping the frontage of the property clear of waste packaging and discarded takeaway food throughout the hours of trading.

The meeting closed at 12.35 pm

Chairman of the Panel