

MAIDSTONE BOROUGH COUNCIL

Licensing Committee

MINUTES OF THE MEETING HELD ON THURSDAY 26 NOVEMBER 2015

Present: Councillor Mrs Hinder (Chairman), and Councillors Mrs Blackmore, Greer, Mrs Grigg, Mrs Joy, B Mortimer, Naghi, Newton, Mrs Ring and Mrs Robertson

Also Present: Councillor Vizzard

65. **APOLOGIES FOR ABSENCE**

It was noted that apologies for absence had been received from Councillors McLoughlin, Parvin and Springett.

66. **NOTIFICATION OF SUBSTITUTE MEMBERS**

It was noted that Councillor Ring was substituting for Councillor McLoughlin.

67. **NOTIFICATION OF VISITING MEMBERS**

Councillor Vizzard was in attendance as an observer.

68. **DISCLOSURES BY MEMBERS AND OFFICERS**

There were no disclosures by Members or Officers.

69. **DISCLOSURES OF LOBBYING**

There were no disclosures of lobbying.

70. **TO CONSIDER WHETHER ANY ITEMS SHOULD BE TAKEN IN PRIVATE BECAUSE OF THE POSSIBLE DISCLOSURE OF EXEMPT INFORMATION.**

RESOLVED: That the items on the agenda be taken in public as proposed.

71. **MINUTES OF THE MEETING HELD ON 24 SEPTEMBER 2015**

RESOLVED: That the minutes of the meeting held on 24 September 2015 be approved as a correct record and signed.

72. **MINUTES OF THE MEETING HELD ON 19 OCTOBER 2015**

RESOLVED: That the minutes of the meeting held on 19 October 2015 be approved as a correct record and signed, subject to the following amendment:

That the reference to a Dance House Mother be amended to read House Mother.

73. REPORT OF THE HEAD OF HOUSING AND COMMUNITY SERVICES - STREET TRADING CONSENT – MR DAVID BOLESWORTH

The Chairman invited all present to introduce themselves, as follows:

Councillor Hinder	- Chairman
Councillor Joy	- Vice-Chairman
Councillor Blackmore	- Committee Member
Councillor Greer	- Committee Member
Councillor Grigg	- Committee Member
Councillor B Mortimer	- Committee Member
Councillor Naghi	- Committee Member
Councillor Newton	- Committee Member
Councillor Ring	- Committee Members
Councillor Robertson	- Committee Member
John Littlemore	- Head of Housing and Community Services
Jayne Bolas	- Legal Advisor
Claire Perry	- Licensing Partnership Manager
Poppy Collier	- Clerk to the Committee
David Bolesworth	- Applicant
Lee May	- Brachers Solicitors, representing the Applicant
Ashley Green	- Gourmet Street Food Company, Objector.

It was noted that apologies were received from Environmental Health and Fremlin Walk, who had submitted objections included in the agenda. Both were unable to attend due to late notice and prior commitments, and wished their objections to be taken into account.

The Head of Housing and Community Services, John Littlemore, provided a brief overview of the application. Jayne Bolas, the legal advisor, corrected the statement at item b) of the Order of Proceedings included at p.58, clarifying that the Head of Housing and Community Services did not have the delegated power to refuse an application, applications with objections were referred to Committee for a decision after a hearing..

The applicant was invited to present his case. Lee May, representing the applicant, stated the following:

- The applicant, if granted the variation, would not be frying any onions or other food. In his view the environmental enforcement objection related to a misapprehension that he would be.
- The application accorded with the Council's policy.
- There were, in Mr May's opinion, no meaningful objections.
- When balancing the matter the benefit should be given to the applicant due to this being his livelihood.

- The applicant already had permission to sell ice creams from his barrow, in the same location at the same times. The application was to sell hotdogs from an enclosed cabinet on the same barrow. The hotdogs would not be cooked in the cabinet, but would be kept warm using steam. This type of equipment was used in cinemas and other enclosed spaces. The policy was for a presumption in favour of granting unless a reason set out in the policy applied.
- Competition should not be an argument against granting the application, as if there were not a sufficient market then Mr Bolesworth would cease to trade.
- There was not an undue concentration of similar trade in the area, and it would be unfair to Mr Bolesworth if Fremlin Walk's decision to have multiple businesses were to disrupt his ability to trade.
- There would be no noise from the equipment and no smell. An arrangement had been formed with the Royal Star Arcade for the disposal of litter.
- There would be no obstruction caused as there was already consent in place for the pitch, and the application would require only a slight change to the design of the barrow to accommodate the cabinet.
- Fourteen of those consulted on the application had not objected.
- The complaints listed in the papers consistently referred to the smell of onions. If required the applicant was happy to accept a condition of no onions and prohibiting frying of any food.
- Mr Bolesworth was a small trader for whom it was essential to maintain an income from trade over the winter months. The Committee was asked to consider the harm that would be caused to Mr Bolesworth over the loss of livelihood and balance this with the perceived harm of the smell of cooking food.

The objector Mr Ashley Green declined the opportunity to ask the applicant questions. Members were then invited to ask questions of the applicant.

In response to questions it was stated that:

- The cabinet in question worked like an electric kettle to warm the hotdogs. It featured glass sides, and was enclosed. It had to be opened in order to serve a customer. It was approximately the same size as the ice cream freezer. The ice cream freezer and slushy machine would be removed and replaced with the hotdog cabinet and hot drink machine. A light on the cabinet indicated when the hotdogs were at the optimum temperature to be served.
- This type of cabinet had been previously used on a barrow as the applicant intended to do.
- Aside from condiments there would be no additional food stuffs for customers to add to their hotdogs that would emit an odour.
- Only frankfurters would be sold on the barrow.
- Although those consulted may not have objected as they had not experienced the hot food barrow when it operated five years ago, faith could be put in the fact that those consulted would have understood the issue at hand.

- If there was a problem with smells, the council would have enforcement powers to call for a review and remedy the situation.
- A Member queried the use of a fence that was occasionally placed around the barrow. Mr May confirmed that Maidstone Borough Council had agreed the use of the land on which the barrow was pitched.

The objector Mr Green was invited to present his case and stated the following:

- The Gourmet Food Company aimed to raise the bar of food standards by offering local produce.
- As part of their consent, they were not allowed to sell frankfurters and had to sell gourmet sausages.

The applicant's representative, Mr May, was invited to ask questions of the objector, Mr Green. Mr May reiterated his view that the objection had not touched upon valid reasons for refusal.

The Committee was invited to ask questions of Mr Green. In response Members were advised that the Gourmet Food Company licence contained conditions that sausages and onions must be oven cooked.

The Committee was given the opportunity to ask questions of clarification to the applicant or objector and there were none. Both parties were then asked to sum up, beginning with the objector.

Mr Green, objecting, had no further comment.

Mr May, representing the applicant, highlighted his previous statement that there were a lack of policy-based reasons to refuse, and that refusal would impact upon Mr Bolesworth's livelihood.

The Head of Housing and Community Services was invited to comment and had nothing further to add.

Members were aware that conditions on a consent could be varied, and consent revoked at any time on the basis of sound evidence such as substantiated complaints.

The Committee asked others to leave, save for the Legal adviser and Clerk, to consider the matter before reconvening in public.

It was **RESOLVED**:

That the street trading consent currently held by Mr. Bolesworth be varied to include hot drinks and hot frankfurters in the items for sale. For the avoidance of doubt all the remaining terms of that consent are to remain the same subject to the addition of condition as follows:

- The only hot food to be sold shall be frankfurters.
- No onions are permitted to be sold.

- There shall be no cooking of food on the stall only warming of precooked frankfurters.
- The warming of frankfurters shall take place within a closed cabinet, opened when in use, only for the purpose of serving frankfurters to customers.
- There shall be no sale of ice creams and slush puppies when the sale of frankfurters and hot drinks is taking place.

Informative: if any other structures associated with the barrow and its use require planning consent the street trading consent holder is reminded that this consent does not provide permission and use should not take place until planning consent is obtained.

74. REPORT OF THE HEAD OF HOUSING AND COMMUNITY SERVICES - OUTCOME OF THE CONSULTATION ON THE DRAFT STATEMENT OF GAMBLING POLICY 2005 FOR 2016 -2019

John Littlemore, Head of Housing and Community Services, introduced the report detailing the outcome of the consultation on the Draft Statement of Gambling Principles for 2016-19.

Coral had responded and Gosschalks had submitted suggestions for consideration (attached as appendix B to the report).

The Committee was advised that a full review would be undertaken in 2016. It was recommended that the current principles be approved with provision to take into account the suggestions made by Gosschalks during the full review.

In response to questions it was confirmed the risk of being judicially reviewed was low due to the fact that Gosschalks' suggestions would be taken into account in the drafting of a fully revised Statement.

RESOLVED:

1. That the draft Statement of Gambling Principles attached as Appendix A to the report of the Head of Housing and Community Services be approved for recommendation to full Council for adoption.
2. That the suggestions for change to the policy made by Gosschalks be noted.

75. REPORT OF THE HEAD OF HOUSING AND COMMUNITY SERVICES - DRAFT STATEMENT OF LICENSING POLICY

The Head of Housing and Community Services, John Littlemore, presented the report on responses to consultation on the draft Statement of Licensing Policy 2016-2021. It was explained that, if agreed by the

Committee, it would then be presented to Council on 9 December 2015 for adoption.

In response to questions Mr Littlemore confirmed that his delegated authority was to make the amendments already listed at appendix B of the report, and any other minor corrections.

RESOLVED: That the Statement of Licensing Policy at Appendix A to the report of the Head of Housing and Community Services be approved for recommendation to full Council, and the Head of Housing and Community Services be authorised to make the amendments identified, and any other minor amendments, in Appendix B to the report.

76. URGENT REPORT OF THE HEAD OF HOUSING AND COMMUNITY SERVICES - LICENSING TRAINING

The Head of Housing and Community Services, John Littlemore, requested that this urgent item be withdrawn due to the intention to bring a fuller report to the next meeting of the Committee, which was agreed by the Chairman.

Mr Littlemore took the opportunity to provide a verbal update advising Members that a letter would be sent to those who had not attended training to confirm a date for this to be undertaken.

RESOLVED: That the verbal update of the Head of Housing and Community Services be noted.

77. DURATION OF MEETING

6.30 p.m. to 8.05 p.m.