

BROMSGROVE DISTRICT COUNCIL

MEETING OF THE LICENSING (MISCELLANEOUS) SUB-COMMITTEE A

FRIDAY, 1ST FEBRUARY 2019, AT 4.30 P.M.

PRESENT: Councillors R. L. Dent (Chairman), M. T. Buxton and S. P. Shannon

Officers: Mrs. V. Brown, Mr. P. Morrish and Mrs. P. Ross

34/18 **APOLOGIES**

There were no apologies for absence.

35/18 **DECLARATIONS OF INTEREST**

There were no declarations of interest received.

36/18 **STREET TRADING CONSENT APPLICATION REVIEW**

The Chairman opened the Hearing and introduced the Members of the Sub-Committee and officers present.

At the invitation of the Chairman, the applicant introduced himself. Mr. Barnicoat confirmed that he had been made aware that he could have been represented by a legal representative at his own expense during the Hearing; but had chosen not to be represented and was happy for the Hearing to continue.

The Council's Legal Advisor informed Mr. Barnicoat that all Sub-Committee Members had carried out an unannounced Site Visit to the trading site.

At the request of the Chairman, the Council's Legal Advisor reminded Members that, as detailed in the report, Mr. Barnicoat was granted a street trading consent for this site; at the Licensing Sub-Committee meeting held on 14th June 2018. Members granted the street trading consent for a trial period of six months, in order to determine and assess any adverse impact that the trading may have had.

The Sub-Committee was being asked to consider a review of the Street Trading Consent granted to Mr. Barnicoat on 14th June 2018, for a site on the carriage way of Sugarbrook Road, Aston Fields Industrial Estate, Bromsgrove, B60 3DR.

The Technical Officer (Licensing), Worcestershire Regulatory Services (WRS) outlined the reasons why this matter had been brought before the Sub-Committee.

The Technical Officer (Licensing), WRS confirmed that the Responsible Authorities had been consulted with and that no representations had been received. However, a representation had been received from a nearby business on the industrial estate, as detailed at Appendix 2 to the report.

At the invitation of the Chairman, Mr. Barnicoat addressed the Sub-Committee.

Mr. Barnicoat explained that following his wife's friends comment regarding the fact that there was nowhere on the industrial estate to grab a breakfast; he had decided to submit a Street Trading Consent application form to Licensing, WRS.

He had been trading, successfully at the site since June 2018. Customers were able to purchase gourmet burgers, breakfast items (bacon, sausages etc.) and jacket potatoes. He had thought that after a while he might need to tweak his menu, but his customers were more than satisfied with the choice he offered and his food was selling really well.

Mr. Barnicoat further explained that his burgers had been recognised and had been included on the shortlist for a gourmet burger award, which he was very proud of.

In response to the Chairman, Mr. Barnicoat agreed that the mobile unit, his own vehicle and further vehicle were parked at the site. Neither of these additional vehicles was ever parked on double yellow lines. He had never had any safety concerns about the traffic since he had been trading. He had also not received any complaints from any of the businesses on the industrial estate regards any traffic concerns they had with his mobile unit or the other two vehicles parked at the trading site.

With the agreement of the Chairman, Mr. Barnicoat provided three letters of support from businesses on the industrial estate. They had no road safety concerns. The door at the rear of his mobile unit, was a split door, so anyone inside the mobile unit could open and look through the top half of the door before exiting the mobile unit. Mr. Barnicoat also highlighted that he also needed to consider his own safety and had chosen a location where he felt he could trade safely. The vast majority of his customers worked on the industrial estate so walked to his mobile unit to purchase food.

He had taken lots of photos of the area and traffic which he was happy to provide to Sub-Committee Members. He had no safety concerns and he reiterated that no one had expressed any safety concerns to him.

In response to further questions from Members, Mr. Barnicoat stated that he had been awarded (the highest score awarded), a score of five stars, under the Food Standards Agency, Food Hygiene Ratings Scheme, 'Scores on the doors' initiative.

The Council's Legal Advisor drew Members' attention to the representation received, as detailed on Appendix 2 to the report. Sub-Committee Members should consider how much weight they gave to the concerns raised with regard to road safety; as no representations had been received from any of the Responsible Authorities consulted with.

In response to the Council's Legal Advisor, Mr. Barnicoat explained that he sold gourmet burgers, breakfast items (bacon, sausages etc.) and jacket potatoes.

The Sub-Committee then adjourned to consider its decision. Upon its return it was

RESOLVED that Mr. Barnicoat be granted a Street Trading Consent to continue trading from the location.

Having had regard to:

- The report presented by the Technical Officer (Licensing), Worcestershire Regulatory Services (WRS).
- The Council's Street Trading Policy.
- The written application and oral representations, provided at the Hearing by Mr. Barnicoat.
- The written objection from Mr. Raj Sandhar, Subway.

The Sub-Committee were reminded that at the Licensing Sub-Committee meeting held on 14th June 2018, Mr. Barnicoat was granted a Street Trading Consent for a trial period of 6 months; during which time any adverse impact of the trading would be assessed. The Sub-Committee was required to consider any representations received since the grant of the licence to determine if there had been any adverse impact.

The reasons for the Sub-Committee's decision are as follows:

- The Sub-Committee noted that following a consultation exercise undertaken by the Technical Officer (Licensing), WRS, in November 2018, a representation was received from Mr. Raj Sandhar, Subway. Mr. Sandhar had expressed a safety concern with regards to the location of the Street Trading unit which was parked (on the corner), as this slowed down the passing traffic. Mr. Sandhar also stated that both he and Greggs paid very good business rates to be trading on the road, which the Street Trader did not have to pay; and his sales

had been affected by the Street Trading van parking at the end of the street, near to his store.

- In considering the objection received Members noted that Mr. Barnicoat's business primarily sold burgers which they did not consider was of the same type of food sold by Subway. The Sub-Committee did not consider it within their remit to restrict the choice available to members of the public therefore no weight was given this specific objection.
- The Sub-Committee also disregarded comments relating to the business rates as such considerations fell outside of their remit.
- The Sub-Committee considered the concern raised with regard to the location of the mobile unit and the impact it could have on road safety.
- The objection stated that the unit was parked "on the corner". Members had conducted a site visit and did not consider the description of the location to be accurate as the unit was situated away from the corner of the road. The Technical Officer (Licensing) confirmed that he had visited the site on several occasions and the unit was in the same position as described by Members.
- The Sub-Committee noted that there had not been any objection from Highways for England or West Mercia Police with regards to the siting of the unit or any road safety concerns.
- The Sub-Committee was mindful that the initial Street Trading consent was issued for 6 months in order to assess any adverse impact over that period of time. Having considered the representation received Members concluded that this did not amount to an adverse impact and therefore Mr. Barnicoat could continue to trade from the location.

The following legal advice was given:

- The Sub-Committee should have regard to all of the evidence provided and decide what weight to give to the representation received.
- Regard should be given to the Council's Street Trading Policy and the criteria for granting / renewing a Street Trading Consent, as detailed at 3.7.2 on page 10 of the Street Trading Policy.
- The Sub-Committee must consider only those matters directly relevant to the Street Trading Consent, Members must disregard any comments made with regard to any matters which fall outside of their remit.

- The Sub-Committee should determine each application on its own merit.

There was no right of appeal against the decision of the Licensing Sub-Committee.

The meeting closed at 5.08 p.m.

Chairman