

Unconfirmed



Minutes of a Meeting of the **Licensing Sub-Committee** held in the Conference Room,
Riverside, on **Friday, 06 October 2023** at **10.00am**

Members of the Sub-Committee present:

Councillor Janet Craig, Councillor Alan Green, Councillor Keith Patience, Councillor Keith Robinson

Other Members present:

Councillor Graham Parker

Officers present: Teresa Bailey (Senior Licensing Officer), Martin Clarke (Licensing Manager and Housing Lead Lawyer), Matt Makin (Democratic Services Officer (Regulatory)), Agnes Ogundiran (Political Group Support Officer), Alli Stone (Democratic Services Officer (Governance))

Others present: the applicants barrister, the applicants licensing manager, a representative of Suffolk Constabulary, the Clerk to Lowestoft Town Council, local residents

1 Election of a Chair

On the proposition of Councillor Patience, seconded by Councillor Green it was

RESOLVED

That Councillor Robinson be elected as Chairman of this meeting of the Sub-Committee.

2 Apologies for Absence

There were no apologies for absence.

3 Declarations of Interest

Councillors Patience, Green and Craig declared an other registerable interest as members of Lowestoft Town Council. They confirmed they had not been part of any

discussions concerning Licensing or Planning for this premises at Lowestoft Town Council.

4 Declarations of Lobbying and Responses to Lobbying

There were no declarations of lobbying.

5 New Premises Licence - McDonalds Restaurant Ltd, Leisure Way, Lowestoft, NR32 4TZ

The Sub-Committee received report ES/1687 of the Senior Licensing Officer, which related to a new premises licence for new premises license at McDonald's Leisure Way, Lowestoft, NR32 4TZ to permit late-night refreshment (indoors and outdoors) Monday to Sunday 23:00 to 05:00.

The Senior Licensing Officer summarised the report and advised that a hearing was required as seventeen representations had been received against the application and one representation had been received from Suffolk Constabulary, who were a responsible authority. The Sub-Committee was requested to determine the application by either granting the application subject to any mandatory conditions and to those consistent with the application, granting the application subject to the same conditions but modified to such extent as the Sub-Committee considers appropriate for the promotion of the licensing objectives, or by rejecting the application. The Senior Licensing Officer advised that the Sub-Committee must state its reasons when announcing its decision.

The Senior Licensing Officer confirmed the licences held by nearby premises which were a Tesco Store which had a license for the supply of alcohol for twenty four hours a day, seven days a week. The opening hours stated on the licence were Monday to Friday twenty four hours a day, Saturday closing at 23:00 and opening on Sunday from 10:30 to 16:30. the Senior Licensing Officer confirmed they did not have to adhere to the opening hours on their licence. The Potters Kiln restaurant had a licence for the supply of alcohol from 10:00 to 23:30.

The Chair invited the applicant's barrister, Mr Charalambides, to address the Sub-Committee. Mr Charalambides stated that the Council had already considered the amenity of the site through the planning process, and granted unrestricted planning permission for a restaurant and associated parking. This therefore indicated that the Council accepted that this site would be operational for twenty four hours a day. The considerations for planning were far wider than the four licensing objectives and this was not an opportunity to revisit or reopen the planning issue. Mr Charalambides stated that therefore many of the submissions of representatives were not relevant to this discussion.

Mr Charalambides referred to the proposed operating schedule for the premises, which contained a commitment to promote the licensing objectives and work with the local community to ensure the proper and safe running of the restaurant, which would be part of the community. The conditions in this schedule had been criticised as being generic by Suffolk Constabulary. McDonalds Restaurants had a national operation and reputation and the conditions reflected the experience of McDonalds in licensing. Mr Charalambides highlighted the condition in the operating schedule regarding CCTV.

This would full cover all internal and external areas and included facial recognition software. The store would also be fitted with a a staff safe system which meant that a member of staff could activate a system to relay information to a remote operator who could activate the loudspeaker in the restaurant to call out behaviour and manage conflict. McDonalds staff had extensive training to manage conflict and behaviour in the restaurant, and there were a variety of systems in place to move people along, such as playing classical music or turning off the wifi which reduced the time people would spend on the premises.

Mr Charalambides referred to concerns that had been raised regarding littering around the premises. It was recognised that quick service restaurants created litter from people leaving the premises, and whilst McDonalds were concerned about this, it was clear in the guidance issued under Section 182 of the Licensing Act 2003 that antisocial behaviour beyond the premises was the responsibility of the individual. It was therefore not appropriate to ask a business to control people beyond their premises. McDonalds did have regular litter picks around areas the operated in, and a member of staff would be employed to litter pick in the area from sunrise to sunset. This area covered by these litter picks reflected feedback from local communities and any particular littering issues. McDonalds had also provided additional bins in the local area, and sponsored local litter picks and 'Love Your Area' campaigns. Mr Charalambides stated these were effective conditions, and none of the McDonalds in the local area had been subject to review or criticism.

Regarding comments from the police Mr Charalambides stated that the police representation did not focus on McDonalds, but on the anti-social use of motor vehicles in the area. The McDonalds premises were would be well lit and covered by CCTV cameras. when not in use the premises car park would be locked, excepting the car chargers which were just outside of the premises. The police representation described the local area as 'irresistible' to 'boy racers' but this was not backed up by statements from individual officers who stated there was no real issue in the area. The representation also discussed issues in other areas and other car parks, not this premises. Whilst a number of incident details were provided relating to Leisure Way, the majority of these were during the daytime and early evening hours and therefore would not relate to the late night opening of McDonalds in this location. The representation also referred to issues arising from the operation of the neighbouring Tescos store, and Mr Charalambides stated that the operating of this separate business should not be used to judge McDonalds as an operator. The idea that this McDonalds would provide a base for boy racers was something the police had to convince the committee of, and Mr Charalambides stated that the CCTV, facial recognition and good lighting around the premises would mean that should anyone move from this McDonalds to commit crime they could easily be identified.

Mr Charalambides stated that this restaurant would be run by a local franchisee who operated other locations in the area and would be employing around three hundred people when this restaurant was opened. The franchisee was a great supporter of the local area, and sponsored the local football team, and offered space and refreshments to the police during local events such as the First light Festival. Both the stores which were already run by this franchisee held litter picks and sponsored regular litter picking events.

Mr Charalambides summarised that the evidence relating to this location was limited and that the evidence of individual police officers relating to the area was inconsistent. McDonalds had a tried and tested operating schedule, and would work with the local community. The police had no direct criticisms of the operating schedule or of the specific location, beyond general concerns in the area. Section 14.13 of the guidance issued under Section 182 of the Licensing Act 2003 stated that licensing law was not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they were away from the licensed premises. There was no reason to limit the license under the narrow remit of licensing law.

The Chair asked if there would be any any restrictions on parking at the premises during late night opening hours. Mr Charalambides confirmed that the main car park in front of the store would be visible from inside the store and was covered by CCTV. If any operating hours were restricted this car park would have a barrier so that the car park would be closed during the restricted operating hours. There were eight electric vehicle charging bays on the edge of the car park which would be open twenty four hours a day regardless of the McDonalds operating times and could not be restricted in accordance with the planning conditions for the site. There would be no restrictions on the length of time people could stay in the car park, and people did not generally dwell in the car park as they were discouraged by being overlooked. If people had visited the drive-through they tended to drive away and consume their food elsewhere.

Councillor Patience stated he welcomed comments on litter picking, as many local companies sponsored litter picks in the natural areas surrounding the site. Mr Charalambides stated that if there were existing litter picks in the area then the franchisee would want to contribute to this.

Councillor Green asked whether the late night opening would be for just takeaway or was this the restaurant as well. Mr Charalambides stated that it was envisaged that the store would open for dining in, deliveries and drive-through throughout the night. This was easier for staff as it made shift swap overs easier. It also reduced the need to power down and power up the equipment, and for better cleaning of the store. Keeping the restaurant open with full lighting and staffing was also generally safer and prevented loitering in the space, although this was assessed regularly with risk assessments and revised if necessary.

The Senior Licensing Officer asked Mr Charalambides to confirm that if the sub-committee granted the hours applied for would any barrier in effect never close. Mr Charalambides confirmed the barrier would be installed and used at any times when the restaurant might need to close, for example for major works or on Christmas day. The Senior Licensing Officer referred to comments about litter picking from sunrise to sunset and asked if any litter dropped overnight would be picked up the following day. Mr Charalambides confirmed this was the case, the litter pickers tended to go out before and after the rush times during the day, and any other peak times identified locally. There could sometimes be litter picks later into the night but this was more difficult due to safety concerns. The immediate area around the restaurant would be maintained throughout the night as it would be well lit.

Mr Corkett, representing Suffolk Constabulary, asked why McDonalds had not engaged with any responsible authorities or anyone in the local area about their application. Mr

Charalambides commented that McDonalds had a lot of local knowledge of the area from a variety of sources, and this was reflected in the risk assessments and plans for the site. The first stage of local engagement would have happened during the planning process which would have taken into account full amenity beyond the licensing objectives. The granting of planning permission had demonstrated that the Council were happy with a twenty four hour operation in this area. This site was perceived to be low risk, and the application and operating schedule which were distributed to all responsible authorities and were therefore considered appropriate consultation. Mr Charalambides stated that there was no legal requirement for any additional consultation beyond the posting of notices.

The Legal Advisor asked if the use of automatic number plate recognition cameras was feasible in this location. Mr Charalambides commented that this was feasible, if there was evidence that this was needed. The CCTV system did cover the car park and vehicle entry and exit to the site, and contained facial recognition software.

The Legal Advisor asked that if the sub-committee were minded to impose a restriction on time for car parking, would this be feasible for McDonalds as an operator. Mr Charalambides confirmed that the site operated walk ins, drive-through, delivery services, and people who drove to eat in. If the sub-committee requested restrictions on loitering then signage could be put up, although this was rare as people did not often loiter of the premises.

The Legal Advisors asked that in relation to the franchisee, what steps could be taken to monitor licensees to ensure there was no need for a review. Mr Charalambides stated that McDonalds had not had a review of a licence during the time that he had been working for them, due to the steps put in place to ensure franchisees and staff were continuously trained to a high standard. McDonalds own Licensing Manager provided a set of criteria which were reviewed and updated and staff training was based on this. The way customers ordered had also changed, and most customers ordered through screens or apps which reduced the risk of direct conflict with staff. If an issue did arise then the franchisee was well connected to the local community, and had the ability to speak with McDonalds as soon as issues arose. McDonalds also had the ability to step in if they felt the franchisee was not operating appropriately.

The Chair invited Mr Corkett, representing Suffolk Constabulary, to address the Sub-Committee.

Mr Corkett stated that much of the previous discussion was not relevant to the representations made by Suffolk Constabulary. It was clear that McDonalds was a good operator, but no consideration had been given to the issues that could arise in this area. Although planning permission had been granted on the basis of a twenty four hour operation, this did not mean that a twenty four hour licence automatically had to be granted.

Mr Corkett stated that police representation was about crime and disorder and the potential for it in this area. Because this location had not been built yet, it was not clear that there would be no issue. People in the area did suffer from nuisance and antisocial behaviour as a result of motor vehicles throughout late night hours. There was evidence of nuisance in relation to the faster A-roads in the area, and plenty of this was

evidenced through issues at the Gateway Retail Park. Police resourcing was not unlimited and where action was taken people did often move on but they would inevitably come back when the police moved their focus to other problem areas. If people who perpetuated antisocial behaviour had the base of a twenty-four hour McDonalds to operate from, adjacent to an A-Road and residential areas, there would be an issue. Disturbance outside of an outlet in this area were an issue for licensing, and licences should not be granted for a business which would keep people in an area for an extended period. Mr Corkett stated that the operating schedule was good, but it did not address issues which were specific to the local area. Had there been a more thorough consultation prior to the application being submitted, there could be a more constructive conversation which could have avoided the need for this hearing. The Police believed it would be sensible to have operating hours of 05:00 to 23:00 to see how this premises affected antisocial behaviour in the area, and to move on from there. The statements of individual officers and local people showed that there were issues with anti-social behaviour in the area and there were concerns about this location. There were concerns about people congregating here and causing a nuisance, and the sub-committee should be doing everything they could to prevent this.

The Chair referred to a 15 minute waiting limit for the Tesco premises and asked if this was enforced. Mr Corkett stated there had been signs stating a 15 minute waiting limit on these premises for a while, but they were not monitored. The Police had no ability to enforce this as it was private land and would need to be done via cameras or a private parking company.

Councillor Green stated that for the antisocial behaviour listed in the police representation, McDonalds were not yet operating, and so how could the police be sure that this would make it worse. Mr Corkett stated McDonalds would provide a focal point. Tesco had been there for a number of years and people did gather in this area. It was anticipated that McDonalds would cause a similar situation by providing a meeting point. They may not cause antisocial behaviour in the car park at McDonalds but there would be antisocial behaviour around this.

The Chair invited Ms Foote, Clerk for Lowestoft Town Council, to present their representation. Ms Foote summarised that the Town Council objected to the licence on the grounds of crime and disorder as there would be additional gatherings in the car park causing an increase in antisocial behaviour. The entrance to the site was poorly lit, which would cause issues for pedestrians and drivers. There would also be an increase noise and light pollution to nearby residential premises, causing further disturbance.

The Chair invited local residents to make their representations.

Mr C stated that he regularly attended litter picks in the area, and that there were already issues caused by rubbish from other McDonalds premises. Mr C stated that by already obtaining planning permission, the application for the licence seemed to be a way of avoiding further consultation. When the neighbouring Tesco store had opened for twenty-four hours there had been multiple issues with antisocial behaviour in the car park despite traffic calming measures being put in place. There was a concern that as Tesco had reduced its opening hours this behaviour would move to McDonalds, and very little had been said about measures being put in place to oversee the external area. Mr C stated that the local area was used for vehicle antisocial behaviour, and the

submission from the police stated that a twenty-four hour operation in this area would increase antisocial behaviour. During the planning process issues raised by the police had been ignored as they were not under planning control, and therefore they had to be considered by the Licensing Sub-Committee. McDonalds could run successfully without twenty four hour opening. This had not been stated in the planning application, and should not be granted through a licensing application.

Mrs B, speaking on behalf of Mr and Mrs A endorsed what had previously been said. Antisocial behaviour was an issue for residents living nearby. The applicant had claimed they really cared about the community, but did not seem to have paid any attention to the issues raised by the local community. Mrs B stated that she hoped that due attention would be paid to the behaviour and noise and disturbance issues raised by others.

Mrs P stated that she lived in a row of ten bungalows, with the rear boundary facing the McDonalds construction. Many of these were occupied by older people and overlooked the site, and many of the residents lived alone. The noise and lighting from the building would be visible for twenty four hours a day, and having a twenty four hour opening will severely impact these vulnerable residents. There was already a litter issue from Tesco, and adding in a McDonalds restaurant would worsen this. Mrs P stated that to allow the extension of these opening hours was guaranteed to exacerbate these issues and cause others.

The Chair invited all parties to sum up.

Mr Corkett stated that it was unusual that the police made representations against new licences, and that they had done so as the application had the potential to cause crime and disorder issues. To inflict these issues on the people of the area was unreasonable. No consultation had been carried out, and this application had not been put forward in a community minded way. This area would be a hotspot of antisocial behaviour, and even without this, the noise from the site would cause disturbance to local residents.

Mr Charalambides stated that it was difficult to listen to such heartfelt representations from local residents, but the Sub-Committee was required only to take into account evidence of what was happening in the area and issues in regard to the four licensing objectives. The stores operated by this franchisee had not been mentioned as sites of concerns, and indeed the only site mentioned was run by a different business. The police had stated that they believed McDonalds to be a good operator, and that they had no comments on the operating schedule and so it had to be understood that nothing further could be done by McDonalds in this area to limit antisocial behaviour. McDonalds would not become a base for antisocial behaviour, and if it did there were measures in place which could be used control and supervise the area. A manned and supervised site was less likely to lead to problems further down the road. McDonalds could operate safely in this area, and should issues arise they were contactable and could take measures to address the issue. Issues which might arise beyond the area were not the responsibility of McDonalds. The evidence of the police was general, and there were no specific pieces of evidence to support a limiting of the opening hours. If there was no evidence to limit the operation then the full licence as applied for had to be granted.

The Sub-Committee adjourned with the Legal Advisor and Democratic Services Officer to consider their decision. On their return the Chair read the following decision notice:

DECISION NOTICE

McDonald's Restaurant Ltd (the applicant) has applied for a new premises license at McDonald's Leisure Way, Lowestoft, NR32 4TZ to permit late-night refreshment (indoors and outdoors) Monday to Sunday 23:00 to 05:00.

The Sub-Committee heard from the Licensing Officer, who summarised the report and confirmed that the hearing had been held as seventeen representations against the application had been received from other persons, and one representation against the application from the police. The Licensing Officer also confirmed the licensable hours for nearby premises.

The Sub-Committee then heard from the applicant's representative, who indicated that the site had been granted permission for twenty-four-hour operation. The four licensing objectives were narrower than the considerations for planning, and much of the representations that had been made were not relevant to the licensing objectives. The operating schedule of the restaurant contained a commitment to work with the local community to ensure the safe operation of the restaurant. The restaurant would be covered with CCTV and facial recognition and the surrounding would be well lit which would help discourage people from loitering in the area. McDonald's had a well-publicised commitment to reducing litter and to funding litter picks not only on their own premises but in the wider area. The applicants representative stated that the evidence from the Police contained contradictions about the level of anti-social behaviour in the area, and very little specific evidence about the level of anti-social behaviour which would be a result of the site. The applicants representative confirmed that there would be a barrier on the site which could be closed to manage the number of people in the area, and that CCTV would cover the inside and outside areas of the site and use facial recognition software.

The Sub-Committee then heard from a representative of Suffolk Constabulary who stated that whilst McDonald's were a good operator, they had not taken into account the issues in the local area regarding anti-social behaviour. People in the area suffered from anti-social behaviour from motor vehicles, and there were concerns that a twenty-four-hour restaurant in the area would provide a base where people involved in anti-social behaviour could congregate. The Police representative stated that there should have been a more constructive discussion beforehand about the issues which could have then been reflected in the operating schedule. The Police representative stated that the Sub-Committee should do everything they could to reduce anti-social behaviour in this area by limiting this licence.

The Sub-Committee heard from local residents who stated they agreed with the concerns raised by the Police. There was already anti-social behaviour in the area and residents were concerned about the potential for this to increase. There were also concerns about the increase in litter and disturbance to neighbouring green spaces.

The decision of the Sub-Committee

The Sub-Committee, having considered the application, the Licensing Officer's report and the representations received from the applicant, the police and other objectors has decided to grant the licence as applied for.

Reasons for decision

In arriving at this decision, the Sub-Committee has taken into consideration the representations of both the applicant and objector as well as the Licensing Officer's report. The Sub-Committee also considered the Council's own licensing guidance and statement of licensing policy, as well as the Statutory Section 182 guidance, and Human Rights Act 1998.

Whilst the Sub-Committee notes paragraph 9.12 of the Statutory Guidance that the Police are the experts in relation to crime and disorder and public safety. The Sub-Committee places considerable weight on evidence received from the police, ultimately the final decision as to whether or not the licensee is capable of promoting the licensing objectives is a matter for the Sub-Committee.

Whilst the Sub-Committee heard evidence from the Police regarding anti-social behaviour and crime and disorder in various locations around the Lowestoft area, it appears to the Sub-Committee that none of these could be attributed to McDonalds, and McDonalds could not be held responsible for the behaviour of people who had left their premises. The Sub-Committee also notes that this operator should not be judged on issues arising as a result of other operators.

The Sub-Committee also places considerable weight on the fact that environmental protection, who are also a responsible body with particular expertise in the prevention public nuisance, have received the application and have not made any representations.

The Sub-Committee notes the objections from Lowestoft Town Council and nearby residents, however any issues that are currently occurring do not appear to be related to McDonalds as this business is not currently operating in this area and therefore cannot be held responsible for this. The Sub-Committee is aware that local residents have the right to peaceful enjoyment of their property but is satisfied that that operating schedule will allow them do continue doing so.

The Sub-Committee notes that the police made no criticism of the operating schedule and acknowledged that McDonalds are a good operator and have a good record of compliance. The Sub-Committee also notes comments by McDonalds representative that they have never had a review of a licence. Whilst McDonalds will not be operating this site themselves, the franchisee, who has a good track record locally, will be supervised and supported by McDonalds. Should there be any issues with compliance with this licence the Sub-Committee notes that there are internal measures to address this. In any event, if there are major problems with licensable activities, the licence can be reviewed and revoked.

In relation to issues caused by potential gathering on the premises car park, the Sub-Committee notes that there will be extensive good quality facial recognition CCTV and

that the site will be lit and supervised whenever licensable activities are taking place. This together with the conditions in the operating schedule is likely to mitigate crime and disorder on the site.

The Sub-Committee is therefore satisfied that that license can be granted as applied for.

Anyone affected by this decision has the right to appeal to the Magistrates' Court within 21 days of receiving notice of the decision.

Date: 6 October 2023

6 There are no Exempt or Confidential items for this Agenda.

The meeting concluded at 13.07

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Chair