

Unconfirmed



Minutes of a Meeting of the **Licensing Sub-Committee** held in the Deben Conference Room, East Suffolk House, Melton, on **Tuesday, 17 August 2021 at 10:00am**

Members of the Sub-Committee present:

Councillor Linda Coulam, Councillor John Fisher, Councillor Colin Hedgley

Other Members present:

Councillor Mary Rudd

Officers present:

Teresa Bailey (Senior Licensing Officer), Sarah Carter (Democratic Services Officer), Martin Clarke (Legal Advisor), Leonie Houlton (Licensing Officer), Matt Makin (Democratic Services Officer)

Others present:

Mr M Lamarti, Mr O Lamarti, Ms L Lamarti

Announcements

Mr Matt Makin, Democratic Services Officer and Clerk to the Sub-Committee, opened the meeting and advised that there was an error in the order of the agenda, and that Item 2 (Election of a Chairman) would be taken first.

2 Election of a Chairman

On the proposition of Councillor Colin Hedgley, seconded by Councillor John Fisher it was

RESOLVED

That Councillor Linda Coulam be appointed as Chairman of the Sub-Committee for this meeting.

1 Apologies for Absence

Apologies for absence were received from Councillor Keith Patience. The Chairman advised that Councillor Colin Hedgley, who had been listed on the agenda as Reserve, had taken Councillor Patience's place on the Sub-Committee.

3 Declarations of Interest

No declarations of interest were made.

4 Declarations of Lobbying and Responses to Lobbying

No declarations of lobbying were made.

5 Review of Existing Street Trading Consent

The Sub-Committee received report **ES/0855** of the Acting Legal and Licensing Services Manager, which sought to review the Street Trading Consent held by Mr Lamarti, trading as Lamartis.

The Senior Licensing Officer presented the report on behalf of the Licensing Officer. The Sub-Committee was advised that the reason for the review was that a number of complaints had been received concerning a Lamartis ice cream van that was operating during April and June 2021 at Ashfield Crescent, Lowestoft. The complaints stated that the chimes were played for between 20 to 35+ seconds as well as while being stationary.

The Senior Licensing Officer elaborated that evidence had also been received that Lamartis vans had been trading unlawfully in the north of the District. The Council's Licensing Team had contacted Mr Lamarti on several occasions and had provided Mr Lamarti with the complaints received and evidence of illegal trading.

The Sub-Committee was advised that, since the publication of the report, further evidence of illegal trading had been received; this evidence had been circulated to the Sub-Committee on 16 August 2021. The Licensing Team had also received an email from Mr Lamarti on the day of the hearing, before it commenced, where he claimed to not be aware he needed street trading consent to trade at the North Denes carpark in Lowestoft. The Senior Licensing Officer was able to produce copies of two separate emails sent to Mr Lamarti advising him that he needs street trading consent to trade at the North Denes carpark.

The Sub-Committee was asked to determine the matter by:

- Allowing the trader to continue to trade under his current consent WST0009 and deciding whether further applications will be accepted by the Licensing Team either immediately or after a period of time.
- Revoking the current street trading consent, WSTC0009
- Adding or amending conditions to the current, or any future, Street Trading consents held by Mr Lamarti.

The Sub-Committee was advised that it needed to take into account the Human Rights Act 1998 when making its decision.

The Chairman adjourned the meeting to allow for the new evidence to be considered by all parties.

The meeting was adjourned at 10:15am and was reconvened at 10:26am. The Chairman confirmed with all parties that they had been able to fully review the new evidence.

The Chairman invited questions to the Officers.

The Senior Licensing Officer confirmed that there had been a significant amount of correspondence between the Licensing Officer and Mr Lamarti regarding a variety of complaints, allegations and issues.

The Sub-Committee was informed that Mr Lamarti had been given ample opportunities to study the relevant guidance.

The Chairman noted that Mr Lamarti only had street consent for one vehicle and that five different vehicles had been cited in the report; the Senior Licensing Officer confirmed that only one vehicle had street trading consent and that the other vehicles had been trading without consent.

The Licensing Officer advised that one resident in Ashfield Crescent, Lowestoft had complained on numerous occasions about the Lamartis ice cream van operating in the area; the investigation of these complaints led to evidence being received of unlawful trading. The Licensing Officer added that complaints had also been received from both Lowestoft and Southwold Town Councils about Lamartis ice cream vans trading in unauthorised areas.

The Senior Licensing Officer confirmed that the Code of Practice on Noise from Ice-Cream Van Chimes Etc. in England 2013 did not form part of the conditions of Mr Lamarti's street trading consent and that all consent holders were made aware of the guidance.

Mr Lamarti said that he usually received his street trading consent and badge via post, but had not received anything this year, and queried why this was. The Licensing Officer confirmed that Mr Lamarti had been sent a copy of his current Street Trading Consent via email on 28 May 2021.

Mr Lamarti stated he was not very conversant with technology and struggled to access email, being assisted with this by his son; the Senior Licensing Officer noted that there had been extensive contact with Mr Lamarti in the past via email and considered that he would have been aware of the conditions of his consent having held it for a number of years.

Mr Lamarti was of the view that he had been advised by the Licensing Officer that he did not need street trading consent to trade at the North Denes carpark and that all he needed was permission from the landowner, Lowestoft Town Council, which he had obtained. The Licensing Officer clarified that she had advised Mr Lamarti that he needed both landowner permission and street trading consent to trade at the site; when this was challenged by Mr Lamarti the Senior Licensing Officer highlighted the email correspondence where he had been advised of this and that although Lowestoft Town Council had confirmed its financial arrangement with Mr Lamarti, it had not requested that the condition preventing him trading at the North Denes carpark (added at the Town Council's request following consultation in 2020) be removed from Mr Lamarti's Street Trading Consent.

The Chairman invited Mr Lamarti to present his case. Mr Lamarti was supported by his son during his presentation.

The Sub-Committee was advised that Mr Lamarti had 15 different ice cream vans and that there was only one van operating in Lowestoft at any one time. It was noted that other vans were used in Lowestoft when the consented van had broken down or its driver was absent from work.

Mr Lamarti's son challenged comments in the report about COVID-19 safety concerns, stating that his father's vans were all fully equipped with necessary PPE, having taken advice from Great Yarmouth Borough Council's health and safety team, and that advice had also been taken from the Licensing Officer about when it was allowed for Lamartis to trade. Mr Lamarti's son said that his father had returned to work as soon as possible to financially support his family.

The chimes on the Lamartis ice cream vans were stated to be automatically cut off after seven to eight seconds and set at a maximum volume of 60 decibels by the manufacturer; Mr Lamarti's son refuted the allegations made by the complainant in Ashfield Crescent and added that all drivers were trained to not sound their chimes for more than 10 seconds.

Mr Lamarti's son noted that only one person from Ashfield Crescent had complained and explained that when a similar issue had arisen in the Great Yarmouth, Lamartis agreed with Great Yarmouth Borough Council that they would no longer visit the street in question; Mr Lamarti's son added that the complainant in this example later turned out to be making vexatious complaints. Mr Lamarti said had he known before the hearing the area of the complaint he would have made a similar agreement.

It was highlighted that Mr Lamarti had previously received his Street Trading Consent in the post and subsequently ensured his drivers had copies of it; Mr Lamarti's son said it was apparent that he had not seen the email from the Licensing Officer with the current Street Trading Consent. Mr Lamarti acknowledged that the COVID-19 pandemic had changed the way people communicated but asked for the Sub-Committee to consider that this had resulted in Mr Lamarti thinking he had not received the latest consent.

Mr Lamarti's son explained that his father had lost sleep due to the stress of the situation as a lot of his business was done in Lowestoft; Lamartis had been contacted by several residents asking why it was no longer trading in the area and Mr Lamarti's son highlighted that this was the business' busiest season. Mr Lamarti's son noted that the COVID-19 pandemic had already impacted negatively on Lamartis and this situation caused his father additional stress.

In reference to the reports of a Lamartis ice cream van trading in Lowestoft, Mr Lamarti's son stated that this was actually a driver taking their lunch break in the town; the driver in question was asked to not do this and had since left the company.

Mr Lamarti's son said that his father had not been able to contact the Licensing Team every time a van broke down and reiterated that only one van was operating in Lowestoft at any one time.

The Sub-Committee adjourned, with the Legal Advisor and the Democratic Services

Officer, to make its decision.

Mr Lamarti said he could not understand the concerns raised and highlighted how hard he was working; he said that he had already lost staff because of the situation and could lose even more.

The Chairman invited questions to Mr Lamarti.

It was confirmed that Mr Lamarti was able to read his emails but not directly respond and that his son managed his emails for him. Mr Lamarti's son noted that he had other commitments and was not able to give his full attention to his father's emails.

Mr Lamarti's son clarified that the chimes on the vans automatically switched off after roughly seven seconds and had to be manually restarted. Mr Lamarti trained his drivers to not immediately replay the chimes when they finish.

The Sub-Committee was advised that if the consented ice cream van breaks down, another van and driver is sent to Lowestoft; this van is selected by who is available at the time.

Mr Lamarti's son said that Mr Lamarti struggled to use IT and has issues with reading both due to cataracts and a lack of education in his formative years.

It was confirmed that Mr Lamarti undertook the training of new drivers, which took place over two weeks. Mr Lamarti did not have any training records; Mr Lamarti said that he knew how to use the chimes and instructed his drivers on how to use them appropriately.

Mr Lamarti's son explained that a different van to that consented had been used at the North Denes carpark as Lowestoft Town Council required Lamartis to use a van which did not need to keep the engine running to power the freezer.

The Legal Advisor referenced Mr Lamarti's prosecution for unlawful street trading in 2006 and suggested that he should be aware of the need for a Street Trading Consent in the north of East Suffolk; Mr Lamarti's son said that his father had not been aware of this in 2006 and had applied for the consent as soon as he was informed it was required; Mr Lamarti's son reiterated that the COVID-19 pandemic had made it difficult to communicate with the Council.

It was confirmed that Lamartis would consider no longer trading in Ashfield Crescent, Lowestoft.

Mr Lamarti explained the additional difficulties of swapping vans due to breakdown, as it was now his policy to assign a driver and their stock to a specific van, in response to COVID-19. Mr Lamarti said that he was conversant with the Code of Practice on Noise from Ice-Cream Van Chimes Etc. in England 2013 and was content to comply with it.

The Licensing Officer confirmed that in 2020 Mr Lamarti had held two Street Trading Consents, one of which included a backup vehicle in the event of a breakdown. The Licensing Officer advised that communication could happen by post if requested but

reiterated that Mr Lamarti had been sent his current consent via email on 28 May 2021.

The Chairman invited the Senior Licensing Officer to sum up.

The Senior Licensing Officer considered that Mr Lamarti had focused on only one issue today and noted that several issues had been highlighted in respect of how Lamartis operated.

The Senior Licensing Officer stated that the Licensing Officer had been in contact with Mr Lamarti on a regular basis to discuss these concerns and was of the opinion that Mr Lamarti should have a firm understanding of what was required of him in relation to his Street Trading Consent.

It was noted that despite being clearly told that a Street Trading Consent was required to trade at the North Denes carpark, Mr Lamarti had continued to trade there without one.

The Chairman invited Mr Lamarti to sum up. Mr Lamarti's son did so on behalf of his father.

Mr Lamarti's son acknowledged that his father was now clear about needing a Street Trading Consent to trade at the North Denes carpark and had previously assumed that the consent from Lowestoft Town Council was all that was required. Mr Lamarti's son questioned why there had been no contact from the Licensing Team about trading at the North Denes carpark for the two years Lamartis had been trading there and noted that the most recent evidence had been received the day before.

The Sub-Committee adjourned, with the Legal Advisor and the Democratic Services Officer, to make its decision.

On its return, the Chairman read the decision notice which was as follows:

"This Sub-Committee meeting has been held to review the existing street trading consent held by Mr Lamarti, trading as Lamartis, following a number of complaints received concerning a Lamartis ice cream van that was operating during April and June 2021 at Ashfield Crescent, Lowestoft.

The complaints stated that the chimes were played for between 20 to 35+ seconds as well as while being stationary.

Evidence has also been received of illegal trading being conducted by Mr Lamarti's business.

In arriving at this decision, the Licensing Sub-Committee has considered the Licensing Officer's report and oral representations from Mr Lamarti.

The Sub-Committee first heard from the Senior Licensing Officer, who summarised her report. On questioning, the Licensing Officer confirmed that there was only one complainant from the community and both Lowestoft and Southwold Town Councils had complained.

The Sub-Committee then heard from Mr Lamarti, who indicated that they had difficulty with communications between the Council and themselves due to their lack of technical knowledge, in particular difficulties with using email. Mr Lamarti's son stated that although Mr Lamarti could read emails, he had difficulty in responding to them. In addition, Mr Lamarti's son admitted that some emails received could have been missed.

However, Mr Lamarti acknowledged that they had been trading for a number of years and that he had previously been prosecuted in 2006 for street trading and licence offences.

Mr Lamarti acknowledged that he had a consent for one vehicle, but that if this vehicle broke down, he would need a replacement vehicle to trade from. He also indicated that he had consent from Lowestoft Town Council to trade at the North Denes car park but that a special vehicle had to be used that did not require the engine to be running at all times. Mr Lamarti claimed that he did not understand that he also needed street trading consent from East Suffolk Council to operate on the site.

Mr Lamarti also indicated that had he been aware that the complaints were coming from one road, he would have avoided that road. He also stated that he was aware of the Code of Practice on Noise from Ice-Cream Van Chimes Etc. in England 2013 and was willing to comply with it.

In summing up, the Licensing Officer reiterated that there were several concerns relating to general non-compliance with the street trading requirements, with the complaints about the chimes being only one part of this.

The Licensing Sub-Committee also considered the Human Rights Act 1998.

The Sub-Committee's decision

After considering the application, and the representations, both written and oral, and having considered the need to promote the Human Rights Act 1998, the Sub-Committee has decided that Mr Lamarti's street trading consent shall continue, but shall be varied to have the following additional conditions imposed:

- 1. A written record of when and where the vehicle is trading at any time be kept and made available to the Council on request.*
- 2. They are to comply with the Code of Practice on Noise from Ice-Cream Van Chimes Etc. in England 2013 and any subsequent versions or replacement documents.*
- 3. They are not to enter Ashfield Crescent, Lowestoft.*

When making this decision, the Sub-Committee noted that Mr Lamarti had been trading for a number of years, having been prosecuted in 2006 for trading without consent, and therefore was of the view that he should have been aware of the requirements to obtain consent and comply with any conditions.

The Sub-Committee was aware that there had been only one complaint from the public and considered it would be disproportionate to revoke Mr Lamarti's consent. However, this decision notice will be placed on the Council's file and may be taken into account in

any future decision.

The Sub-Committee reminds Mr Lamarti that any and all vehicles used must have a street trading consent.

The Sub-Committee directs that any future alleged breaches of the consent are not dealt with informally and instead be directed to a Licensing Sub-Committee for consideration.

Any person aggrieved by the Sub-Committee's decision may, within 21 days of the date of this Notice, appeal to the Magistrates' Court.

17 August 2021"

The meeting concluded at 12:52pm

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Chairman