

Minutes of a Meeting of the Licensing Act 2003 Sub Committee held in the Hub, Mareham Road, Horncastle, Lincolnshire LN9 6PH on Tuesday, 25th June, 2024 at 10.30am.

PRESENT

Councillors Stephen Evans, Darren Hobson, Neil Jones and Terry Taylor.

Councillor Darren Hobson attended the Meeting as a Substitute.

Officers in Attendance:

|                |                                   |
|----------------|-----------------------------------|
| Donna Hall     | - Group Manager Public Protection |
| Neil Brooks    | - Licensing Compliance Officer    |
| Kim Robertson  | - Legal Advisor                   |
| Lynda Eastwood | - Democratic Services Officer     |

Also in Attendance:

|                     |  |
|---------------------|--|
| Mr Victor Fox       | - Director, Europa Fisheries Ltd and The Factory Rock Shop |
| Mr Ashley Fox       | - Review Applicant   |
| Mr Grant Shackleton | - Chattertons Solicitors                                   |
| Mr Andrew Gooud     | - Gateley Smithers Purslow Limited                         |
| Mr Taj Bola         | - Designated Premises Supervisor (DPS), LA Café            |
| Mr Michael Kheng    | - Kurnia Licensing Consultants                             |
| Mr Duncan Craig     | - Barrister  |
| Ms Kerry Cox        | - Barrister's Assistant                                    |
| Mr Andrew Brown     | - ML Consulting Structural Engineers                       |

**9. ELECTION OF CHAIRMAN:**

Councillor Neil Jones was duly nominated and upon being put to the vote, it was

RESOLVED

That Councillor Neil Jones be elected Chairman of the Licensing Sub-Committee for this Meeting only.

COUNCILLOR NEIL JONES IN THE CHAIR

**10. APOLOGIES FOR ABSENCE:**

Those present were noted.

**11. DISCLOSURE OF INTERESTS (IF ANY):**

At this point in the meeting, Members were invited to declare any relevant interests. None were received.

## **12. REVIEW OF A PREMISES LICENCE:**

Donna Hall, Group Manager Public Protection, presented an open report which enabled Members to consider an application by Mr Victor Fox of Europa Fisheries Limited and The Factory Rock Shop, for a review of the premises licence held in respect of LA Café, 1 Grand Parade, Skegness, PE25 2UN.

The Group Manager Public Protection outlined the background information along with a summary of the previous hearings held on 2<sup>nd</sup> February 2024 and 5<sup>th</sup> April 2024.

Members were referred to Appendices A, B & C, pages 9 to 18 of the report refer. Members were further referred to Appendix D, a copy of the Application for the Review, pages 19 to 26 of the report refer together with supporting information from the representatives of the applicant and the premises licence holder.

The Group Manager Public Protection also reminded Members of the recommendations available to them, page 2 of the report refers.

At this point in the meeting, Mr Duncan Craig, Barrister for the premises licence holder addressed the Sub-Committee and invited them to reject the review on the grounds of being vexatious, under Section 52.4 of the Licensing Act. Mr Craig advised Members that the review should be a collaborative process, however, Mr Ashley Fox had stated he had no intention of withdrawing from any action as set out in his email to Mr Michael Kheng of Kurnia Licensing Consultants on 3rd June 2024.

Mr Craig also referred to additional emails sent from Mr Kheng to Mr Fox which were contained in the supporting documentation, along with correspondence from David Gibbs, Building Control Surveyor, and David Dodds, Environmental Health Service Manager, dated June 2024. The documentation further outlined a Planning Permission from 20th June 2001 showing that the balcony area had been lawfully permitted to have members of the public on it over the last 23 years.

Mr Craig also explained that Environmental Health had withdrawn their objections and were now content with the situation.

Members were then referred to two reports provided by Mr David Brown, an experienced structural engineer who had visited the premises and inspected the balconies. He was of the opinion that the balcony was safe.

In relation to an email from Chris Mager dated 1st June 2024 which outlined the history of the balcony and its intended use, a Member queried who Mr Mager was and his connection to the review. Mr Grant Shackleton informed Members that he was an architect who was familiar with the building when it was built in the 1970s and who has had concerns regarding the safety of the balcony for a number of years. Mr Craig

commented that the correspondence from Mr Mager was hearsay and had no bearing on the proceedings.

Mr Craig then referred Members to a letter in the Premises Licence Holders Evidence Bundle 03 from Mr David Dodds to Mr Singh dated 21<sup>st</sup> June 2024, which highlighted three recommendations.

Mr Craig commented that the review process was one that should be given a due level of respect and given the evidential landscape and manifest and a lack of desire from the Applicant to engage in communication, proportionate and proper steps were needed.

Mr Craig advised that his client had taken steps to establish that the building was not unsafe and asked the Sub-Committee to reject the review on the grounds of it being vexatious and to conclude the proceedings.

Following which, Mr Grant Shackleton, solicitor for the applicant, addressed Members and informed them that he believed it was not a vexatious hearing and that it was an issue of public safety.

Mr Shackleton reminded Members that Mr Singh had agreed to have the balconies tested after the hearing on 2<sup>nd</sup> February 2024 but had failed to do so. Instead, Mr Singh relied on other evidence that the balconies were safe. Following which, Mr Shackleton's client now had no trust in Mr Singh and was not willing to withdraw the application whilst there was a real risk that the balconies were unsafe.

Mr Shackleton referred Members to correspondence from August 2023 addressed to Mr Singh and his legal representatives relating to the balconies and asking them to demonstrate that they were safe, or to arrange for testing to be carried out in the interest of public safety.

Mr Shackleton informed Members that there was evidence of water ingress on the balconies which would undermine the structure's stability as reported by Mr Andrew Goud of Gateley Smithers Purslow.

With regards to the planning situation, Mr Shackleton explained that building control were not able to produce any evidence that any structural testing was provided and they were not aware of a change of use application for the balconies.

Mr Shackleton expressed his disappointment in the withdrawal of the objections by Environmental Health but was pleased that Andy Goud was present at the hearing to give evidence as an expert in these matters.

Mr Shackleton reported that David Gibbs and David Dodds had both considered that the structure was not dangerous under the Building Act which meant that the balcony would need to be in a serious state of disrepair before Building Control would act upon it. Mr Shackleton stated

that the balcony was not designed to hold a large number of people and there was a real risk that the balcony was unsafe.

Mr Shackleston concluded by commenting that the balconies should be tested and, if unsafe, needed to be rectified. He further considered that the hearing was the appropriate forum to deal with the matter and would ask the Sub-Committee to reject the vexatious application and continue with the review.

N.B. The Sub-Committee retired for their deliberation at 11:02am and the Meeting re-convened at 11:47am.

N.B. The Applicant for Review plus his party and Premises Licence Holder plus his party left the room at 11:47am to have a discussion and re-joined the Meeting at 12:13pm.

Upon resuming the meeting, the Chairman advised everyone that the Sub-Committee had made a decision to reject the argument of a vexatious application.

Following which, Mr Shackleston advised the Sub-Committee that the two parties had engaged in a constructive discussion and had come to a pragmatic solution. This was to recommend the use of a load testing with scaffolding underneath the concrete slab and would not affect the local businesses. It was agreed that the two experts, Mr David Brown & Mr Andrew Gooud would obtain 3 quotations and both parties would equally fund the cost of the testing which would confirm whether the balcony was safe. He advised that testing would also be carried out on the balustrade and if the test results were satisfactory Mr Fox's application would be withdrawn.

Mr Shackleston confirmed the above agreement and reiterated that no licensing activities would be carried out on the balcony until testing had taken place and it was deemed safe.

Following which, Mr Grant requested an adjournment to enable the testing to take place which the Sub-Committee agreed to.

Following which it was,

RESOLVED

That the Application for Review of a Premises Licence for the premises known as LA Café, 1 Grand Parade, Skegness be adjourned to a date to be determined.

The Meeting closed at 12.21pm.