

BATH AND NORTH EAST SOMERSET

LICENSING (GAMBLING AND LICENSING) SUB-COMMITTEE

Monday, 23rd April, 2012

Present:- Councillors:- Douglas Nicol (Chair), Gabriel Batt and Gerry Curran

Also in attendance: Simon Barnes (Senior Legal Adviser), Jeremy Lockley (Environmental Health Officer) and Terrill Wolyn (Senior Licensing Officer)

1 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

2 ELECTION OF VICE-CHAIR (IF DESIRED)

RESOLVED that a Vice-Chair was not required on this occasion.

3 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

4 DECLARATIONS OF INTEREST

There were none.

5 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

6 MINUTES: 28 FEBRUARY 2012

These were approved as a correct record and signed by the Chair.

7 LICENSING PROCEDURE

The Chair drew attention to the licensing procedure, copies of which had been made available to those attending the meeting.

8 APPLICATION FOR A PREMISES LICENCE FOR VILLA MAGDALA, HENRIETTA ROAD, BATH BA2 6LX

Applicant: Eiderdown Ltd, represented by John Willmott (Director)

Interested Parties: Ian Herve, Ceris Humphreys, Ms Board, Mrs Glyde

Responsible Authority: Avon and Somerset Police, represented by Martin Purchase (Liquor Licensing Officer)

The parties confirmed that they had received and understood the licensing procedure.

The Senior Licensing Officer summarised the application, which was for a new premises licence authorising the sale and supply of alcohol 24 hours a day for consumption both on and off the premises. She advised members that the application was put on the basis that off sales were required to allow consumption of alcohol in the garden, which was not shown on the submitted plans. The Police had made a representation proposing a condition that:

“There shall be no consumption of alcohol after 10pm each day in any outside area”.

The applicant had agreed in writing to this condition.

Mr Willmott stated the case for the applicant. He explained that he was a Director of the operating company and personal owner of the premises. He said that the premises had recently undergone a major refurbishment and he wanted to be able to offer wine, not beer or spirits, to bona-fide guests. There was significant demand for a bottle of wine with meals. He would also like guests to be able to consume wine in the garden. He was happy to accept the Police condition that there should be no alcohol consumed in the garden after 10pm. In fact, he would be quite prepared to accept 9.30pm as the terminal hour for the consumption of alcohol in the garden. He explained that the application for off sales had been made because he had been advised that as the garden was not part of the licensed premises, off-sales would be required to allow guests to consume wine in the garden. There was no intention to sell alcohol to people coming in off the street.

The Senior Legal Adviser advised members that in his opinion an off-licence was not required in order for alcohol to be consumed in the garden. In his view, the garden and outside areas were part of the premises, notwithstanding that they were not shown on the submitted plans. Mr Willmott said that if this was the case, he would withdraw his application for an off-licence. In response to questions from Members, Mr Willmott stated:

- he would accept a condition imposing a terminal hour of 9.30pm for drinking in the garden
- the garden was not in a fit state for use by guests at present
- it would be possible for guests to have tea and coffee in the garden
- Villa Magdala was a five-star guest house and the clientele consisted mostly of middle-aged professionals; hen parties were not accepted; the daily rate was £120-£150 on weekdays and £150-£170 at weekends

The Interested Parties put questions to Mr Willmott. Mr Herve stated that he lived next door but one to the premises. He asked at what time the sale of alcohol would commence. Mr Willmott replied that a complimentary glass of bucks fizz would be offered with breakfast.

Mrs Humphreys asked what lighting would be used in the garden at night and whether there would be tables and chairs there. Mr Willmott stated that it would be

low-level lighting, not floodlighting; it would be like the lighting used to illuminate a footpath. There would be tables and chairs.

Mr Purchase asked for further clarification as to whether an off sales licence was required for consumption of alcohol in the garden and the Senior Legal Advisor repeated his advice that in his view it was not required. A Member asked if it would be possible for the Sub-Committee to restrict the consumption of alcohol to the garden and prevent it from taking place in the car park. The Senior Legal Adviser replied that there could be conditions to address areas of concern.

The Interested Parties stated their cases. Mrs Humphreys said that she would also speak on behalf of Mrs Glyde, who had had to leave the meeting as the start had been delayed. Mrs Humphreys said that it was important that clear conditions were imposed on the licence. She was concerned that there should be conditions which would apply to future purchasers of the premises. She would strongly object to sales of alcohol taking place in the garden. She said that the fact that the clientele would be up-market was no guarantee of good behaviour. She felt that noise and light from the garden would have a detrimental impact on the locality; sounds would carry at night when background noise had reduced. She was pleased that the applicant had offered to terminate activity in the garden at 9.30pm, but she felt that this was not enough. There were elderly people and children in the vicinity and some people suffering chronic illness. She said that guests of a bed and breakfast establishment should not commence drinking until the late afternoon, and requested that a condition should be imposed to this effect. She also felt that there should be no drinking off the premises and no drinking or music in the garden and a condition restricting lighting there. She then spoke on behalf of Mrs Glyde. She said that Mrs Glyde's husband suffered from an illness and spends most of the time in bed. He would be adversely affected by nuisance caused by activities in the garden at any time of day.

In response to a question from a Member, she said that she had no concerns about guests drinking indoors, but was concerned about guests being able to drink all day, which she felt worked against government efforts to control the harm arising from the consumption of alcohol, and she did object to the use of the garden for drinking. Another Member complimented her on the clarity of her written representation, but said that he was inclined to doubt her presumption that the licence as applied for would "inevitably" result in public nuisance. He was also doubtful that, as had been suggested, people would "preload" on alcohol which they had to purchase at hotel prices. She responded that as the area was a very quiet one, noise from the garden on summer evenings would be bound to cause nuisance. She also suggested that the offer of free bucks fizz with breakfast would encourage people to drink more. It was not clear that people would not be able to purchase alcohol at other premises and drink it in the garden. She felt that there was some lack of clarity in what was currently proposed. A Member commented that it would be for the management to prevent guests from bringing their own drink into the premises.

Mr Purchase stated his case. He said that though the applicant had agreed the condition proposed by the Police that there should be no consumption in the garden after 10pm, it was not stated at what time consumption could commence there, which was an important issue under a 24-hour licence.

The parties were invited to sum up.

Mr Willmott said people who had overindulged would be refused access to the premises. The Villa Magdala was not a fly-by-night operation. He would be happy to accept a start time for drinking in the garden.

Following an adjournment, the Sub-Committee **RESOLVED** to grant the application as applied for, but limited to the sale of alcohol for consumption on the premises, subject to conditions consistent with the operating schedule, the mandatory conditions imposed by the Licensing Act 2003 and the following additional conditions:

“There shall be no consumption of alcohol in the car park at any time”

“No alcohol shall be consumed in the garden between 9.30pm and midday on any day”

Authority was delegated to the Licensing Officer to issue the licence accordingly.

REASONS

Members have today determined an application for a new Premises Licence for Villa Magdala, Henrietta Road, Bath for the supply of alcohol for consumption on and off the premises 24 hours every day. In doing so they have reminded themselves of the Licensing Act 2003, Statutory Guidance, the Council's Statement of Licensing Policy and the Human Rights Act 1998.

Members are aware that the proper approach under the Licensing Act is to be reluctant to regulate in the absence of evidence and must only do what is necessary and proportionate to promote the licensing objectives based on the evidence before them.

This application attracted representations on the licensing objective of public nuisance. Those representations which fell outside of the Licensing Act 2003 were disregarded by members. They considered the relevant representations and took account of the evidence put before them. This included evidence from residents raising concerns about noise and lighting in the garden and consumption of alcohol in the garden. Members also noted the representation from the police also raising concerns regarding consumption of alcohol in the garden. Members noted the representations from the applicant, in particular that the applicant will accept a restriction on consumption of alcohol in the garden.

Members were careful to balance the competing interests of the applicant and those of the interested parties and responsible authority in reaching a decision. Accordingly, Members have done only that which is reasonable and proportionate in the circumstances and have decided to grant the Premises Licence as applied for save that it shall be limited to sales of alcohol for consumption on the premises. Having considered advice from the Legal Officer and the Senior Licensing Officer, members are of the view that the premises includes the garden and other outside areas.

9 APPLICATION TO VARY A PREMISES LICENCE FOR DOMINO'S PIZZA, LONG ACRE, LONDON ROAD, BATH BA1 5DL

Applicant: Bath Pizza Ltd T/A Domino's Pizza, represented by John Gaunt (John Gaunt & Partners) and Siggy Wilberg (Franchisee)

Responsible Authority: Environmental Services, represented by Jeremy Lockley (Environmental Health Officer)

The parties confirmed that they had received and understood the licensing procedure.

The Senior Licensing Officer summarised the application. The applicant was seeking to vary the current licence by extending the terminal hour for the provision of late night refreshment from 01.30 to 05.00 every day. A representation had been received from Environmental Services requesting the imposition of a condition preventing the use of delivery vehicles between 02.00 and 07.00 on any day. Representations had also been received from three Interested Parties, two of whom wished to remain anonymous, relating to the licensing objective of the prevention of public nuisance. Additional information had been submitted by the applicant, comprising a skeleton statement of case and a noise assessment report, which had been circulated to Members and the parties the previous Friday.

Mr Gaunt stated the case for the applicant. He said that the application was, in essence, very simple: the applicant would like to extend the authority to provide late night refreshment until 05.00 every day. The premises already had a premises licence with conditions relating to the prevention of public nuisance objective, such as the prohibition of the use of mopeds after midnight. These conditions would apply to the extra hours sought. There had been no representation from the Police. His client had operated in Bath for a total of fifteen years and had relocated to the current premises in January 2011. He submitted that the operation of the premises had been satisfactory and that the applicant had sought to engage with the local community. He suggested that it was significant that the local residents' association had not made a representation to the current application, despite having done so to the previous application. He said that the premises were located on the A4 London Road, which was a main through route from which there was a great deal of ambient noise. The premises currently opened at 10.00 and traded until 01.30. The peak trading periods were lunch time, 11.30 until 14.00, and early evening, 18.00-21.30, after which trade tended to tail off. 80% of sales were made during the two peak periods. It was anticipated that the number of vehicle movements in the couple of hours before 05.00 would be no more than five an hour.

He then turned to the representation of the Environmental Health Officer. He said that the main problem with the representation was that it provided no evidence to justify the restriction proposed. The EHO had said that in his professional opinion the application "has the potential" to give rise to public nuisance; this was not good enough, there had to be evidence. He was also confused about the EHO's proposal to prohibit the use of delivery vehicles between 02.00 and 07.00. He had made no objection to extra trading hours for the shop but only for the use of delivery vehicles. What was it that made vehicle deliveries acceptable up to 01.30, the current terminal hour, but not after 02.00? Why had he mentioned 07.00 when 05.00 was the

proposed new closing hour? Mr Gaunt said that in general Licensing Authorities seemed to prefer takeaways making vehicle deliveries rather than customers calling at the premises in the early hours. He referred to paragraphs 6.6 and 6.7 of the Council's Statement of Licensing Policy, which state that duplication of licensing controls with other statutory regimes should be avoided. It had been decided in the case of Thwaites that licensing decisions had to be based on real evidence. In his submission, there was no evidence. The EHO had confirmed that there had been no complaints about the use of vehicles by Domino's and that there had been a single complaint about noise from plant and machinery at the premises. This had been made last summer and Domino's had taken remedial action. He referred to the EHO's email to him of 17 April in which he had stated that the Council had not carried out an assessment of background noise after 02.00 in the vicinity of the premises.

He submitted that if Environmental Services wished to impose restrictions on a business, it was reasonable to expect that a noise assessment would have been made in order to have an idea of the background noise level against which the business would operate. Since other legislation could be used to deal with noise nuisance, the licensing regime should not be used as well, and the EHO had confirmed in his email of 19 April that other legislation could be used. Mr Gaunt said that one Interested Party lived immediately behind the premises. Domino's would make contact with her and provide her with a contact number to be used if there were problems. It appeared from their representations that the two anonymous Interested Parties probably resided at the top of Thomas Street and would be well-shielded from any noise nuisance. He then turned to the noise assessment report commissioned by Domino's and said that though the report used technical terms and he was not an acoustics expert, it appeared to show that there were unlikely to be noise problems for local residents from plant and machinery or delivery vehicles if longer hours were granted. There would only be a few additional vehicle moments near an already busy road. There was currently a planning restriction; an application had been made for its removal. In conclusion he submitted that the condition requested by the EHO was neither necessary, nor proportionate.

In reply to questions from Members, Mr Gaunt and Mr Wilberg stated:

- on Fridays and Saturdays, the busiest nights, about 40 deliveries were made between 21.30 and 01.30
- most deliveries were made by car
- it was expected that no more than 5 deliveries per hour would be made between 01.30 and 05.00; it was difficult to estimate the number of customers who would call at the premises
- the extra hours would provide flexibility and it was better for trade if a takeaway had a reputation for being open most of the time; the market would determine whether it was worthwhile trading for all of the authorised hours

The Environmental Health Officer stated his case. He said that in his professional opinion there was the potential for nuisance from plant and machinery and from

vehicle movements. He submitted that the potential for noise disturbance was confirmed by paragraph 3.19 of the applicant's noise report, which advised:

“Various staff notices should be displayed at prominent locations within the store premises and within delivery vehicles to remind delivery staff of the potential for noise disturbance and simple measures to minimise noise generation, e.g. ‘Do not play loud music’, ‘Do not rev engines’, etc. Similar noise notices should also be provided in the customer area.”

In his view the acoustics report did not fully recognise the potential for disturbance from the increased operation of plant and machinery arising from longer operating hours. He believed that the potential for noise nuisance should be dealt with pro-actively, rather than waiting until after problems had occurred. In response to questions from Members he stated:

- noise from plant and machinery would be more noticeable in the early hours when the level of background noise had dropped
- while it was true that London Road was busy and used by HGVs in the early hours, Domino's delivery vehicles operated from the rear of the store away from London Road

The parties were invited to sum up.

Mr Gaunt asked why, if the EHO had concerns about the potential for noise nuisance arising from increased operating hours of the store, had he only requested a restriction on the hours that deliveries could be made by vehicle. What happened at 02.00 that made vehicle deliveries acceptable before but not after? He submitted that it was not proper to impose restrictions on his client's business when Environmental Services had not carried out an assessment of background noise in the vicinity. His client would be happy to accept a condition forbidding the use of radios by delivery vehicles after, say, 00.00 (midnight). There had been no complaints about the delivery vehicles. He submitted that there was no evidence to justify imposing the condition requested by the EHO.

The EHO reiterated his concerns that the application as it stood would lead to an increase in noise nuisance.

Following an adjournment, the Sub-Committee **RESOLVED** to grant the variation as applied for. Authority was delegated to the Licensing Officer to issue the licence accordingly.

REASONS

Members have today determined an application for variation of a Premises Licence for Domino's pizza, Long Acre, London Road, Bath to allow the provision of late night refreshment until 05.00 hrs every day. In doing so they have reminded themselves of the Licensing Act 2003, Statutory Guidance, the Council's Statement of Licensing Policy and the Human Rights Act 1998.

Members are aware that the proper approach under the Licensing Act is to be reluctant to regulate in the absence of evidence and must only do what is necessary and proportionate to promote the licensing objectives based on the evidence before them.

This application attracted representations on the licensing objective of the prevention of public nuisance. Members disregarded those representations which fell outside of the Licensing Act 2003. They considered the relevant representations and took account of the evidence put before them. This included evidence from a noise consultant instructed by the applicant which concluded that noise caused by the extension was unlikely to be a problem. Members also noted the absence of complaints in relation to the way the premises had operated so far. Members accepted the applicant's evidence that trade would gradually reduce as the night goes on.

Members were careful to balance the competing interests of the applicant and those of the interested parties and responsible authority in reaching a decision. Accordingly, Members have done only that which is reasonable and proportionate in the circumstances and have decided to grant the extension as applied for.

Members felt it was unnecessary to impose a condition regulating the playing of radios by delivery vehicles but would expect the applicant to be sensitive to residents in this regard.

The meeting ended at 1.46 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services