

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Monday, 28th July, 2014, 2.30 pm

Councillors: Manda Rigby (Chair), Roger Symonds and Anthony Clarke

Officers in attendance: Alan Bartlett (Principal Public Protection Officer), Terrill Wolyn (Senior Public Protection Officer) and Carrie-Ann Rawlings (Senior Legal Adviser)

41 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

42 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

43 DECLARATIONS OF INTEREST

Councillor Symonds noted that he was quoted in the Bath Chronicle of 17 March 2014 as saying that the Undercroft scheme was "brilliant". He explained that he had made this remark after a presentation on the scheme at the Resources Policy Development and Scrutiny Panel and was referring to the benefits to the people of Bath of the redevelopment of the area. He felt that notwithstanding this remark he was still able to judge the two applications before the Committee today on their merits without prejudice.

44 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

45 MINUTES: 20 MAY, 3 JUNE AND 3 JUNE

The Minutes of the 20 May 2014 were approved as a correct record, subject to the deletion of inadvertently repeated paragraphs in item 22 (Wunder Bar). The Minutes for the two meetings of 3 June 2014 were also approved as a correct record.

46 LICENSING PROCEDURE

The Chair drew attention to the procedure to be followed for the next two items of business.

47 APPLICATION FOR A PREMISES LICENCE FOR NEW MARKET ROW UNDERCROFT, BATH BA2 4DF

Applicant: Bath and North East Somerset Council, represented by Piers Warne (TLT Solicitors), Marie Percival (Senior Development Surveyor, B&NES), Kevin Conibear (Fleurets)

Other Persons: Ian Perkins (The Abbey Residents Association), Ann Robins (The Empire Owners' Association)

The parties confirmed that they had understood the licensing procedure.

The Senior Public Protection Officer summarised the application. She referred to the additional documents that had been exchanged by the parties, which had been circulated to Members. These documents are attached as Appendix 1 to these minutes.

The Chair reminded the applicant's representatives that because the premises were located in the Cumulative Impact Area, the presumption was that the application would be refused, therefore the Sub-Committee would expect them to address this specifically.

Mr Warne stated the case for the applicant. He said that it had been considered that if the Council was the licensee, it would have greater control over the premises. There had been a great deal of interest from prospective lessees. The restaurant would have 80-120 covers. The scheme for the Undercroft was a key element in the Redevelopment Zone Core Strategy. It was expected that the planning application for the scheme would be submitted in October 2014. Mr Warne said that there had been extensive public consultation about the redevelopment scheme, and the Statement of Community Engagement was part of the consultation. Page 4 of the Statement listed "noise breakout from the restaurants" as one of the key themes that the project team had addressed during the design development. He hoped that the operating schedule had struck a balance between the interests of the residents and those of the businesses. The lessees would pay high rents and it was felt that expressions of interest should not be deterred by excessively onerous conditions. There had been exchanges between the parties which had centred on four key areas:

1. Closure of the outside areas. The applicant had agreed that outside areas should be closed at 23.00 and cleared by 23.30.
2. Sundays. The applicant had agreed that licensable activities should cease at 23.00 on Sundays, apart from the 7 Sundays preceding a Bank Holiday.
3. A condition to deal with vertical drinking. This presented problems, because many restaurants nowadays have some kind of bar area, and the applicant did not want to restrict this unnecessarily.
4. A noise condition. This also presented problems, because there were many noise sources in the area and would be difficult to attribute noise specifically to the premises.

Mr Warne then addressed the cumulative impact issues. He referred to the Council's Statement of Licensing Policy. He noted that Paragraph 14 of the Policy deals with the integration of strategies and submitted that this applies to the Undercroft scheme, since it is a key part of the Bath local strategy. Paragraph 16, which deals specifically with cumulative impact, states that different types of premises have different impacts, that applications should be considered on their individual merits, and that an application should only be refused if the licensing objectives could not be furthered by appropriate conditions. He noted that the discussions with the Other Persons had focussed on possible conditions, and that they were not seeking refusal

of the application. He then referred to the paragraph 13.35 of the Secretary of State's Guidance, which states that a Licensing Authority must always be prepared to consider whether it would be justified to depart from its special policy in the light of special circumstances. He suggested that it was a key challenge in the spatial strategy for Bath to regenerate this derelict area, and that this constituted special circumstances.

A Member asked about off-sales. Mr Warne replied that this had been sought so that customers could take an unfinished bottle of wine home. He suggested that a bottle of wine with the cork reinserted would be a sealed container, though to avoid doubt the condition could be reworded to say "the original container".

Mr Perkins stated his case. He said that he was broadly in favour of the redevelopment of the Undercroft. However to get a flavour of what it is like in the cumulative impact area, it would be instructive to stand on Grand Parade or Orange Grove in the evening and observe the level of disturbance and violence and occasionally people jumping into the river. He submitted that in order to mitigate the impact of additional premises on residents, the Sub-Committee should have regard to conditions already imposed on premises in the area and elsewhere. He submitted that there was a need for a condition against vertical drinking as a bulwark against a possible drift in this direction under economic pressures. He suggested there should be a clause in the lease against vertical drinking. Noise was a constant problem for residents. The buildings in Bath made it difficult to predict how sounds would be propagated, particularly low-frequency sounds. Many licensed premises in Bath had conditions about noise attached to their licences. Residents wanted conditions that could be enforced if noise from particular premises became a problem.

Ann Robins stated the case for the Empire Owners' Association. She said that she was not opposed in principle to the application. However, many of the Empire owners experienced difficulty in getting to sleep because of noise, or were woken up in the early hours. She and her husband had experienced two successive nights of disturbance recently. Customers leaving licensed premises congregated around fast food shops and made noise. The streets on both sides of the building were full of people leaving licensed premises. In addition to the noise from customers, there were waste collections and deliveries early in the morning. While people who lived in the city centre accepted there would be noise, many residents (average age now 79) had lived there for many years and circumstances were now radically different from when they had moved in. They wanted some respite from noise, particularly on Sundays. There was a fear that it would prove difficult to maintain the premises as a high-class restaurant, and that it would gradually change its character. That was why she urged the imposition of a condition against vertical drinking.

Members put questions to Mr Perkins and Ms Robins. Ms Robins said that customers exiting premises was a major source of noise. She also suggested that the source of noise would be easier to pinpoint after 23.00

In reply to questions Mr Perkins stated:

- the type of licensed premises was not necessarily a good predictor of noise; one night he had done a tour of the George Street area and had been surprised by the amount of noise emanating from Wood's, which was not an

establishment he had associated with rowdiness; that is why he believed a noise condition was necessary

- he did not think that the review process was a particularly effective protection, as initiating a review was difficult for ordinary people and could be costly; he suggested that the correct approach was for caution to be exercised in the type of licence granted and for licensees to apply for variations if they could show there were no problems; it was difficult to know what conditions should be imposed on an application if the business model had not been defined
- he agreed that a condition about amplified music would be helpful to residents
- well-off people could be as noisy and disruptive as less well-off people
- deaths in the river had been associated with alcohol consumption

The Senior Public Protection Officer advised that the Sub-Committee could not impose tough conditions which the licensee could apply to have varied later; the conditions imposed on a licence had to be proportionate. The conditions made it clear what kind of business the premises could be.

The parties were invited to sum up.

Mr Perkins submitted that the Other Persons had demonstrated that there would be an addition to the cumulative impact of licensed premises in the area. He urged the imposition of a noise condition, as control was much easier if an effective condition was in place.

Ms Robins said that she agreed with Mr Perkins about a noise condition.

Mr Warne said the Council was seeking a tenant who would run a high-class restaurant; he thought that all the documentation made this plain. He referred to the Secretary of State's Guidance, which stated that licence conditions should not duplicate other legislation, should not be standardized and should not seek to control the behaviour of customers after they had left the premises. He said that there were only a few issues disputed by the parties. He submitted that the review process had shown itself to be extremely effective. In addition Environmental Protection Officers had statutory powers to deal with public nuisance. He did not believe that the noise condition proposed by the Other Persons would be enforceable. He submitted that customers from restaurants tend to disperse over an extended period, which would mitigate noise impacts. The applicant was concerned that if conditions were too restrictive, potential lessees would be discouraged. The Council hoped to grant a 20-year lease, which would be a robust protection. He again drew attention to the fact that the Other Persons were not urging the refusal of the application; what was in dispute was the nature and precise terms of conditions. In conclusion he said that the Undercroft scheme would give members of the public access to an area from which they had hitherto been excluded and was well integrated with other policies to develop and regenerate Bath.

Following an adjournment, it was **RESOLVED** to grant the license with conditions as set out in the decision below.

Decision and reasons

Members have determined an application for a new premises licence at New Market Row, Undercroft, Grand Parade, Bath, BA2 4AN. In doing so they took account of the Licensing Act 2003, Statutory Guidance, the Council's Statement of Licensing Policy and 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 that they must only do what is appropriate and proportionate in the promotion of the licensing objectives based on the information before them. In this case, however, Members noted that the premises are situated in the Cumulative Impact Area and accordingly as the council has a Cumulative Impact Policy a rebuttable presumption is raised that such applications should be refused unless the applicant demonstrates that the application if granted will not undermine the licensing objectives and add to the Cumulative Impact being experienced.

In reaching a decision Members took account of all relevant oral and written representations, including additional documents received and balanced the competing interests of the applicant and interested parties.

The application was for:

- i. The sale of alcohol on and off the premises between 09:00 hours and 00:00 hours daily with exception of the morning following New Year's Eve when an extension until 02:00 hours was sought.
- ii. Indoor regulated entertainment to allow for both live and recorded music between 11.00 hours and 00:00 hours daily with the exception of the morning following New Year's Eve when an extension until 02:00 hours was sought.
- iii. Late night refreshment to be consumed both indoors and outdoors between 23:00 hours and 00:30 hours daily with the exception of the morning following New Year's Eve when an extension until 02.30 hours was sought.

It was also suggested as part of the application that amongst other things, CCTV cameras would be installed and maintained in consultation with the Police Crime Prevention Office, off sales would be in sealed containers only; the premises would be a member of Pubwatch or related scheme and would operate a challenge 21 policy.

On behalf of the applicant Piers Warne of TLT Solicitors addressed the Licensing Sub-Committee. It is estimated that there will be 80 to 120 covers at the restaurant. The application has been made on behalf of BANES which enables more control and can attract the best tenants. Mr Warne indicated that the applicant was fully aware of and had regard to Cumulative Impact Policy, Statement of Licensing Policy and Statutory Guidance. He informed the Licensing Sub-Committee that the planning application is in and running.

Mr Warne made reference to the Statement of Community Engagement and whilst he acknowledged that this was produced as part of the Planning process he sought to illustrate the level of consultation that has gone into the proposal which he said

was extensive. Mr Warne noted that a specialist acoustic consultant was engaged amongst others and that there is room for these restaurants.

Members noted that Mr Warne said he did not think this application engages the Cumulative Impact Policy but if it does he would suggest that the applicant can get over it.

Mr Warne made reference to the consultation response to TARA and Empire Owners' Association under cover of a letter dated 18 July 2014. He suggested that it is useful to have in mind that what is proposed is to enhance the area, make it publicly acceptable and enhance what is already there.

Members noted that the applicant and objectors had agreed to some additional conditions as can be seen from the applicant's letter of the 18 July. They also noted that further conversations have been had today and some further agreement had been reached regarding the outstanding 4 issues. Members noted however that it was still their decision whether or not to grant the application and if so, what conditions were appropriate and proportionate.

Members noted from Mr Warne's submissions that he made reference to "Integrating Strategies" within the Council's Statement of Licensing Policy and went on to contend that a small restaurant was cited as an example at paragraph 16.10 of an establishment that might not add to problems of cumulative impact.

Members noted the questions and answers in relation to glass containers being taken off site and Mr Warne for the applicant, invited members to support the notion of customers being able to take a half a bottle of wine off site and encouraged members to develop a condition.

Mr Perkins on behalf of TARA indicated that they were broadly supportive of bringing the colonnades into use and thought this was borne out by negotiations which have taken place but objected on the grounds of the prevention of crime and disorder, the prevention of public nuisance and public safety objectives. To understand the cumulative impact he said you just need to look at Grand Parade and Orange Grove due to premises in the vicinity and traffic links. Members noted that he cited disturbance, violence and jumping in the river as issues in the area. TARA have looked at what is going to mitigate, in line with conditions imposed on competitors and upmarket restaurants elsewhere. He cited specific issues regarding vertical drinking but confirmed that objectors were not pursuing a condition in this regard in the hope that their concerns would be minuted and that there will be robust clauses in leases.

Members noted what Mr Perkins said about this being a sensitive noise area due to architecture and how noise travels within building structures and his assertion that most premises in Bath have a condition that they will not disturb the most noise sensitive premises.

Anne Robins gave views on behalf of the Empire Owners who do not object in principle. She referred to struggles to get to sleep, being awoken by shouting and screaming. Mrs Robins cited the cumulative impact taking into account people frequenting these restaurants and said that noise has grown significantly over the years. She said that the residents' greatest fear is that the applicant will not find the

upmarket tenant they are looking for but they have agreed not to pursue a vertical drinking condition.

Members noted that in summing up the objectors reiterated the points made previously and emphasised their request in respect of a noise condition.

In summing up Mr Warne referred to the nature of the proposed premises. He noted the Statutory Guidance in relation to the general principles of licence conditions and the appropriateness of conditions.

In relation to noise nuisance he contended there were a number of enforcement measures outside of licensing and suggested the condition proposed by the objectors is not enforceable and amorphous. He said that the application was made to balance concerns of residents and attract top operators. Mr Warne informed members that the applicant is looking at 20 year leases and so user clauses should have a 20 year life span which is a robust protection albeit not a licensing protection. Addressing cumulative impact, he said that different premises have different effects but contended there will be no additional effect in any event here.

Members noted that no representations were received from Responsible Authorities.

Members had regard to the Cumulative Impact Policy and did feel that there was likely to be an impact but considered the premises were unlikely to add significantly to the Cumulative Impact and that conditions would be effective. Further members considered the premises were unlikely to have a detrimental effect on the licensing objectives.

The licence shall be granted as applied for with conditions consistent with the operating schedule save for the following additions and amendments:

- (1) In relation to outside areas as marked on the licensing plan cessation of licensable activities at 23:00 hours with outside areas to be clear at 23:30 hours.
- (2) On Sundays all licensable activities to cease at 23:00 hours with areas to be clear at 23:30 hours save for Sundays immediately prior to Bank Holiday Mondays when the originally requested licensing hours will apply.
- (3) Customers will not be permitted to leave the premises (premises to include the outside area as marked on the licensing plan for licensable activities) with glass containers save for sealed or re-sealed containers only.
- (4) All doors and windows to be closed (except for access and egress) after 23:00 hours when regulated entertainment takes place.
- (5) A dispersal policy will be drawn up and implemented to ensure that customers leaving the premises (in particular at the close of the premises for licensable activities) do so without causing disturbance to local residents.
- (6) The premises manager will ensure that staff clear litter from around the entrance/exits at the close of business.

Members noted concerns in relation to noise but did not feel any conditions were put forward which were sufficiently precise and/or enforceable and they were mindful of the Statutory Guidance in this regard. Members however welcomed the offer that this could potentially be addressed in other ways.

Authority was delegated to the Senior Public Protection Officer to issue the licence.

48 APPLICATION FOR A PREMISES LICENCE FOR THE COLONNADES, EMPIRE UNDERCROFT, BATH BA2 4DF

Applicant: Bath and North East Somerset Council, represented by Piers Warne (TLT Solicitors), Marie Percival (Senior Development Survey, B&NES), Kevin Conibear (Fleurets)

Other Persons: Ian Perkins (The Abbey Residents Association), Ann Robins (The Empire Owners' Association)

The Chair said that as there was great deal in common between this and the previous application, she would be grateful if the parties focussed on what was specific to this application.

Mr Warne stated the case for the applicant. He said that it was expected that this restaurant would have 150-180 covers. There was a prospective lessee who had expressed great interest and was happy with the conditions proposed.

Mr Perkins stated his case. He urged the imposition of a noise condition. He said that the noise condition proposed by the Other Persons was common on premises licences in Bath, so had at one time been thought enforceable.

Ms Robins supported the imposition of a noise condition. A nearby licensed premises had such a condition on its licence.

The parties were invited to sum up.

Mr Perkins said that he would be concerned if there was no effective means of controlling noise from the premises. The Senior Public Protection Officer said that the obstacle to such a condition is noise attribution. Environmental Health, however, would be able to intervene, if it could be shown that the premises was a source of noise at nuisance levels. Mr Perkins responded that his view the Environmental Protection Act had proved very ineffective for dealing with noise. The Sub-Committee had the power to impose a more effective form of noise control and he urged them to use it.

Mr Warne said that he was unable to agree that procedures under the Environmental Protection Act were ineffective. In conclusion he submitted that it would be appropriate for the Sub-Committee to impose all the conditions that it had imposed on the previous application.

Following an adjournment the application was granted with conditions, as set out in the decision below.

Decision and reasons

Members have determined an application for a new premises licence at Empire Undercroft, Grand Parade, Bath, BA2 4AN. In doing so they took account of the Licensing Act 2003, Statutory Guidance, the Council's Statement of Licensing Policy and 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 that they must only do what is appropriate and proportionate in the promotion of the licensing objectives based on the information before them. In this case, however, Members noted that the premises are situated in the Cumulative Impact Area and accordingly as the council has a Cumulative Impact Policy a rebuttable presumption is raised that such applications should be refused unless the applicant demonstrates that the application if granted will not undermine the licensing objective and add to the Cumulative Impact being experienced.

In reaching a decision Members took account of all relevant oral and written representations, including additional information and balanced the competing interests of the applicant and interested parties.

The application was for:

- iv. The sale of alcohol on and off the premises between 09:00 hours and 00:00 hours daily with exception of the morning following New Year's Eve when an extension until 02:00 hours was sought.
- v. Indoor regulated entertainment to allow for both live and recorded music between 11.00 hours and 00:00 hours daily with the exception of the morning following New Year's Eve when an extension until 02:00 hours was sought.
- vi. Late night refreshment to be taken both indoors and outdoors between 23:00 hours and 00:30 hours daily with the exception of the morning following New Year's Eve when an extension until 02.30 hours was sought.

It was also suggested as part of the application that amongst other things, CCTV cameras would be installed and maintained in consultation with the Police Crime Prevention Office, off sales would be in sealed containers only; the premises would be a member of Pubwatch or related scheme and would operate a challenge 21 policy.

On behalf of the Applicant Mr Warne of TLT solicitors addressed the Licensing Sub-Committee. Members noted that Mr Warne relied upon all of the same submissions, Statutory Guidance, Policy and points raised in respect of the previous application for the New Market Undercroft. He informed the Licensing Sub-Committee that there is a very interesting bidder involved and that covers for this restaurant are likely to be 150 to 180 maximum.

Mr Perkins reiterated his desire for a condition to address noise. Mrs Robbins noted that these premises will be closer to the Empire and a proposed noise condition would be even more appropriate in these circumstances and wanted to ensure that it was minuted that this should be reflected in the lease.

In summing up Mr Perkins said that he was concerned that there should be protection for noise nuisance. He contended that the Licensing Authority needs to hold some powers in its hand when other legislation fails to do what it should. Mr

Perkins acknowledged that the Licensing Act does not permit Licensing Authorities to impose conditions where such matters are covered by other law.

Members noted that in summing up Mr Warne informed the LSC that the proposed lease does include clauses in respect of noise abatement. He does not necessarily accept that noise abatement notices are ineffective. He contends for the imposition of the same additional/amended conditions as per previous application.

Members noted that no representations were received from Responsible Authorities. Members had regard to the Cumulative Impact policy and did feel that there was likely to be an impact but considered the premises were unlikely to add significantly to the Cumulative Impact and that conditions would be effective. Further members considered the premises were unlikely to have a detrimental effect on the licensing objectives.

The licence shall be granted as applied for with conditions consistent with the operating schedule save for the following additions and amendments:

- (1) In relation to outside areas as marked on the licensing plan cessation of licensable activities at 23:00 hours with outside areas to be clear at 23:30 hours.
- (2) On Sundays all licensable activities to cease at 23:00 hours with areas to be clear at 23:30 hours save for Sundays immediately prior to Bank Holiday Mondays when the originally requested licensing hours will apply.
- (3) Customers will not be permitted to leave the premises (premises to include the outside area as marked on the licensing plan for licensable activities) with glass containers save for sealed or re-sealed containers only.
- (4) All doors and windows to be closed (except for access and egress) after 23:00 hours when regulated entertainment takes place.
- (5) A dispersal policy will be drawn up and implemented to ensure that customers leaving the premises (in particular at the close of the premises for licensable activities) do so without causing disturbance to local residents.
- (6) The premises manager will ensure that staff clear litter from around the entrance/exits at the close of business.

Members noted concerns in relation to noise but did not feel any conditions were put forward which were sufficiently precise and/or enforceable, and they were mindful of the Statutory Guidance in this regard. Members however welcomed the offer that this could potentially be addressed in other ways.

Authority was delegated to the Senior Public Protection Officer to issue the licence.

The meeting ended at 5.27 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services

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