

## **BATH AND NORTH EAST SOMERSET COUNCIL**

### **LICENSING SUB-COMMITTEE**

Tuesday, 4th November, 2014, 10.00 am

**Councillors:** Manda Rigby (Chair), Anthony Clarke and Brian Webber

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

#### **84 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the procedure.

#### **85 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apologies were received from Councillor Roger Symonds, who was unwell. Councillor Brian Webber substituted.

#### **86 DECLARATIONS OF INTEREST**

There was none.

#### **87 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR**

There was none.

#### **88 MINUTES: 7TH OCTOBER 2014**

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

#### **89 LICENSING PROCEDURE**

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

#### **90 APPLICATION FOR A PREMISES LICENCE FOR THE LAVA COFFEE COMPANY LIMITED, 11 SOUTHGATE PLACE, UNIT SU15, BATH BA1 1AP**

Applicant: The Lava Coffee Company Ltd, represented by Mark and David Medley

Other Person: Sandra Wilcox

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

The Public Protection Officer summarised the application, which was for authority to supply alcohol on the premises from 07:00 to 22:00 seven days a week. The opening hours were the same.

Mark Medley stated the case for the applicant. He said that Lava was a large coffee company and that the main emphasis at the premises would be on coffee. They

wished, however, to have the ability to serve alcohol to customers. They would be unlikely to use the full hours applied for every day, but they wanted flexibility to vary according to circumstances. The Cosy Club opposite was a fully licensed restaurant and had a balcony which was used 350 days a year. The noise from the upper floor of the Cosy Club was amplified because of the setting. By contrast, the tables and chairs outside Lava would only accommodate sixteen customers and they would probably be little used in the winter. David Medley said that only a restricted range of drinks would be available, consisting mainly of wine and beer. He did not think that people out for a night's drinking would be likely to patronise the premises. In response to questions from Members, they stated:

- the premises were a sub-franchise; the main franchise was in London; other sub-franchises would be opening in other parts of the UK
- they would be happy to reduce the hours applied for, which had been agreed after they had met Martin Purchase, Liquor Licensing Officer of Avon and Somerset Police, who had recommended that they should apply for the same alcohol hours as their opening hours
- Cosy Club had 66 outside seats, compared with Lava's 16
- they did not wish to do anything that would undermine the life of Bath; they would keep a firm control over the premises and not allow excessive drinking
- they emphasised staff training; Mr Mark Medley was a personal licence holder and a manager would be trained to be a personal licence holder
- they did not stay open till 22:00 every night; recently the premises had closed at 21:00 on a Thursday, because there were few people about

Ms Wilcox stated her case. In reply to a question from the Chair, she confirmed that her representation was based on the possibility of public nuisance arising from the sale of alcohol at the premises. She asked Members to bear in mind that Southgate is a mixed residential and commercial area. She lived immediately above the premises and was chiefly concerned about noise that might emanate from people sitting outside the premises. This would not be such a problem in winter, when she would have her windows closed, but she was concerned about the possibility of noise nuisance in the summer. She did not think there would be a problem with people drinking inside. Sixteen people outside might not seem a lot, but this could be a hen party, for example. In reply to questions from Members she stated:

- people drinking coffee outside would tend to be different from those drinking alcohol outside; people tend to become louder and more voluble after they have consumed alcohol
- she did not think the hours applied for were reasonable, given the setting, and would prefer to be reduced; she would be happy if there was no use of the outside area after 19:00

David Medley asked her if she would be concerned about the outside area being used later during special events. She replied that she would not object to this, but

thought that that the premises should have to make an application each time they wanted to do this.

The parties were invited to sum up.

Mark Medley said that alcohol sales would only be a small part of the business. A bottle of beer would cost £4.95, so that it was not likely that binge drinkers would be attracted to the premises. He would be happy to reduce the hours for the sale of alcohol to 11.00 to 20.00 and for there being no drinking in the outside area after 19.00.

Ms Wilcox said that she did not wish to add anything to her submission.

Following an adjournment, it was **RESOLVED** to grant the application with modifications as detailed below.

The Chair thanked the parties for their amicable and constructive engagement with each other.

### Decision and reasons

Members have today determined an application for a new premises licence for the Lava Coffee Company Limited, 11 Southgate Place, Unit SU15, Bath. In doing so they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's 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 appropriate and proportionate in the promotion of the licensing objectives based on the information put 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 promotes the licensing objectives and would be unlikely to add significantly to the cumulative impact.

In reaching a decision Members were careful to take account of all the relevant oral and written representations and were careful to balance the competing interests of the applicant and interested party.

### THE APPLICANT

The applicant indicated that the main offering was coffee products however they would like to be able to offer alcohol as an option. The applicant noted that the Cosy Club has 66 outside seats and outdoor heating whereas this premises has 16 outdoor seats and no outdoor hearing. The target market for the premises is not for all night drinkers.

The applicant addressed the cumulative impact of the proposal and indicated that they would tightly control noise and ensure that the staff are well trained. They would not tolerate excess alcohol sales to an individual and will refuse to sell where appropriate. The premises want to be seen as a coffee shop.

The applicant indicated that they would be agreeable to reduced hours of 11.00 hours to 20.00 hours for the sale of alcohol on the premises and a cut off time of 19.00 hours for consumption of alcohol in the outdoor seating area of the premises, if members felt that to be appropriate and proportionate.

THE INTERESTED PARTY

The interested party alleged that the applicant’s proposals would undermine the prevention of public nuisance licensing objective. She lives above the premises and expressed concern about noise emanating from the premises and the increase in noise levels as people drink more alcohol. Her main concern related to alcohol consumed in the outdoor seating area of the premises. She conceded that in the winter there is not likely to be a great problem; this is likely to be more of a nuisance during summer time where her windows are likely to be open. She expressed the view that the proposed times of 7.00am to 10.00pm for sale of alcohol was unacceptable and excessive in a mixed commercial and residential location and that this would cause public nuisance. She felt reduced hours would reduce the public nuisance she felt she would experience.

THE MEMBERS

Members determined that the application would not add to the cumulative impact already being experienced. Members accepted that the business model of the premises was focussed on serving coffee but that the applicant wanted to have the option of serving alcohol and that would be in quantities that was unlikely to cause public nuisance. Members resolved to grant the application subject to conditions consistent with the operating schedule and the mandatory conditions save for the following amendment:

- (l) The sale of alcohol, for consumption on the premises only is permitted as follows:  
Monday to Sunday from 11.00 hours to 20.00 hours

Provided that no alcohol is to be consumed in the outdoors seating area as shown on the layout plan after 19.00 hours daily.

Members made that amendment on the basis that it was appropriate and proportionate and promoted the licensing objective of preventing public nuisance.

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

The meeting ended at 11.21 am

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**