

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

### **LICENSING SUB-COMMITTEE**

Tuesday, 28th April, 2015, 10.00 am

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

**Officers in attendance:** Carrie-Ann Evans (Senior Legal Adviser) and Kirsty Morgan (Public Protection Officer)

#### **166 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the procedure.

#### **167 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

#### **168 DECLARATIONS OF INTEREST**

There were none.

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

There was none.

#### **170 MINUTES: 27 MARCH 2015 AND 7 APRIL 2015**

The minutes of the 27 March 2015 and the 7 April 2015 were approved as a correct record and signed by the Chair.

#### **171 LICENSING PROCEDURE**

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

#### **172 APPLICATION FOR A PREMISES LICENCE FOR BURGER & LOBSTER, 25 (THE OCTAGON) 7 28 MILSOM PLACE, MILSOM STREET & BROAD STREET, BATH BA1 1BZ**

Applicant: Burger and Lobster, represented by Thomas O'Maoileoin (Thomas & Thomas partners LLP) and Alex Neil (proposed Designated Premises Supervisor)

Other Persons: Simon Potter and Julian Parry.

The parties confirmed that they understood the procedure to be followed for the hearing.

The Public Protection Officer presented the report and outlined the application from Burger and Lobster for a new premises licence. Representations had been received from two local residents in respect of all four licensing objectives. Since the application sought authority to sell alcohol for consumption on the premises and was situated in the Cumulative Impact Area, a rebuttable presumption was raised that the

application should be refused. The onus was therefore on the applicant to demonstrate that there would be no significant contribution to the cumulative impact from the application. Additional information, including proposed further conditions submitted by the applicant, had been received since the publication of the agenda, which had been circulated to Members and the parties.

Mr O'Maoileoin stated the case for the applicant.

He said that the premises were in the Octagon, which was situated by Milsom Parade, Milsom Street and Broad Street and was therefore in the Cumulative Impact Area.

He had had correspondence with the two Other Persons and as a result the applicant had proposed a number of additional conditions. He had hoped to meet the Other Persons, but unfortunately this had not happened because of a communication problem.

Burger and Lobster was a restaurant chain, which already had premises in London and Cardiff, and would shortly open in Manchester. There was also one in New York, off of Time Square. The product was of high quality, and Burger and Lobster had received good reviews in the national press. The company liked buildings which were slightly quirky, such as the Octagon. The premises were not ideal for a company that simply wanted to make a quick buck. Burger and Lobster was putting £2.4 million into the Octagon and was working with the Bath Preservation Trust, English Heritage and the Council's building officers.

In response to a concern of the Other Persons, the applicant was now proposing to bring forward the terminal hour for licensable activities to 00:00 (midnight) seven days a week with a closing time of 00:30.

Another concern expressed by the Other Persons was the dispersal of customers. There were several exits from the premises, some of which led more directly to residential properties than others. The applicant had decided that the best exit route for customers at night would be to Green Street.

CCTV would be installed throughout the premises. The applicant did not feel that the provision of SIA security staff would be appropriate given the style of the premises; customers might expect them at a nightclub, but not at a restaurant. They were not provided at other Burger and Lobster premises. However, the two entrances to the premises would be supervised by members of staff. On arrival customers would be shown to a table.

There would be an area outside the premises designated for smoking.

The total capacity of the premises was 300 persons although this was not set in stone and could go up or down. However, this would probably be reduced because of the tables. About 95% of the space within the premises was taken up by tables and chairs. The applicant would be happy to accept a condition restricting sales of alcohol to customers seated at table, with an exception made for the small bar in the basement. He indicated the area on the plan. He expected that the vast majority of customers would order drinks from their tables.

The applicant was happy to agree to conditions relating to free calls for taxis and for signage at all exits advising customers to leave quietly.

He commented on the list of eighteen proposed further conditions (a copy of which is contained in the Appendix to these minutes.) In relation to condition 1, he said that it was difficult to forecast how frequently the facility to have alcohol with breakfast would be used by customers. All the other Burger and Lobster premises had this facility.

The manager's direct telephone number would be publicised (proposed condition 14).

He addressed concerns about underage drinking and said that the type of customer attracted to Burger and Lobster establishments should be considered. These included members of the local business community, families and tourists. Alcohol was not a large element in what these customers ordered. The typical customer would have a couple of glasses of wine or a glass of beer. The average spend was £20—25 per head; the prices charged which would be unlikely to attract underage drinkers.

Members put questions to the representatives of applicant, in response to which they stated:

- the operator would work with the local manager to identify designated smoking areas; no specific area for smoking had yet been designated, but one might be at the front of the premises in Milsom Street and another in the courtyard
- there would an outside seating area on an upper level
- there had been no problems with local residents at the other Burger and Lobster establishments

The Chair asked Mr O'Maoileoin to explain, with reference to each of the licensing objectives, why the application would not significantly add to cumulative impact. In reply, he noted that there had been no representations from the Responsible Authorities. He said the premises would be monitored by CCTV. He submitted that crime and disorder was mostly linked to premises which were alcohol-centred, which the Burger and Lobster was not. Public safety was being addressed by a £2.4 million investment in the building. Protecting children from harm was promoted by the premises being very family-oriented and by the implementation of a Challenge-21 policy. The potential for public nuisance was being minimised by conditions addressing how customers left the premises and the removal of waste. Music being limited to background music only and extractor equipment would minimise the emission of smells.

In reply to a question from the Public Protection Officer Mr O'Maoileoin confirmed that the applicant was no longer seeking authorisation for the provision of recorded music.

The Chair asked whether the applicant would be prepared to have fewer operating hours from Monday to Thursday than on Fridays and Saturdays. Mr O'Maoileoin replied all the other Burger and Lobster establishments had the same operating hours seven days a week. This made the production of advertisements and signs easier. In practice there would usually be fewer customers earlier in the week and the full operating hours might not be utilised then.

In response to a question from the Chair about security, Mr O'Maoileoin referred to proposed condition 6 and said that security staff would be engaged if recommended by the police at any time.

In response to questions from Mr Potter he stated that if there were any changes to the present plans, or if major events were planned at the premises, local residents would be consulted.

Mr Potter stated his case. He said that he was very pleased by the new conditions and by what he had heard from the applicant's representatives. He hoped that there would be an ongoing relationship between the management of the premises and local residents.

Sometimes there was dialogue with local residents when licensed premises first opened, followed by a decline in the relationship over time because of high staff turnover.

Mr Parry said that he been very encouraged by the discussions that had taken place at today's hearing. It should be borne in mind by the operators of licensed premises that that there were people living in the city centre.

Following an adjournment, the Sub-Committee **RESOLVED** to grant the application with additional conditions as detailed below.

### Decision and reasons

Members have today determined an application for a new premises licence for Burger & Lobster, 25 (The Octagon) and 28 Milsom Place, Milsom Street and Broad Street, 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 the application involves the provision of 'on trade' sale of alcohol. 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 being experienced.

Members were careful to take account of the relevant written and oral representations made and were careful to balance their competing interests. Members were however careful to disregard irrelevant matters.

Members noted that there had been no representations from Responsible Authorities.

### **Applicant**

Thomas O'Maoileoin spoke as the solicitor for the applicant. He indicated that Burger and Lobster offer a high quality product; they are family led as opposed to alcohol led and that they are prepared to invest in the integrity of the building.

Mr O'Maoileoin acknowledged and addressed the fact that the premises fall in the middle of the Cumulative Impact Area and indicated that as an operator they would not add to the Cumulative Impact experienced in Bath. He addressed each of the licensing objectives in turn and referred to the conditions proposed which seek to address those objectives.

The applicant indicated that if members were minded to approve the licence they would reduce the hours sought for late night refreshment and sale of alcohol to midnight and they would reduce the premises closing time to 12.30am (save for non-standard timing sought in relation to New Year). The Applicant also indicated that they are no longer pursuing the part of their application for Recorded Music as they only seek to play background music which is not a licensable activity. Furthermore, it was clarified by the applicant in relation to the further conditions document circulated to Members and all parties that:

- except in the area immediately in front of the bar in the basement of the premises, alcohol shall be by waiter/waitress service only.
- After 00:00 hours customers will exit the premises from Green Street.

And the following further conditions were offered by the applicant:

- All smoking areas at the premises shall be supervised by a member of staff.
- A receptacle shall be provided in all smoking areas for the disposal of cigarette butts.
- Smoking areas shall be regularly checked for litter which shall be collected and suitably disposed of by a member of staff.

### **Interested Parties**

In written representations the interested parties objected under all four licensing objectives. However, Mr Potter indicated in oral submissions that he was extremely happy that the premises were being brought back into use. He was happy and encouraged by what he had heard from the applicant and indicated that his main areas of concern had been addressed very well. His principal residual concern was to ensure a continuing dialogue and relationship with the applicant in relation to the premises.

Mr Parry said that he was very encouraged by discussions with the applicant. He asked the applicant to continue to be mindful of residents.

### **Members**

Members determined that the application would not add significantly to the cumulative impact already being experienced and found that the application promotes the licensing objectives.

Members resolved to grant the application subject to conditions consistent with the operating schedule save for the following amendments:

Recorded Music  
No longer sought

Sale of Alcohol  
08:00 to 00:00 daily

Late night refreshment  
23:00 to 00:00 daily

Opening hours  
08:00 to 00:30 daily

Further, Member resolved to grant the application subject to the mandatory conditions and imposed the following further conditions as offered by the applicant and circulated to Members and all parties (annexed hereto), subject to the following points of clarification (numbers relate to paragraphs within the further conditions document):

2. Except in the area immediately in front of the bar in the basement of the premises, alcohol shall be by waiter/waitress service only.

17. After 00:00 hours customers will exit the premises from Green Street.

And Members imposed the following further conditions as offered by the applicant in oral submissions to the committee:

- All smoking areas at the premises shall be supervised by a member of staff.
- A receptacle shall be provided in all smoking areas for the disposal of cigarette butts.
- Smoking areas shall be regularly checked for litter which shall be collected and suitably disposed of by a member of staff.

Members imposed the additional conditions on the basis that they were appropriate and proportionate in promoting the licensing objectives.

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

The meeting ended at 12.02 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**

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**BURGER AND LOBSTER, 25 (THE OCTAGON) AND 28 MILSOM PLACE, MILSOM  
STREET AND BROAD STREET, BATH BA1 1BZ**

**PROPOSED FURTEHR CONDITIONS TO ADDRESS CONCERNS RAISED BY  
OBJECTORS AND LICENSING POLICY**

1. Between the hours of 08:00 hours and 10:00 hours the sale of alcohol shall be ancillary to substantial refreshment (e.g. champagne breakfasts).
2. Except in the bar area hatched green on the plan alcohol shall be by waiter/waitress service only.
3. CCTV to be installed at the premises in accordance with the reasonable requirements of the police Crime Prevention Officer.
4. The applicant will join the appropriate local Pubwatch/Nightwatchescheme.
5. Off-sales of alcohol to be in sealed containers only.
6. The need for door security shall be assessed by the licence holder or designated premises supervisor on a regular basis and door staff shall be employed when and where the risk assessment deems this appropriate. The number of Door Supervisors employed at the premises when licensable activities are taking place, their location within the premises and the times they will be employed will be decided in consultation with the police
7. All relevant fire and health and safety regulations will be adhered to and staff trained accordingly.
8. Prominent notices shall be displayed at all exists requesting patrons to respect local residents and to leave the premises and area quietly.
9. A telephone number for free calls to local taxi firms to be available for departing customers at the end of the night.
10. A Challenge 21 policy shall be implemented and full and appropriate identification shall be sought from any person who appears under the age of 21. The only acceptable forms of identification shall be passport, photo driving licence and those carrying the PASS logo.
11. Notices shall be displayed indicating that the Challenge 21 policy is in force.
12. A sales refusal book shall be kept at the premises and this shall be checked each week by either the premises licence holder or the designated premises supervisor to ensure that staff are accurately recording refusals. The refusal book shall be open to inspection by appropriate officers of responsible authorities.
13. There shall be a personal licence holder on duty on the premises at all times when the premises are authorised to sell alcohol.

14. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.
15. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 08.00 hours on the following day.
16. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
17. After 00:00 hours customers will exit the premises from (to be decided).
18. An incident log shall be kept at the premises, and made available on request to an authorised officer of the Council or the Police.