

# **BATH AND NORTH EAST SOMERSET COUNCIL**

## **LICENSING SUB-COMMITTEE**

Thursday, 11th June, 2015, 10.00 am

**Councillors:** Paul Myers (Chair), Mark Shelford and Dine Romero

**Officers in attendance:** Shaine Lewis (Principal Solicitor and Deputy Monitoring Officer), John Dowding (Senior Public Protection Officer), Michael Dando (Senior Public Protection Officer) and Kirsty Morgan (Public Protection Officer)

### **1 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the procedure.

### **2 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

### **3 DECLARATIONS OF INTEREST**

There were none.

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

There was none.

### **5 MINUTES: 26 MAY 2015**

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

### **6 EXCLUSION OF THE PUBLIC**

The Sub-Committee passed the following resolution:

Having been satisfied that the public interest would be better served by not disclosing relevant information, in accordance with the provisions of Section 100(A)(4) of the Local Government Act 1972, the Sub-Committee **RESOLVES** that the public be excluded from the meeting for the following two items of business and that the reporting of the meeting be prevented in accordance with Section 100A(5A), because of the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Part 1 of Schedule 12A of the Act, as amended.

### **7 TAXI PROCEDURE**

### **8 CONSIDERATION OF CONVICTION OBTAINED - MR S A**

Mr A confirmed that he had received understood the procedure to be followed for this hearing.

The Senior Public Protection Officer summarised the application.

Mr A stated his case and was questioned by Members. He then made a closing statement.

Following an adjournment, the Sub-Committee **RESOLVED** to place 4 penalty points on Mr A's Private Hire Drivers' Licence.

#### Decision and reasons

Members considered what action, if any, to take against a licensee convicted of an offence during the course of his licence who failed to declare it in accordance with Council policy.

In determining the matter Members had regard to the Local Government (Miscellaneous Provisions) Act 1976, the Council's Policy, Human Rights Act 1998 and case law. Members noted that case law stated hearsay evidence is admissible, the economic wellbeing of the licensee is irrelevant and when considering any action the protection of the public is of the utmost importance.

Members took account of Mr SA's oral and written representations that he had a lot on his mind at the time and had forgotten about the conviction when he renewed his licence. Members recognised his admission and his remorse, but took a dim view that he did not declare his conviction and made a false declaration given he had been licensed for over 3 years. Members proceeded in accordance with their policy and placed 4 penalty points on his Private Hire Drivers' Licence.

### **9 CONSIDERATION OF CONVICTION OBTAINED - MR M E B**

Mr B confirmed that he had received and understood the procedure to be followed for the hearing.

The Senior Public Protection Officer summarised the report. He pointed out that "conviction" should in fact be "caution" throughout the report.

A DBS certificate relating to Mr B and his statement was circulated to Members. Mr B and the Senior Public Protection Officer withdrew from the room while Members studied these.

After the meeting reconvened, Mr B stated his case and was questioned by Members. He then made a closing statement.

Following an adjournment, the Sub-Committee **RESOLVED** to issue a stern warning about his future conduct to Mr B.

#### Decision and reasons

Members determined what action to take against a licensee issued with a caution during the course of his licence who failed to declare it in accordance with Council policy.

In determining the matter Members had regard to the Local Government (Miscellaneous Provisions) Act 1976, the Council's Policy, Human Rights Act 1998 and case law. Members noted that case law stated hearsay evidence is admissible,

the economic wellbeing of the licensee is irrelevant and when considering any action the protection of the public is of the utmost importance.

Members took account of Mr MEB's oral and written representations and noted at the time of the incident his life was in upheaval. Members noted his apology and statement that he had learned a lesson from his mistake. Members therefore depart from the Policy by not giving points, but give a stern warning as to his future conduct and declarations.

## **10 LICENSING PROCEDURE**

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

## **11 APPLICATION TO VARY THE PREMISES LICENCE FOR THE COWSHED, 5 BLADUD BUILDINGS, BATH BA1 5LS**

Applicant: The Cowshed (Bath) Ltd, represented by Matthew Phipps (TLT Solicitors) and Des Jones (Operational Manager)

Other Persons: The Abbey Residents, represented by Sally Rothwell; Mrs Amanda Habisrittinger and Rachel Perry (witness)

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

The Senior Public Protection Officer summarised the application. The applicant was seeking:

to vary the layout and design of the premises;

to add alcohol for consumption off the premises in order for alcohol to be taken into external areas;

to add the condition "the external areas shown on the submitted plan will not be used after 22:00 hours on any evening".

Representations had been received from Other Persons relating to the licensing objectives of crime and disorder and public nuisance.

Additional information received from the parties, including additional conditions proposed by the applicant, had been circulated to members before the meeting. The additional conditions were:

1. The whole of the outside areas shall be laid out to tables and chairs and no less than 80% of the outside areas will contain furniture.
2. There will be no more than 48 chairs available for customers in the outside spaces at any one time.
3. Waiter/Waitress service will be available throughout the premises at all times.

4. A dedicated member of staff shall supervise and control the outside areas/area (when in use) throughout service
5. Additional garden furniture, such as parasols and/or umbrellas will be available throughout the outside areas at all times.

Members had been given an opportunity to view video footage submitted by the Other Persons.

Mr Phipps stated the case for the applicant. He said that the applicant had opened a similar premises in Bristol five years ago. Another part of the business was Ruby and White wholesale and retail butchers'. The premises was located next to a nightclub, but was itself emphatically a restaurant. The premises had received a number of favourable reviews and had been welcomed as a part of Bath's dining culture. He noted the concerns expressed about large parties at the premises. It was true that there were large tables in the outside dining area, but there had only been 6 tables with more than 8 diners in the last month, whereas 1700 customers had been served at tables of 7 or less. There was nothing to suggest that the premises had contributed to crime and disorder. Alcohol could only be consumed at a table. The applicant was proposing five conditions relating to the operation of the outside area. The Council's Licensing Policy, including the Cumulative Impact Policy, had been raised in the representations. He noted that paragraph 16.11 of the Council's Statement of Licensing Policy says that "the impact can be expected to be different for premises with different styles and characteristics" and submitted that no addition to cumulative impact would arise from this application. The purpose of the application was to allow the serving of alcohol in two areas at the rear of the premises. He submitted that the premises were not a source of crime and disorder or public nuisance, and that the new conditions applied for would allow greater control of the outside areas. These conditions were to a large extent a response to concerns raised in the representations. In accordance with the Cumulative Impact Policy, the Sub-Committee had to be satisfied that conditions would be insufficient to prevent a significant addition to cumulative impact before refusing the application. The applicant wished to apologise for the "shoddy evening" of 31<sup>st</sup> May, when after the premises had closed, the Assistant Manager had admitted customers who had been queueing outside the premises and served them with drink; three members of staff had been interviewed about this and two had been dismissed.

Mr Phipps was questioned by Members. In reply he stated:

- the two outside areas were at different levels and each had a maximum of 48 seated customers
- there was no external bar

In response to questions from the Other Persons he stated:

- there would be an intensification of the use of the outside areas, but he did not agree that this would create additional noise nuisance;
- the premises ceased serving alcohol at midnight; last orders for food would probably be 22:00; the previous evening the premises had closed at 22.20
- he did not think that music inside the premises would be audible outside even when doors were opened, and that conversation from customers on the outside tables would to a large extent be imperceptible

Sally Rothwell stated her case. She said that she was representing The Abbey Residents Association in place of Ian Perkins, who was unable to attend. She said that the premises were very close to a number of residential properties and because of heritage issues it was very difficult for residents to soundproof their homes. There was already noise and anti-social behaviour associated with other licensed premises in the area. If this application were granted, it could lead to a further reduction in residents' quality of life. 48 people dining on the terraces could give rise to considerable hubbub. She urged the Sub-Committee, if it was minded to grant the application, to reduce considerably the number of customers allowed on the terraces at any one time. She also urged that a member of staff should be required to be present on the terraces when they were in use.

Ms Habisrittinger stated her case. She was also concerned about the number of customers on the terrace. 48 customers outside for ten hours a day was unacceptable. She urged that the application be rejected to protect residents quality of life. She called her witness, Rachel Perry. Ms Perry said that she was unable to sleep in her bedroom because of external noise. People who had been drinking made a lot of noise. She had suffered stress and an adverse impact on her health because of the noise. She noted that the applicants had said that the proposed conditions would allow management to exercise greater control over the premises, but what kind of premises was it that needed controlling?

The parties were invited to sum up.

Sally Rothwell said that residents were extremely concerned about the potential for noise from the outside areas of the premises. She thought the application should be refused. However, if the Sub-Committee was minded to grant the application she believed that the number of people permitted in the outside areas should be reduced and that a member of staff should always be on duty on the terraces.

Ms Habisrittinger asked the Sub-Committee to reject the application.

Mr Phipps submitted that hubbub did not constitute public nuisance. He acknowledged that there would be some perceptible noise, but he submitted that private nuisance was not the same as public nuisance. He urged the Sub-Committee to consider the specifics of the Council's Licensing Policy and to focus on whether the applicant's proposed additional conditions would be sufficient to allay concerns about any addition to cumulative impact.

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

### **DECISION AND REASONS**

Members determined an application to vary a premises licence at The Cowshed, Bladud Buildings, 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 the premises are situated in the Cumulative Impact Area. As the Council has a Cumulative Impact Policy applying to variations of premises licences 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 balance the competing interests of the applicant and interested parties and gave account to all relevant representations whilst disregarding the irrelevant. For example noise nuisance from other premises in the vicinity, rats, seagulls and the noise and odour associated with the use of kitchen equipment at the premises.

Members noted that there had been no representations from Responsible Authorities such as the police and environmental health.

#### The Applicant

The application was to vary the layout and design of a premises licence in accordance with the plan to allow people to enjoy a drink with a meal when dining outside. It was stated that the premises opened in October 2014 and is a steak restaurant not a night club or bar. It is a fine dining operation with food at the very heart of what they do. The restaurant has been very well received as demonstrated by the additional information. In acknowledging the concerns of Interested Parties it was stated they do have large tables although these are in the minority and whilst they wanted people to come and enjoy themselves a suite of conditions was proposed to regulate the use of the outside terrace. With regard to smoking it was proposed that smokers will be encouraged but not restricted to the lower end of the outside area. The applicant stated there was no crime and disorder connected with the premises and with regard to the video incident this was a one off, did not involve licensable activity and all staff involved had been disciplined. In conclusion it was suggested that the use of the outside area would not cause a nuisance as it would simply involve outside dining until 10pm which was a reasonable and proportionate application.

#### Interested Parties

The Interested Parties made representations under the objectives of crime and disorder and public nuisance. In this regard it was stated that neighbouring properties already suffered from the effects of other licensed premises in the area and there was concern over the impact the extended use of the rear terrace would have as neighbours are limited in the steps they can take to prevent noise entering their premises. In this regard it was suggested that if granted this would lead to an increase in late night disturbance affecting the quality of life of residents as had already been experienced. In the event of the application being granted a number of additional conditions was suggested for Members consideration.

#### Members

Members took account of the relevant oral and written representations and noted the additional information which included video footage. Members considered the vast majority of issues raised in objection covered matters arising from other premises in the locality and matters to be dealt with by other statutory regimes.

Whilst Members found this a reasonable application from a responsible operator it was determined that placing tables and chairs for 48 covers in the outside area would be likely to have a detrimental effect on the objective of prevention of public nuisance. This was because the area was presently unused, there was evidence that when the conservatory windows are open noise escapes and therefore any tables and chairs placed in the outside area was likely to generate noise. Members considered therefore that by reducing the number of covers from 48 to 30 in the outside area would reduce the likely impact and together with the control mechanisms in place submitted by the applicants by way of staff, staff training and conditions, the terrace could be regulated in such a way so as not to add significantly to cumulative impact.

Accordingly Members resolved to grant the application subject to conditions consistent with the operating schedule, the mandatory conditions, those put forward by the applicant and as imposed by Members as appropriate and proportionate in the promotion of the licensing objectives.

The conditions are as follows:

There will be no more than 30 chairs available for customers in the outside spaces at any one time;

Waiter/Waitress service will be available throughout the premises at all times;

Each outside area shall have a dedicated member of staff to supervise and control the outside areas when in use throughout service.

Additional garden furniture, such as parasols and/or umbrellas will be available throughout the outside areas at all times.

External tables and chairs shall not be configured in such away so as to accommodate more than 8 covers together.

The external areas on the plan will not be used after 10pm on any evening.

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

The meeting ended at 2.24 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**