

BATH AND NORTH EAST SOMERSET

LICENSING (GAMBLING AND LICENSING) SUB-COMMITTEE

Thursday, 15th September, 2011

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

Also in attendance: Terrill Wolyn (Senior Licensing Officer) and Francesca Smith (Senior Legal Adviser)

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 22 JULY 2011 AND 8 AUGUST 2011

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 FUBAR, 2 GROVE STREET, BATHWICK, BATH BA2 6PJ

Applicant: James Mcalinden, represented by David Holley (Licensing Agent) and Elizabeth Pike (Manager)

Interested Parties: Steve Deeley, Adrian Phipps, represented by David Phipps, Ian Perkins (The Abbey Residents Association)

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

The Licensing Officer summarised the application as set out in her report. She explained that a new licence was required because of alterations to the premises. Representations had been received from interested parties in respect of the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance and public safety.

Mr Holley stated the case for the applicant. He apologised that the applicant was not able to attend because of an engagement in Bristol. He introduced Elizabeth Pike, the Manager of the premises. Mr Holley explained that the premises comprised a bar area, a small downstairs room, containing tables and chairs, and an outside terrace/decking area at the rear of the premises, also furnished with tables and chairs. There was, in total, seating for about 90 people. The premises had been closed for six months while alterations to the bar and decking area had been carried out. Ms Pike said that the intention was to create a pleasant social environment, not a nightclub where people came to get drunk. Mr Holley stated that the premises were licensed under the Licensing Act 1964, which contained provisions relating to the supply of alcohol ancillary to the provision of meals. A new licence was required because of the physical changes to the premises, to allow extended hours in accordance with the Licensing Act 2003, and to allow parties and other special events to take place at the premises without the need to apply for Temporary Event Notices. Mr Holley said that the applicant hoped that the conditions included in the operating schedule gave a clear indication of the intended nature of the operation. He noted that an interested party had suggested that there should be a condition requiring the fitting of a noise limiter to music amplification equipment with a noise limit set by the local authority. He suggested that it was very difficult to regulate noise in terms of decibel levels, because so much depended on special factors. It was proposed to have a karaoke facility, to be used occasionally when parties were taking place, but there would be no dance floor. He suggested that the condition included in the operating schedule that "no noise to emanate from the premises so as to be audible or cause nuisance at the façade of the nearest residential premises" would be sufficient. He said that he would not respond in detail at this stage to all the issues raised by interested parties. He noted that no representations to the application had been received from the Responsible Authorities. He drew attention to the condition in the operating schedule providing that

Where a risk assessment by the DPS and/or at the written request of the Police, SIA door staff shall

1. Supervise all patrons queuing to enter premises and when leaving to seek to ensure they do so in a quiet and orderly manner
and
2. Wear yellow reflective jackets at all times when on duty.

and the condition that the management should consider joining Pubwatch or other similar organisation.

While acknowledging that fire safety was no longer an issue for the Sub-Committee, he said that the applicant had produced a fire risk assessment, which had been impressed the Fire Service and that all necessary fire measures had been taken.

A Member sought assurance that the premises would not become a nightclub, given that it appeared that there would be a vertical drinking area and there would be karaoke facilities. Ms Pike replied that there was absolutely no intention of turning the premises into a nightclub. They did not want people squashed in getting drunk and then spilling out onto the streets. Mr Holley said that there would be a seat available for every person invited into the premises. Ms Pike said that waitresses served at table; it was not a place where people would crowd around the bar. There were about 8 seats in front of the bar, to allow people to sit and talk.

A Member asked what would be the terminal hour for the provision of hot food. Ms Pike said food would be served up to an hour before closing time; customers sometimes arrived late and wanted a bite to eat. The Senior Legal Adviser drew attention to the hours sought for late night refreshment, which were 23.00-00.00 (midnight) on Sunday to Thursday and 23.00-01.00 (the following day) on Fridays and Saturdays.

A Member asked about the use of the terrace/decking area. Ms Pike replied that it had seats for about 10 people, and was an area where people could sit outside and enjoy evening sunshine, not somewhere where people could just sit and get drunk. It could be used by smokers until it was closed at 22.30, and in fact the management preferred smokers to use this area rather than the street.

In response to questions from interested parties, Mr Holley and Ms Pike stated

- alcohol would be sold for consumption off the premises as well as on the premises
- the Fire Service had issued a safety certificate for the premises

Mr Deeley stated his case. As Commercial Director of IPL, a company located in offices abutting on to the premises occupied by Fubar, he was concerned that the use of the terrace/decking area by customers of Fubar might pose a threat to the security of his offices and might cause nuisance to IPL staff and disturb their work. Karaoke sessions might also disturb staff. He explained that the company was engaged in sensitive work and operated on a 24-hour a day, seven days a week basis, so that staff were often working late at night and early in the morning. He suggested that the terrace facilitated unauthorised access to IPL's offices and that someone attempting to scale the wall separating IPL and Fubar might fall and suffer serious injury.

A Member asked whether IPL had ever discussed the possibility of unauthorised access to its offices with the management of Fubar. Mr Deeley said that the concerns had only arisen when the decking area had been constructed. He had had discussions with Fubar and had also written to them asking them to dismantle the terrace because it impinged on IPL's property. In reply to a further question he confirmed that he had written to Planning about the terrace.

Mr Phipps stated his case. He said that he believed that the construction of the terrace/decking area had been in breach of planning regulations. The Chair advised him that the Sub-Committee could not consider planning matters. Mr Phipps said that the terrace/decking area was so close to his property that it would be possible for people using it to spill drinks through his window. He felt that the use of the area

by customers of Fubar could cause nuisance to people in his property. He had suffered a burglary a few years ago and feared that the terrace made it easier for people to gain unauthorised access to his property.

Mr Perkins stated the case for The Abbey Residents Association (TARA). The Association was concerned about the proliferation of vertical drinking establishments in the centre of Bath and their proximity to residential premises. As the number of these establishments grew, there were more people on the streets late at night and an increase in the nuisance suffered by residents. He noted that the application mentioned the holding of parties at the premises. He felt that a line had to be drawn and a limit set to the number of these establishments. However, if the Sub-Committee were minded to grant the application, he hoped additional conditions would be imposed to protect residents as suggested in TARA's representation.

A Member suggested to Mr Perkins that parties could be held in restaurants as well as drinking establishments, and asked him why he thought from the evidence the applicants had provided that the premises would become a vertical drinking establishment. Mr Perkins replied that he had represented TARA at many licensing hearings and was able to compare what had been said at the hearings with what had actually happened. He would like to ask the applicants why they needed to change the character of their current licence by the inclusion of regulated entertainment and by increasing the emphasis on the sale of alcohol.

Mr Holley asked Mr Perkins whether he had visited the premises. Mr Perkins replied that he had not done so since it had been renamed as Fubar. Mr Holley asked him whether he thought the fact that the rooms in Fubar were small and that there were enough tables and chairs to accommodate all customers might discourage vertical drinking. Mr Perkins replied that it might. Mr Holley asked why TARA considered that a closing hour of 2am was too late even at the weekend. Mr Perkins replied that there seemed to be an assumption that people did not work at the weekend. In fact his wife did, and so did a lot of other people. People needed proper sleep before going to work. A closing hour of 2am would mean that people leaving the premises would be lingering in the street until 2.30 or 3am, as experience showed that dispersal from licensed premises was slow. Mr Holley asked Mr Perkins whether he thought that the condition about noise included in the operating schedule would be sufficient to meet his concerns. Mr Perkins replied that it would not, as it would be Environmental Protection who would enforce it. Enforcement through Environmental Protection was bureaucratic and imposed burdens on complainants, such as keeping noise logs, whereas the requirement to close doors and windows and the imposition of a noise limit dealt with the problem at source. Mr Holley asked Mr Perkins whether the condition about the use of SIA staff would address his concerns about queues outside the premises. Mr Perkins replied that door staff could only exercise limited control over people in the street. He said that Grove Street was something of a rat run for taxis and that the pavement outside Fubar was very narrow.

The Senior Legal Adviser advised that the condition in the operating schedule about the inspection of the decking area by a building control surveyor related to health and safety was unenforceable as this was a matter to be dealt with under separate legislation. She also advised that the condition about consideration of membership of

Pubwatch was also unenforceable and therefore neither of these conditions should be attached to the licence.

The parties were invited to sum up. Mr Deeley summed up on behalf of all the interested parties. He said that they were concerned that the proposed changes to the current operation of the premises would have adverse impacts.

Mr Holley submitted that the conditions included in the operating schedule clearly indicated what the applicant wanted the premises to be. Hot food would be available for as long as alcohol was sold. There was a provision relating to the use of door staff should the management consider this necessary or if the Police requested it. The management would endeavour to ensure that customers left the premises in a quiet and orderly manner. He did not see how the licence applied for would allow any future owner to turn the premises into a nightclub. Karaoke would only take place occasionally. It was noteworthy that no representations had been received from the Responsible Authorities. He said that the current economic climate was not favourable for restaurants, and he had noted that that even some licensed premises in the vicinity had closed. He submitted that the Licensing Authority could not simply refuse any new licenses in the cumulative impact area and suggested that the conditions offered by the applicant would be sufficient to prevent any addition to the cumulative impact. He emphasised that there had been no complaints about events at the premises held under Temporary Event Notices.

Having heard the submissions from the parties, the Sub-Committee adjourned.

After reconvening, the Sub-Committee **RESOLVED**, in accordance with paragraph 12(a) of the Hearings Regulations to adjourn the hearing in order to conduct a site visit under the provisions of the Council's "Good Practice Guide for Members and Officers Dealing with Licensing Matters" in order to consider the representations made about the terrace/decking in relation to the licensing objectives of the prevention of crime and disorder and public nuisance.

Having completed the site visit and reconvened, the Sub-Committee **RESOLVED** to grant the application as applied for, subject to the following additional condition:

The outside decked area shall not be used at any time when licensable activities are taking place on the premises

Subject also to the conditions consistent with the Operating Schedule, with amendments, namely the condition proposed by the applicant that the decked area would be used subject to the approval of a Building Control Officer is not a matter to be considered under the Licensing Act 2003 as this would result in the duplication of statutory regimes which is to be avoided. This condition is therefore not imposed on the premises licence. The condition related to Pubwatch is also not imposed as it is not enforceable. The condition relating to noise, as drafted, is vague and unenforceable and is amended to read:

Noise shall not emanate from the premises so as to cause a nuisance at the façade of the nearest noise sensitive premises.

Subject also to the mandatory conditions related to the sale of alcohol, door supervisors, the prevention of irresponsible drinks promotions, the dispensing of alcohol directly by one person into the mouth of another, the provision of free tap water, age verification policy, and the availability of alcohol in smaller measures.

REASONS

Members have today determined an application for a new Premises Licence for Fubar, 2 Grove Street, Bathwick, Bath. In doing so they have reminded themselves of the Licensing Act 2003, Statutory Guidance, the Council's Statement of Licensing Policy, which contains a policy on cumulative impact, 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.

Members noted that the applicant was unable to attend the hearing today due to reasons beyond his control. Accordingly, Members listened carefully to the applicant's representative, and his manager, who had attended today, took account of the representations from the Interested Parties and were careful to balance the competing interests of all the parties.

Members noted that representations had been made with regard to fire safety and recognised that these did not fall to be considered under the Licensing Act as this was dealt with by the Regulatory Reform (Fire Safety) Order 2005. They therefore disregarded them.

The Interested Parties had made representations related to the use of the terrace, i.e. the safety of customers when present on the terrace, the likelihood of crime and disorder, as a breach of security to adjoining premises, to Fubar, could occur and the likely nuisance from customers smoking and drinking on the terrace. Representations were also made with respect to the likelihood of nuisance from music emanating on the premises and litter.

Members noted that no representations to the application had been made by the Police, Environmental Health or Health and Safety.

Members considered that a site visit was necessary in order to consider the representations made as to the decking area in relation to the licensing objectives of the prevention of crime and disorder and public nuisance.

They therefore noted the provisions as to site visits in the Council's "Good Practice Guide for Members and Officers Dealing with Licensing Matters"

Under paragraph 12 (a) of the Hearings Regulations they therefore adjourned the meeting to a later time in order to facilitate the site visit.

The premises fall within the cumulative impact policy contained in the Council's Statement of Licensing Policy. Cumulative impact is not mentioned specifically in the

Licensing Act 2003 but it means in the Guidance the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. The effect of adopting a cumulative impact policy is to create a rebuttable presumption that applications for new premises licences will be refused if relevant representations are received. If the application is not to be refused then the applicant will have to demonstrate that the operation of the premises will not add to the cumulative impact in the area.

The Members considered that the measures proposed in the Operating Schedule would largely promote the licensing objectives of the prevention of crime and disorder, public safety and the prevention of public nuisance. They therefore considered that the premises would not add to the cumulative impact in the area.

However, Members considered that the use of the outside decked area would be likely to cause public nuisance and the potential for crime and disorder to occur especially in relation to the surrounding premises and therefore imposed the condition that it was not to be used when licensable activities were taking place.

The meeting ended at 1.36 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services