

## **BATH AND NORTH EAST SOMERSET**

### **LICENSING (GAMBLING AND LICENSING) SUB-COMMITTEE**

Thursday, 5th January, 2012

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

**Also in attendance:** Terrill Wolyn (Senior Licensing Officer), Wendy Stokes (Licensing Support 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 LICENSING PROCEDURE**

The Chair drew attention to the licensing procedure, copies of which had been made available to those attending the meeting.

#### **7 APPLICATION FOR A PREMISES LICENCE FOR THE FAT FRIAR, 227 LONDON ROAD EAST, BATHEASTON, BATH BA1 7NB**

Applicant: Roberto Mondim (not present and not represented)

Responsible Authority: the Police, represented by Martin Purchase (Liquor Licensing Officer)

The Licensing Support Officer presented the report. The Police had requested that seven additional conditions be attached to the licence as listed in paragraph 4.10 of the report. The applicant had agreed in writing to all of the conditions, but had subsequently written pointing out that, as he was not applying for off sales, two of the conditions were not appropriate and he requested that they should not be attached to the licence. These conditions were:

Alcohol will only be sold over the counter with food orders over £4.00.

and

All deliveries which include alcohol must only be received by a person aged 18 or over.

Mr Purchase stated the case for the Police. He said that the applicant was not present today as he was on a pre-booked foreign holiday. He had met the applicant to discuss the application, and the applicant had agreed to all the conditions proposed by the Police. Unfortunately the meeting had taken place before the Police had received the full documentation, and it had not been realised that off sales were not included in the application. Mr Purchase stated that there were other premises in the area where there had been problems with alcohol being supplied to people under the age of 18, which had been dealt with. He understood that the applicant was not planning to sell alcohol over the counter and that The Fat Friar could be described as a traditional fish and chip shop.

Following an adjournment, it was **RESOLVED** to grant the licence as applied for together with the mandatory conditions related to the sale of alcohol, 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.

They also imposed the conditions consistent with the Operating Schedule and those proposed by the Police and agreed to by the applicant save for the two which were irrelevant to the sale of alcohol on the premises.

Authority was delegated to the Licensing Officer to issue the licence accordingly.

## **REASONS**

Members have today determined an application for a new Premises Licence for The Fat Friar, 227 London Road East, Bath. In doing so they have reminded themselves of the Licensing Act 2003, Statutory Guidance, the Council's Statement of Licensing 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 that they 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 his being on holiday, for which he had given prior notice to the Council. Members proceeded in his absence and took account all of the oral and written representations from the applicant and Police, and were careful to balance their competing interests.

Members noted that the representations made by the Police were related to sporadic episodes of crime and disorder and anti-social behaviour already experienced in the area and that the applicant had not provided enough detail and clarity to address these matters in the Operating Schedule.

The Police had recommended that certain conditions were attached to the premises licence. These had been agreed to by the applicant save for the two conditions which were relevant to the sale of alcohol off the premises as the application was for the sale of alcohol on the premises only.

## **8 APPLICATION FOR A PREMISES LICENCE FOR PREMIER INN, 4 JAMES STREET WEST, BATH BA1 2BT**

Applicant: Whitbread Group plc, represented by John Gaunt (John Gaunt and Partners, Solicitors), Richard Pearson (Whitbread Acquisition Surveyor), David MacMullen (Director of MacMullen Associates)

Interested Parties: Mr and Mrs Paul Dolan, represented by Mr Dolan

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

The Senior Licensing Officer presented the report.

Mr Gaunt stated the case for the applicants. He said that Whitbread would convert the premises into a Premier Inn, which was a well-known brand. The licensed area would be situated entirely on the ground floor, with the hotel accommodation located on the floors above. He stated that it was normal for all Premier Inns to apply for a 24-hour licence for sales of alcohol to residents, although it was not always implemented. However, the planning permission granted to the premises on appeal by the Planning Inspector required closure at 23.30 Mondays to Saturdays and at 23.00 on Sundays, therefore the applicant was prepared to modify the terminal hour for all licensable activities to non-residents to match these times.

He confirmed that the application for regulated entertainment by way of the exhibition of films did not mean that the premises would become a cinema. The films would comprise only pre-recorded TV shows and educational films. He drew attention to the absence of representations from the Responsible Authorities. He then turned to the representations made by the Interested Parties. Noting that Mr Dolan had expressed concerns about the size of the bar, he produced a full-scale plan, a reduced copy of which had been submitted with the application, pointed out the bar and said that, as there would be 108 bedrooms in the hotel, and large restaurant, a bar with a capacity for 100 persons would not be excessive. He stated that there was no hidden agenda; the premises would only be a Premier Inn, and that there was no example of a Premier Inn which had sub-let space to other operators of licensed premises. He noted that another concern expressed by Mr Dolan was the use of the rear entrance. He said that the whole site would be redeveloped and that it was intended that the James Street entrance would be the only public access to the premises. There would be an area at the rear for deliveries and other services, to which access would only be granted by application at the reception desk. The side entrance was for use in emergencies only and was alarmed, so smokers would have to use the front entrance. The hotel management would have every incentive to prevent nuisance, since residents at the hotel would be able to claim a refund if they suffered disturbance under the "Good Night Guarantee". The premises were only just within the cumulative impact area. Non-residents would be able to use the bar, but

they would have to pay the prices charged by Premier Inns, which would not be cheap compared with other licensed premises in the area.

Members put questions to the applicant, in reply to which he stated:

- the “Saints’ Days” referred to in the non-standard timings were the days of the “national” saints, i.e. St George, St David, St Andrew and St Patrick
- there was some inconsistency between licensing authorities in their approach to background music; while there was a general view that the broadcasting of background music was not a licensable activity, the broadcasting required the use of equipment, which some authorities regarded as “facilities for making music”, hence why this had been applied for. [The senior licensing officer advised that as no entertainment falling within sub-paragraph (2) of Schedule 1 to the Licensing Act had been applied for, the provision of “facilities for making music” was not necessary.]
- it would be possible to control the presence of non-residents outside of the permitted hours, as staff were trained to be alert to the presence of non-residents on the premises at inappropriate times; also, non-residents were given a receipt when they entered a Premier Inn, which they had to hand in when they left. In addition residents would have to produce their door key on request from staff
- the bar area would not be used after the terminal hour for licensable activities and would be cleared of all persons

Mr Dolan stated his case. He said that he was not opposed to the application in principle, and that it would be acceptable with certain additional constraints. Even though the applicant was prepared to make the terminal hour for the sale and supply of alcohol match the condition in the planning permission, a terminal hour of 11.30 pm, with half an hour’s drinking up time, would still mean that customers would be leaving the premises at midnight. Having seen the plan, he was quite happy with the size of the area to be licensed. He believed that a condition should be imposed restricting the use of the rear entrance and imposing a limit on the volume of music within the premises. He was concerned about the lack of controls on vehicles parking near the premises and that off-sales would allow people to congregate and drink in the courtyard at the rear of the bar.

Mr Gaunt submitted some points of clarification. Off-sales had been included in the application to allow guests to take alcohol to their rooms, which were outside the licensed area covered by the application. Music would be background music only, and there was condition included in the operating schedule that “noise or vibration shall not emanate from the premises so as to cause a nuisance to nearby properties” to control nuisance. All fire escapes would be alarmed and there would be CCTV surveillance of the rear service area, as stated on page 74 of the Agenda. Whitbread would be quite happy for the CCTV surveillance to be a made a licence condition.

The Senior Licensing Officer asked the applicant for clarification of the term “Bank Holiday” used in the non-standard timings applied for. Mr Gaunt stated that the applicant was prepared to withdraw the non-standard timings applied for, except that

they would still like authority to sell and supply alcohol to residents 24 hours a day and retain the non –standard timings for New Year.

The parties summed up.

Mr Gaunt summarised his previous submissions.

Mr Dolan urged that the terminal hour for Mondays to Saturdays be 23.00 instead of 23.30

Following an adjournment, it was **RESOLVED** to grant the licence as applied for with amendments proposed by the applicant, i.e.

1. Sale of alcohol to non-residents and the exhibition of films:

10.00 am – 11.30 pm Monday to Saturday  
10.00 am – 11.00 pm Sundays and Bank Holidays

From the start of licensable activity on New Year's Eve until the terminal hour for licensable activity on New Year's Day.

2. The sale of alcohol to hotel residents shall be permitted 24 hours a day

3. Late Night Refreshment

23.00 to 23.30 Monday to Saturday

4. The reference to facilities for making music is deleted from the application.

5. Opening hours for non-residents

06.00 am to 11.30 pm Monday to Saturday  
06.00 am to 11.00 pm Sundays and Bank Holidays

From normal opening time on New Year's Eve until normal closing time on New Year's Day.

6. Opening Hours for residents – 24 hours every day

The premises licence was also granted subject to the mandatory conditions related to the sale of alcohol, the exhibition of films, 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.

Authority was delegated to the Licensing Officer to issue the licence accordingly.

## **REASONS**

Members have today determined an application for a new Premises Licence for Premier Inn, 4 James Street West, 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 listened carefully to the applicant's solicitor and to the Interested Party. The Members took account of both the oral and written representations from all of the parties and were careful to balance their competing interests.

Members noted that representations had been made with regard to planning, competition between licenced premises in the same locality as the Premier Inn, the type of clientele that may attend, parking and traffic. They noted that these were not matters which fell under the Licensing Act and therefore did not attach any weight to them save for some matters which overlapped between planning and licensing which were relevant to the application.

Representations had also been made with regard to fire safety. The Members 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 did not attach any weight to these representations.

The Interested Parties had made representations related to the potential increase in crime and disorder and public nuisance in the area by way of noise disturbance, an increase in excessive drinking in the area and by staff and customers if they were allowed to congregate outside to drink and smoke. One representation was anonymous and therefore the Members did not attach any weight to it.

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

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 Statutory 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 were satisfied with the representations made by the applicant's solicitor as to the operation of the premises, once they were open, and considered that the measures proposed in the Operating Schedule would promote the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance.

They therefore considered that the premises would not add to the cumulative impact in the area and that no further modification was necessary.

The meeting ended at 12.11 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**