

## **BATH AND NORTH EAST SOMERSET**

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

Tuesday, 29th January, 2013

**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: 13 NOVEMBER 2012**

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 TO VARY A PREMISES LICENCE FOR THE WARWICK ARMS, UPPER BRISTOL ROAD, CLUTTON, BS39 5TA**

Applicant: Greene King Retailing Ltd, represented by Matthew Phipps (TLT Solicitors), Simeon Baker (Development Manager, Greene King), Alex Tryfonos (Mezze Restaurants, DPS)

Interested Party: Mr John Bishop

The licensing officer summarised the application. She said this was quite a complex variation, and for the sake of clarity read out all the proposed changes. She asked members to note that no changes were proposed to regulated entertainment outside

the premises. She reported that representations had been received from interested parties in relation to the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance; only one of the Interested Parties had been able to attend today's hearing. She circulated a document tabulating all the proposed changes.

Mr Phipps stated the case for the applicant. He said that that last year statutory provisions relating to live music in licensed premises had been amended, so that now a premises licence automatically conferred the right for live music up to 23.00. This would be sufficient for the applicant, who would accordingly withdraw the part of the application relating to live music. In fact, he said, there would probably not be live music at the premises very often at all. In business terms the extended hours were most important for Fridays and Saturdays and less so for Sundays to Thursdays, though the applicant was not withdrawing this part of the application.

Mr Phipps noted that none of the Interested Parties had objected to the proposed change to the layout of the premises. The applicant, Greene King, was leasing the premises to Mezza Restaurants, who were proposing to invest a significant amount. A copy of the full-size floor plan was provided to members by the Licensing Officer. Referring to the plan, Mr Phipps said that it should be envisaged that most of the floor area would be filled with tables and chairs. Without the change to the plan of the premises, Mezza's proposal could not go ahead. Mr Phipps said that Greene King operated a risk-register system in which problems relating to their premises were logged and addressed by additional measures until they were resolved.

Mr Phipps noted that the responsible authorities had not made representations to the application.

Mr Phipps stated that Mezza Restaurants already operate premises in Downend, Thornbury and Congresbury exactly as they planned to operate the Warwick Arms. The premises would have eight guest rooms, including two family rooms and breakfast would be served. New premises at Portishead would be opened later in the year. He believed that the phrase "community pub" encapsulated what Mezza Restaurants was all about; they specifically sought premises outside cities and their clientele was not drawn from far and wide but from the surrounding community. He stated that Mr Tryfonos would be in attendance at the premises continuously for the first three months after Mezza had begun their operation there. He stated that all the other premises operated by Mezza are cheek by jowl with residential premises and that Mezza have extensive experience of operating premises with extended hours. He said that it was fundamental to Mezza's operation that they are good neighbours; they wanted customers to arrive and leave in an orderly manner.

Mr Phipps stated that Mezza wanted the extended hours because that is what would make the premises commercially viable; they did not want customers leaving at 22.00 to go to other premises. There was evidence that people came to Mezza premises because of the later hours. Food sales accounted for more than 60% of the business.

Mr Phipps noted the points made in the representations about road traffic. He submitted that the premises had adequate parking. The A37 on to which the premises abutted, he said, was a road that never becomes quiet and is used by

commercial vehicles day and night; the premises were fitted with triple glazing, to keep noise out, not to prevent it escaping, though as an ancillary benefit it helped prevent nuisance. He said that all music would be played through the in-house system, which had noise limiters and Mezze would be quite happy for the Sub-Committee to set a maximum level. It was management's policy that entertainment should not prevent conversation. Music in the premises was zoned, so that it was louder in some parts and softer in others. He submitted that any fears of noise nuisance were unfounded.

Mr Phipps said that Mezze were very strict about the admission of customers. There was a booking system for tables and a guest list compiled, which was closed at 19.00. Anyone not on the guest list would not be admitted after 00.00 (midnight). Management did not want the premises to be a late-night resort for those who had had to leave other premises. He stated that a doorman was employed from 20.00 every Friday and Saturday to monitor entry and exit from the premises. There was only one exit at night, as the other exit was designated as a fire exit. People who appeared to be under the influence of drink or who were not properly dressed would not be admitted. Experience at the other Mezze premises suggested that the departure of customers took place over an extended period. Staff called taxis for customers. A floor manager was employed. Staff who had not previously served at table were mentored for a period of two weeks.

Mr Phipps said that he believed that he addressed all the concerns raised by the Interested Parties. He asked Mr Tryfonos and Mr Baker to give evidence. Mr Tryfonos said that good relations with the community were crucial to the success of Mezze's business, because their customers were drawn from the community. Previous licence applications by Mezze had raised more concerns among residents than this one had. There had been about a hundred residents present at the hearing of the application for the Thornbury premises, but now he believed that most local residents would give the premises a good reference. He said that he would check in the first few weeks of operation that noise was at an acceptable level and would give his personal mobile number to residents to contact him if there were problems. His main safety concern was not cars driven by customers, but customers leaving the premises directly onto the busy A37. This entrance would therefore be closed at 22.00, so that customers would have to leave by the rear entrance. A dog leg had also been added to the corridor so that there was no exit directly onto the road. Signs had been erected at the entrances and exits requesting customers to be mindful of local residents. He said that there was a degree of noise at other Mezze premises when large parties were being catered for, but operational procedures allowed customers to disperse slowly. He believed that the previous layout of the Warwick Arms had led to more noise than would occur in future.

Mr Bishop put questions to the applicants. He asked about dancing at the premises. Mr Phipps said that the premises licence did not permit the provision of facilities for dancing, so there could be no dancing by customers. The management wished to allow the possibility of providing a dance show, e.g. belly dancing. Mr Bishop said that there was a great deal of noise and shrieking when events were held at the football club, which was situated behind the Warwick Arms. Since people are people, could not the same be expected at the Warwick Arms? Mr Phipps suggested that the presence of a doorman would have a moderating effect. Mr Tryfonos added that a doorman was employed, even though it was not a licence condition to have one. The

doorman was there to prevent unsuitable people from entering the premises. Mr Bishop wondered about the behaviour of customers who were refused admission, adding that the premises were a long way from a police station. Mr Phipps replied that the Police had made no representation to the application and Mezza's experience was that as word got round about the price level and dress code, unsuitable people would cease to seek admission.

Members put questions to the applicants. In reply they stated:

- there was a designated area for smokers; Mr Tryfonos pointed to this on the plan
- the Parish Council had initially expressed concerns about the application; Mezza had not been able to attend a meeting of the Parish Council because it had been rescheduled twice; there would be an open day to which residents and members of the Parish Council would be invited
- many residents of the sheltered housing were hard of hearing and it was unlikely that they would be affected by noise from the premises; concerns that the premises would be a nightclub were misplaced and this needed to be clarified
- about 80% of Mezza's revenue came from sales of food and the business was family-orientated; being able to accommodate a second sitting for meals in the evening made the business much more viable
- not a lot of money was taken after 00.00, but Mezza wanted to encourage customers to stay; in the early weeks of operation some people would come to the premises just because it was open late; entry would not be permitted after 23.00, except for people who had previously arranged to join a party in progress;

A Member sought clarification about dancing at the premises. The Licensing Officer explained that the provision of facilities for dancing had been removed from the licence by the Live Music Act 2012. Mr Phipps explained that Mezza were not interested in providing facilities for dancing, though did want to be able to provide the occasional dance show.

In reply to questions from officers, Mezza stated

- they would accept a condition of no admission after 00.00
- live music should be removed from the application, as it was no longer required because of statutory reform
- they would accept a condition requiring the employment of one door supervisor after 00.00
- Mezza would accept a condition requiring the provision of notices requesting patrons to leave quietly

Mr Bishop stated his case. He said that local residents would be monitoring the operation of the premises carefully and would let the management of Mezza know if there were any problems. There would be, in effect, a trial period. He wished Mezza well with their new venture. A Member asked whether it was possible to distinguish between noise was possible to distinguish between noise emanating from the football club and noise emanating from the Warwick Arms. Mr Bishop replied that it

was; noise only came from the football club on match days. Mr Tryfonos explained that the football club had a right of way across the lower car park of the Warwick Arms. Mezze would endeavour to control football fans using this. In response to further questions from the Member Mr Bishop stated:

- he felt much heartened by the evidence given by the applicants; if the application was granted, he was sure that residents would give feedback if there were problems
- there had been a number of traffic accidents in the vicinity and he was concerned that the consumption of alcohol would increase their likelihood

The parties were invited to sum up.

Mr Bishop said that he had nothing to add. Mr Phipps said that it might be considered unusual to seek an extension of hours for licensed premises in a residential area, but it was, he suggested, a special application. He submitted that the changes to the internal layout of the premises would promote the licensing objectives. He requested the Sub-Committee to grant the extended hours for seven days a week, even though it was the Friday and Saturday hours that were most critical for the business.

The Sub-Committee adjourned and then reconvened. A Member told the applicants that the Sub-Committee was concerned that the premises might be transformed into a nightclub, under future management if not under the present management. He quoted the example of premises in Bath which were licensed as a restaurant, but turned themselves into a nightclub after 22.00 by the removal of tables and chairs to create a dance floor. He asked whether they would accept a condition requiring that tables and chairs remained in position at all times and a condition requiring recorded music and the performance of dance to cease at 00.00. Mr Phipps replied that the applicants would be happy to accept a condition about the number of tables and chairs, but that not to be able to move them would be a problem. The management would also like to have recorded music after midnight on Fridays and Saturdays. The Sub-Committee could, if it wished, refuse authority for the performance of dance. He also suggested that the whole licence could be made conditional on maintaining the restaurant operation, so that a future license holder who wished to discontinue this would have to apply for a variation. Alternatively, a condition could specify that not less than 80% of the floor area should be covered by tables and chairs, which would prevent the creation of an area large enough for a dance floor. Members agreed that the refusal of authority for the performance of dance and the suggested condition about tables and chairs would provide sufficient guarantee against the premises becoming a nightclub and in those circumstances they would not wish to restrict the playing of recorded music.

The Sub-Committee adjourned again, and after reconvening, **RESOLVED** to grant the variation as applied for, subject to the deletion of that part of the application related to live music and the performance of dance and to the additional conditions proposed by the applicant. They also imposed the conditions consistent with the Operating Schedule in addition to those already on the Premises Licence.

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

## **REASONS**

Members have today determined an application for the variation of a Premises Licence for The Warwick Arms, Upper Bristol Road, Clutton.

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 must only do what is appropriate and proportionate to promote the licensing objectives based on the evidence before them.

Members took account all of the relevant oral and written representations from the applicant Company, its solicitor, and the Interested Parties and were careful to balance their competing interests.

Members noted that the relevant representations, made by the Interested Parties, related to existing nuisance in the form of noise emanating from customers leaving the premises, anti-social behaviour, and crime and disorder.

There is also a warden assisted home for the elderly opposite the premises and representations were made by residents on the basis that they could be disturbed by the late hour and extension in activities. Members also took into account a letter from the applicant's solicitor dated 23 January 2013 addressing the concerns raised by the Interested Parties and which stated in detail the style of the operation and management of the premises. In that letter the company proposed that two conditions be imposed on the premises licence, in relation to the risk assessment of noise, in order to keep any noise nuisance caused to residents to a minimum, and the keeping of a written complaints log to be produced to the Police and the Council on demand.

Representations were also made on the fact that there is no late night bus service from Clutton and noise from cars in the street. Members were aware that these matters did not fall to be considered under the Licensing Act and therefore disregarded them.

Members were aware that once patrons were away from the premises they were no longer in the control of the applicant and that any problems caused by patrons in this respect could be controlled by other means such as informing the Police with regard to anti-social behaviour.

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

Members also noted the modification of the application to exclude live music and agreement of the applicant to remove the performance of dance from the application.

They considered the merits of the application and considered that the provision of such a facility would provide the local community with a new licence concept focussed on food and family.

Members noted that the Supervisor of Mezze would provide his personal mobile number but noted that it could not be imposed as a condition.

Members did not consider it appropriate to impose the two conditions proposed in the letter dated 23 January 2013 as they considered that the premises licence had adequate controls in place.

The meeting ended at 1.09 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**