

# **BATH AND NORTH EAST SOMERSET COUNCIL**

## **LICENSING SUB-COMMITTEE**

Thursday, 6th October, 2016, 10.00 am

**Councillors:** Les Kew (Chair), Deirdre Horstmann (in place of Mark Shelford) and Caroline Roberts

**Officers in attendance:** Alan Bartlett (Public Protection Team Leader), John Dowding (Senior Public Protection Officer), Ian Nash (Public Protection Officer (Licensing)) and Carrie-Ann Evans (Senior Legal Adviser - Bath & North East Somerset Council)

### **40 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the procedure.

### **41 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apologies were received from Councillor Mark Shelford, for whom Councillor Deirdre Horstmann substituted.

### **42 DECLARATIONS OF INTEREST**

There were none.

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

There was none.

### **44 MINUTES OF PREVIOUS MEETING**

The minutes of the meeting of 8<sup>th</sup> September 2016 were approved as a correct record and signed by the Chair.

### **45 EXCLUSION OF THE PUBLIC**

**RESOLVED** that the Committee 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, that the public shall be excluded from the meeting for agenda items 8 and 9 and that the reporting of this part of the meeting be prevented under 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.

### **46 TAXI PROCEDURE**

Members note the procedure to be followed for the next two items of business.

### **47 CONSIDERATION OF A FIT AND PROPER PERSON IN THE ABSENCE OF A VALID DBS CERTIFICATE - MR J M O**

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

The Senior Public Protection Officer presented the report. Members noted that a valid DBS certificate had not been received from the licence holder, despite several requests from Licensing for him to supply one. The DBS web portal had confirmed that a valid certificate had been issued to Mr JMO in March this year. A statement from Mr JMO was circulated to Members, and the hearing was adjourned to allow them time to study this.

After the hearing reconvened, Mr JMO said that there was little he could add to his written statement except to reiterate his apologies. The problem was that he had changed address and was not receiving post from his old address. He had applied for another DBS certificate, which he would forward as soon as he received it. He assured the Sub-Committee that the certificate would show that he had no convictions. In his closing statement he once again apologised for the trouble he had caused.

Following a further adjournment the Sub-Committee **RESOLVED** that Mr JMO continues to be a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence.

### Reasons

Members have had to determine what action to take against the holder of a combined Hackney Carriage/Private Hire Driver's Licence who has failed to provide a valid DBS certificate. In doing so they took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council's Policy.

Members had to decide whether the licensee was a fit and proper person to continue to hold a licence taking into account all of the circumstances.

Members took account of the licensee's written statement and his oral representations and balanced these against the failure to produce a DBS certificate.

Members noted that on renewal of his licence in February 2016, Mr J M O's licence was issued subject to the caveat, which was expressly stated on the face of the licence, that *"to drive a Hackney Carriage/Private Hire vehicle in the Bath and North East Somerset area, subject to the conditions attached hereto and a satisfactory police check and DVLA check as appropriate"*. Despite reminder letters sent to him by the Licensing office on the 16<sup>th</sup> June and 5<sup>th</sup> July, he has failed to provide the certificate. Members noted that the DBS certificate was issued to Mr J M O on 10<sup>th</sup> March.

Mr J M O simply confirmed what he had put in his statement and apologised for the inconvenience caused. He confirmed he is now settled and on top of his affairs. He assured members that the DBS check would come back clear.

Members noted that Mr J M O was first granted a licence in 1998 and that there had been no complaints against him regarding his previous conduct or behaviour. Having heard Mr J M O's representations Members are satisfied that this was a genuine

oversight on the part of the licensee, which he has sought to rectify without delay upon learning of it. On balance Members find that Mr J M O continues to be a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence but issue him with a stern warning to keep on top of his affairs. Members noted that if any caution or conviction is revealed on the DBS check, Mr J M O would be referred back to the Committee.

#### **48 APPLICATION FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE - MR R G W**

The applicant confirmed that he had received and understood the procedure to be followed for the hearing.

The Senior Public Protection Officer presented the report and circulated a DBS certificate in respect of Mr RGW, a statement from him and a reference given on his behalf. The hearing was adjourned to allow Members time to study these documents.

After the hearing was reconvened, the applicant said that he did not wish to make a statement. He also did not wish to make a closing statement.

Following a further adjournment the Sub-Committee **RESOLVED** that Mr RGW was a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence.

#### Reasons

Members have had to determine an application for a combined Hackney Carriage/Private Hire Driver's Licence. In doing so they took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council's Policy.

Members had to decide whether the applicant was a fit and proper person to hold a licence taking into account all the circumstances.

Members took account of the applicant's written statement, reference and his oral representations and balanced these against the information disclosed on his DBS certificate.

The applicant simply referred to his written statement and had nothing further to add.

Members found the matters were historic and had taken place when Mr R G W was a juvenile. Members noted that the applicant had remained conviction free for the period anticipated in the policy. For these reasons they therefore find him a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence.

#### **49 RETURN TO OPEN SESSION**

The Sub-Committee returned to open session.

#### **50 LICENSING PROCEDURE**

Members noted the procedure to be followed for the next item of business.

**51 APPLICATION FOR A PREMISES LICENCE FOR THE EARL, 8-10 MANVERS STREET, BATH BA1 1JQ**

Applicant: IV League Ltd, represented by Christopher Bromley (DPS and Manager)

Other Persons: Anthony Williams and Charlotte Gibson.

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

The Public Protection Officer (Licensing) presented the report.

Members noted that:

- (i) this was an application for a new premises licence to replace an existing premises licence, in order to extend the licensed area of the premises to include an outdoors roof terrace;
- (ii) the premises was situated in the Cumulative Impact Area and that therefore there was a rebuttable presumption that the application should be refused, unless the applicant could demonstrate that the operation of the premises would not add significantly to the cumulative impact already being experienced;
- (iii) the Public Protection Officer clarified typographical errors at paragraph 5.2 of the report regarding the opening hours for licensable activities permitted under the current licence, viz. the current starting hour for the Performance of Recorded Music (indoors only), Other Entertainment within the Act (indoors only) and the opening hour should be 08:00 on Mondays to Saturdays, not 10:00, and the terminal hour for the Performance of Recorded Music (indoors only) on Sundays should be 22:30, not 02:00. The Public Protection Officer circulated a copy of the report showing the revisions to the typographical errors, to all persons present at the hearing;
- (iv) by the provisions of the Deregulation Act 2015 no licence permission was required for any playing of recorded music between 08:00 and 23:00 on any day on premises authorised to sell alcohol for consumption on the premises, provided that the audience does not exceed 500;
- (v) Other Persons had made representations relating to the licensing objective of the prevention of public nuisance;
- (vi) there had been no representations from the Responsible Authorities.

Mr Bromley stated the case for the applicant. He explained that the reason for the application was to allow alcohol to be served from a 'shed' on the outside roof terrace. This had been done for two years, until he had been advised recently that this was not permitted under the current premises licence. He would be content for the hours for regulated activities on the terrace to be reduced from the hours currently applying to the rest of the premises. There had been a bar on the terrace

since 2008. The terrace had been a derelict roof top, but had been converted into a seating area with benches and canopies over it. The terrace was used as a smoking area, and the extent of cover had had to be reduced to allow it to be legally employed for this purpose. He addressed the licensing objectives.

### Public safety

A bar on the terrace allows the movement of people within the premises to be controlled. Without it there would be only one point of sale, and there would be a continuous movement of people up and down the stairs to and from a bar on a lower floor.

### Crime and disorder

There is digital CCTV, which covers the terrace and the bar. The terrace area is lit at night, so CCTV images are clear. There are two SIA-registered door staff, one posted at the front door of the premises and one on the terrace. The doorman at the end of the terrace checks the number of patrons entering and leaving the area, and ensures that the capacity limit of the premises is not breached.

### Public nuisance

Recently more seating had been installed on the terrace with the aim of eliminating the “stand-up culture” and creating a more relaxed environment. The covering on the terrace had been reduced to allow it to continue to be used as a smoking area, so customers did not have to go out into the street to smoke. Suspended sound absorbing panels have been installed within the tent on the terrace in order to contain noise, and Sunday terrace parties have been discontinued because they were too noisy. The SIA-registered doorman posted on the terrace ensured that noise was kept down and that there was no football-match-style chanting by customers.

### Protection of children from harm

A Challenge 21 policy is applied and everyone has to produce ID at the door.

In conclusion he said that the premises did not need as many hours as were allowed under the current licence. They would never dream of opening at 08:00; they opened at 19:00 and had done so for the past three years. The outside area was popular with customers and improved the flow of people within the building.

The Senior Legal Adviser advised Members that as the premises are in the Cumulative Impact Area, the onus was on the applicant to show that the operation of the premises would not add significantly to the cumulative impact already being experienced. Mr Bromley responded that nothing would change in relation to the impact of the premises except that the shed would become a bar.

In response to questions from Members Mr Bromley stated:

- When he began work at the premises there was always a large crowd of smokers in the street at the rear; keeping them inside the premises by using the terrace as a smoking area reduced nuisance for neighbours.

- Bank holiday music events for which Temporary Event Notices had been obtained in the past were now held at another venue. The money made from these events was not worth the disturbance they caused to neighbours. There is background music on the terrace, the volume of which is limited by a noise limiter. When there are more than 50 people on the terrace the music cannot be heard; it really is just background music. No other entertainment takes place on the terrace.
- He had applied for the same hours as were on the present licence because he had been advised by Licensing to do so. In fact the full hours permitted were not needed and not used. He thought it might give neighbours reassurance if the hours were reduced.
- A “club night” is when the night club downstairs opens. Currently this is the busiest time and takes place on Mondays, Thursdays, Fridays and Saturdays in university term time. When the students were on vacation, usually May to mid-September, quiet club nights for about 250 people take place on a Friday and Saturday.
- The terrace will not be used to increase the capacity of the club. There are two venues, the club, which has a capacity limit of 550, and the The Second Bridge Night Club, which has a separate premises licence. This application does not change that.
- He had inherited a situation in which 700 people came to the two premises in an evening. He did his best to control noise, but the use of security staff, shutting doors, sound proofing, not using the outside bar on certain days of the week and so on.
- When he began working at the premises his biggest challenge was managing the queue of customers outside. On a busy night there could be 400 people in a single queue outside the front of the premises. He had introduced a system whereby customers could sign up to come to the premises on a particular night. These people, sometimes 350, originally queued at the front. The queuing point for them was then moved to the rear. A couple of additional queues were established at the front, with one extending round the side, so that there were now only 20 people queuing at the front of the club and 150 queuing down the side. People still tried to enter the club even when the capacity limit had been reached and they had to be managed as well. Customers were now admitted through four different entrances, which prevented the formation of one huge queue at the front.
- there would be no band, DJ or live music on the terrace.
- the club was shut on bank holidays and Sundays.

The Other Persons stated their cases.

Mr Williams said he owned two flats in 12 Manvers Street, which he rented out. He feared that his tenants might leave because of the noise emanating from The Earl, about which they had complained.

Miss Gibson said that she commuted between Bath and London. She had lived in her present flat near The Earl since April. There was noise disturbance from the street at two sides of her flat from people queueing outside The Earl. She only had single-glazed windows but had invested in a triple-glazed window at a cost of £1,500 for her bedroom. Her sleep was disturbed by the noise from customers of The Earl. She was concerned that the more people on the terrace, the greater the noise disturbance would be. She had to get up at 5.30am every day to go to London. She thought that the opening hours of the premises on weekdays should be reduced so that residents near the premises could go to bed at 22:30 and get a good night's sleep. There were people queueing in the street outside her flat most nights except Sunday. She had spoken to Mr Bromley the previous week, and appreciated the work he was doing to reduce noise, such as putting rubber feet on barriers and so on. However, sometimes when she came home she could not get in her front door because of the queues. She felt that the queues needed to be managed better, and that the doormen needed to be better at keeping customers quiet. Other residents were moving out because of the noise. She hoped that it was possible to reach a compromise to reduce opening hours on Sundays to Thursdays. She thought the club needed to be more sensitive to the community around it and little more responsible.

The Chair advised Miss Gibson that today's hearing was not a review of the current premises licence and that it was not possible for the Sub-Committee unilaterally to reduce the hours currently granted to the premises.

The Senior Legal Adviser endorsed the fact that this was not a review of the current premises licence but was a new premises licence application, although the new application should be taken in its proper context. Miss Gibson accepted that this was not a review of the current licence.

Members viewed a video posted on Facebook by a member of staff at The Earl, which Miss Gibson had provided in conjunction with her written representations annexed to the report. The video had been cited in a representation from an Other Person as well, as evidence of the level of disturbance that could arise from the premises. All persons present at the hearing were given the opportunity to view the video. Miss Gibson indicated that she had already viewed it as did Mr Bromley. Mr Bromley was invited to comment on the video. He said that the event shown was a terrace party with live music held under a Temporary Event Notice on a bank holiday in May. He had decided to terminate that event at 22:30. There would be no such events in future. Among other things he did not wish to work on bank holidays or Sundays any longer. He would be quite happy to agree to a condition prohibiting such events on the terrace in the future.

The parties were invited to sum up.

Miss Gibson acknowledged that the new premises licence application essentially related to the extension to the premises to include the outside area but she said there were a number of problems relating to the premises that needed to be looked at even if not in the forum of the Licensing Sub-Committee. She and Mr Bromley

were in regular contact about how the situation could be managed. She hoped that Members would understand the impact on residents.

Mr Bromley said that the only reason for the application was the desire to be able to serve alcohol on the terrace. Nothing else was being changed. He believed that the provision of the bar was an essential measure to allow him to manage the flow of people in the premises. He would continue to have discussions with Miss Gibson.

The hearing was adjourned and Members moved into private session in order to deliberate. The hearing was reconvened so that clarification could be sought from the applicant about the terminal hour for the supply of alcohol on the outside terrace, the terminal hour for supply of alcohol in general vis-à-vis the opening hours for the premises and the capacity of the premises (in connection with the provision of the Deregulation Act 2015 relating to the need for authorisation for the playing of recorded music). Mr Bromley indicated that he was willing to offer condition that supply of alcohol would not take place from the bar on the outside terrace should be after 00:00 (midnight). In terms of the supply of alcohol elsewhere in the premises, he indicated that he would be happy for the terminal hour to be at 01:30 Mondays to Saturday and the premises closing time at 02:00. Mr Bromley indicated that there were never more than 300 people in the premises on any night

Following a further adjournment, the Sub-Committee **RESOLVED** to grant the application for the reasons and subject to the conditions detailed below.

#### Decision and reasons

Members have today determined an application for a new premises licence for The Earl, 8-10 Manvers 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 that they must only do what is appropriate and proportionate in the promotion of the licensing objectives based on the information put before them. Members noted that the application should be considered on its own merits and that the premises are within the Cumulative Impact Area. Accordingly there is a presumption that such applications should be refused unless the applicant demonstrates that they are unlikely to add significantly to the Cumulative Impact already experienced.

Members were careful to take account of the relevant written, video 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.

#### **The Applicant**



The applicant indicated that The Earl benefits from an existing premises licence but has submitted the new premises licence application as they wish to extend the extent of their licensed premises to include the outside area and an external bar.

The applicant noted that they are not seeking to extend the hours for the licensable activities and are in fact, proposing a reduction.

The applicant offered a condition that there will be no regulated entertainment in the outside area and confirmed this includes live or recorded amplified music. He also indicated that there will be no sale of alcohol from the external bar on Tuesdays, Wednesdays and Sundays and offered a condition that there will be no sales of alcohol from the external bar beyond midnight. He further indicated that so far as the sale of alcohol in general, was concerned he would be content to reduce that to 1.30am.

In the event that the new premises licence is granted, they would surrender their existing licence.

The applicant addressed Members on the steps taken to ensure that the extension to the premises licence would not add to the cumulative impact experienced in the area of the premises.

### **Interested Parties**

The Interested Parties objected to the application on the grounds of the prevention of public nuisance licensing objective. It was felt that if the licence was granted for the outside area, there would be an increase in noise levels emanating from inebriated people at the terrace and this would further disturb and upset residents in the vicinity. This was in addition to an increase in issues with regards to littering and rubbish related to the patrons of the premises.

Concerns were also expressed regarding the exacerbation of the current queuing system which exists at the premises. Interested Parties were particularly concerned by the public nuisance that would be caused to them during the working week, if the outdoor terrace was used for licensable activities.

### **Members**

Members are aware that the premises are located in the Cumulative Impact Area and consequently there was an onus on the applicant to show that the operation of the premises will not add to the cumulative impact already being experienced. Members were satisfied that the applicant has shown that the proposed extension to the use of the outside area for the sale of alcohol would not add significantly to the cumulative impact being experienced since this would not result in a significant increase in the number of persons using the premises, including the terrace, and due to the revised hours sought for the sale of alcohol.

In reaching their decision Members noted that in relation to paragraph 9.42 of the Statutory Guidance their determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

Members considered the premises were likely to have an effect on the licensing objective of prevention of public nuisance however they felt that conditions would be effective in the promotion of this licensing objective.

Accordingly members resolved to approve the application subject to:

- changes to the hours for supply of alcohol as offered by the applicant, and
- changes to the hours for recorded music in accordance with the Deregulation Act, and
- with conditions consistent with the operating schedule subject to minor amendments offered by the applicant, and
- an additional condition regarding sale of alcohol on the terrace which was offered by the applicant

all of which is specified below; and the mandatory conditions.

**Changes to hours for licensable activities as follows:**

**Recorded Music (indoors)**

Mondays to Fridays 23:00 – 01:30 the following morning

Saturdays 23:00 – 01:30 the following morning

Sundays N/A

From normal activity start time on New Year's Eve until normal activity start time on New Year's Day

**Supply of Alcohol (on and off premises)**

Mondays to Saturdays 12:00 – 01:30 the following morning

Sundays 12:00 – 22:30

From normal activity start time on New Year's Eve until normal activity start time on New Year's Day

The **amendment to a condition on the operating schedule** and offered by the applicant is as follows:

*“No regulated entertainment shall take place in the outside area” shall be changed to “No regulated entertainment shall place in the outside area and for the avoidance of doubt, this includes live or recorded amplified music”.*

**Additional condition offered by the applicant**

There shall be no supply of alcohol from the bar in the outside area of the premises after midnight from Monday to Sunday inclusive. This is subject to the condition on the operating schedule that there will be no supply of alcohol at all from the outside area bar on Tuesdays, Wednesdays and Sundays.

Members took the view that the additional conditions offered by the Applicant were appropriate and proportionate in promoting the prevention of public nuisance.

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

The meeting ended at 1.04 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**