

BATH AND NORTH EAST SOMERSET

LICENSING SUB-COMMITTEE

Thursday, 1st July, 2021

Present:- Councillors Rob Appleyard (Chair), Steve Hedges and Sally Davis

Also in attendance: Shaine Lewis (Team Leader, Legal Services), Michael Dando (Senior Public Protection Officer) and Wayne Campbell (Public Protection Officer (Licensing))

8 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer advised the meeting of the procedure.

9 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

10 DECLARATIONS OF INTEREST

There were none.

11 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

12 MINUTES OF PREVIOUS MEETING: 3RD JUNE 2021

These were approved as a correct record.

13 LICENSING PROCEDURE

The Chairman explained the procedure to be followed for the meeting.

14 APPLICATION: GARFUNKEL'S 2021 TRG LEISURE LTD NEW PREMISES LICENCE AND APPLICATION: GARFUNKEL'S 2021- BRUNNING PRICE NEW APPLICATION

The Chairman addressed those present and asked for their agreement to take statements, comments and questions as part of a rolled-up hearing for the two applications.

The representatives present from both parties agreed with this proposal.

The Lead Licensing Officer outlined the applications to the Sub-Committee.

He explained that two representations of objection had been received within the statutory period from "other persons", namely Mrs Judith Rutherford, on behalf of the committee of the Empire Residents' Association, in her capacity as

secretary of the Empire Owners' Association and also as an individual with her husband; and Professor Stan Kolaczowski, Chair of the Empire Owners' Association. The representations express concern that the applicant's proposals will undermine the Prevention of Public Nuisance Licensing Objective.

The applicant addressed the Sub-Committee regarding their applications and was questioned by them and the interested parties present.

The interested parties addressed the Sub-Committee regarding their objections to the applications and were questioned by them and the applicant.

The Chairman announced that no representations had been made by any of the Responsible Authorities.

Decision and Reasons

Given the nature of the applications all parties agreed the matters should be dealt with as a rolled-up hearing for the two applications. Members have therefore determined applications for two new Premises Licences at Garfunkel's from TRG Limited and in doing so have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's Policy, Human Rights Act 1998 and case law.

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 on the information before them. Members reminded themselves that each of the applications must be considered on their own merits.

The applicant stated pre Covid there were 2 licences in existence at these premises; the Garfunkel's licence and the Brunning and Price licence. Due to an administrative error arising out of a CVA in June 2020 and global pandemic these licences lapsed. As soon as this was realised two new applications were made replicating the lapsed licences. In short the Garfunkels' licence had operated under a transferred justices' licence for many years with infrequent disturbance. Whilst there was a documented incident on 5 April 2019 this was an isolated incident and had been dealt with. In any event, and as part of the applicant process, there was consultation with Responsible Authorities, Interested Parties and it is notable that there have been no representations from the Responsible Authorities.

In terms of the licenses neither had had a condition on capacity and in terms of the Brunning and Price licence this had never been operated and at the time of its grant there was no evidence to suggest it would cause a problem in terms of capacity. In any event if the Interested Parties had had an issue the proper process would have been to appeal the Licensing Sub Committee's decision.

The applicant further stated that whilst the Interested Parties had suggested significant conditions for the both licences the Brunning and Price licence in particular had been through an additional level of scrutiny on grant. In conclusion these applications are designed to put TRG Limited in the position it was before the CVA and global pandemic struck and there is no evidence to suggest this should not be the case.

The Interested Parties acknowledged that this application mirrored the previous licence and they supported a well-run business operation from the site. Nevertheless, they feared that with the circumstances surrounding the premises having changed, and if large groups were allowed on the terrace, there would doubtless be nuisance from the terrace. Interested Parties also referred to the incident in April 2019 and stated this caused nuisance throughout the building and the manager could not be contacted. They feared, therefore, that this would increase unless conditions were added relating to noise, capacity and smoking. Noise is noise whether from Garfunkels or Brunning and Price and with the applicant failing to meaningfully engage this is, therefore, why conditions addressing capacity, smoking, noise and engagement should be imposed on both licences.

In determining these applications Members were careful to take account of the relevant written and oral representations both for and against and balance their competing interests. Members, however, questioned whether the solicitor representing residents had a mandate to represent parties that had not made relevant representations. Nevertheless, Members reminded themselves that whilst much has been made of the lapsed licenses this is not a Review of them, they have never been reviewed and they must not speculate on future uses or issues. Accordingly, Members make it clear that they are treating these as two new and separate applications with each being determined of their own merits.

In terms of Cumulative Impact Members consider the application engages the Policy and that Relevant Representations have been made. Members do not, however, consider an exception should be made as this could lead to uncertainty as to where the line is drawn. With regard to the previous licences referred to this morning Members found, whilst these have limited historic interest, they nevertheless have some relevance.

In all the circumstances, therefore Members find in the context of licensing today, Covid recovery and the steps taken by UK government to support the hospitality industry the application as presented demonstrates the premises have and could operate without adding to the cumulative impact already experienced.

In terms of conditions Members have had little evidence upon which to base a reasonable belief that the premises had or would have a detrimental impact on the licensing objectives and that conditions are appropriate. Further there had been no representations from Responsible Authorities, no documented complaints and with regards to an evidential basis for Interested Parties' fears Members noted the premises was primarily used as a restaurant that infrequently caused disturbance.

In any event statutory noise nuisance is a specialist issue to be address by the relevant Responsible Authority rather than a Licensing officer and in terms of capacity there was no comment from Avon Fire and Rescue and consider capacity is not a matter for Members in the absence of evidence of an incident. Members therefore find it reasonable, proportionate and appropriate to grant both licences as applied for to put the applicant back in the position it would have been but for the CVA and global pandemic.

Authority is therefore delegated to the licensing officer to issue the licence with conditions consistent with the operating schedule.

The meeting ended at 12.26 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services