

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Thursday, 29th July, 2021, 10.00 am

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

23 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer advised the meeting of the procedure.

24 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

25 DECLARATIONS OF INTEREST

There were none.

26 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There were none.

27 MINUTES OF PREVIOUS MEETINGS: 1ST JULY 2021 & 15TH JULY 2021

The Minutes for the 1st July 2021 and the 15th July 2021 were approved as a correct record.

28 LICENSING PROCEDURE

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

29 APPLICATION: NEW STREET TRADING PITCH - BATHFORD

The Licencing Officer outlined the application to the Sub-Committee. He explained that it was for a new Street Trading pitch to be created near the junction of Ostlings Lane and Bathford Hill, Bathford. The application proposes the sale of hot food and drink from a trailer unit.

The type of stall to be used will be a mobile trailer unit measuring 12ft. in length.

The times applied for are 5pm to 11pm every day.

39 Objections were received. The grounds for the objections are: Public nuisance, litter, detrimental effect on the area and public safety.

One message of support for the application was received.

The Applicant addressed the Sub-Committee regarding their application and an opportunity to question the applicant was given to the Committee and the interested parties present.

Councillor Peter Martin (Bathford Parish Council) as an interested party addressed the Sub-Committee regarding the objections to the application and was questioned by the Sub-Committee and the applicant.

Decision and Reasons

Members had to determine an application to create a Street Trading pitch at Ostlings Lane, Bathford. In determining the application, the Local Government (Miscellaneous Provisions) Act 1982, Council Policy and Human Rights Act were taken into account.

The applicant Mr Akdeniz states he is applying for a street licence for a pitch for a self-contained 12-foot trailer van to sell kebabs, burgers and chips from a pitch in Ostlings Lane, Bathford. The proposed operating hours will be as set out in the application. He will be using battery power not a petrol generator, will remove all waste and grey water.

There were written representations from 39 objectors, who stated they lived in the locality. Objections can be summarised as:

- Highway safety issues. The pitch is close to the busy junction of Bathford Hill and Bradford Road and Ostlings Lane. Customers would be turning across the A363 to access Ostlings Lane. There is a history of highway incidents. Parked cars and queuing customers would further reduce sight lines. Customers would breach the Highway Code by parking close to the junction.
- Shortage of parking. Ostlings Lane is narrow and the area already becomes congested, especially when the Crown Inn is open or a rugby match and with parked camper vans reducing the road to single lane.
- The need for the business is not demonstrated and it would compete with and take business away from the nearby Crown Inn and Robbie's place in Batheaston.
- The location is on the edge of an Area of Outstanding Natural Beauty and at the entrance to a village with a conservation area and would not be in keeping.

- Public nuisance fears from litter, disposal of grey water, attracting vermin (this is already an issue with the pub), cooking smells, noise from generator and customers, increased risk of visitors and associated risk of burglary and general impact on a quiet residential area.
- Better locations nearby.
- If trailer left in situ, it would not be possible to sweep the street in an area where drains become blocked.

There was one letter of support from a local person who considered the business would increase choice as it was difficult to get takeaway deliveries to the village.

There were no representations from statutory consultees.

To grant

In reaching a decision Members took account of the relevant representations and balanced the competing interests of the applicant, supporting representation and the objections. Members were mindful to deal with the matter on its merits and disregarded concerns raised relating to anticipated issues that could be regulated by conditions attached to the licence.

Members noted there were no objections from the Highway Authority or Planning. Given the size of the trailer and the proposed location, Members found there was no evidence that it would have a detrimental effect on public safety, amenity or cause an obstruction. Risk of nuisance and other potential problems could be regulated by attaching to the Licence the Council's standard conditions for a street trading stall as set out in the Council's policy. If there is evidence of breaches of the licence conditions, then ultimately the licence can be withdrawn.

So far as the nature of the food sold Members reminded themselves of their Policy and placed little weight on the objections referring to the lack of perceived need for an additional food outlet and any similarity between the food offered for sale by a nearby premises based provider in Batheaston nor could they take into account the issue of competition with nearby providers.

Accordingly, Members found it reasonable and in the public interest to grant the Street Trading Licence. Therefore, the application is granted as applied for and authority is delegated to the Licensing Officer to issue consent subject to the standard conditions, which includes clauses to prevent potential problems arising from obstruction of the street, customers gathering at the trailer, playing of music, advertising boards, furniture and other obstructions, danger or nuisance, litter, waste and grey water and would require the applicant to have insurance.

30 APPLICATION: WINES OF BOHEMIA

The Licensing Officer outlined the application to the Sub-Committee. He explained that it was for a new Premises Licence for Wines of Bohemia Ltd, 175 Catherine Way, Batheaston, Bath BA1 7PA.

The application proposes the following licensable activity:

The Sale of Alcohol for consumption off the premises. 05:00 to 23:00 hours.

The application proposes the following opening times: Everyday 05:00 to 23:00 hours

A representation of objection had been received within the statutory period from the Police. They express concern that the applicant's proposals are likely to undermine the Prevention of Crime and Disorder, Prevention of Public Nuisance and Protection of Children from Harm licensing objectives

The Licensing Officer informed the Committee that he had received apologies from the Applicant regarding attendance at the meeting and the reasons distributed to all the Committee members.

There were no interested parties for this application.

Paul Kendall (Avon & Somerset Police). The responsible Authority representative addressed the Sub-Committee and answered questions from the Sub-Committee, he informed them that he had communicated with the applicant and worked with them to

formulate the points raised in his representation and the applicant had agreed to all the suggested points.

Decisions and Reasons

Members had to determine an application for a new Premises Licence by Wines of Bohemia Ltd for 175 Catherine Way, Batheaston. In doing so they 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 application must be considered on its own merits.

The applicant stated this application is for a new premises licence for an existing room within her home, which has its own external entrance. The application is for the hours 5am to 11pm. The applicant stated the business is to operate an online mail order business selling wines. The wines will either be delivered if local or the applicant will use mail delivery service if further away. The premises will be used as a storage facility. There will be no sales direct to customers calling at the premises. There will be a declaration at point of sale as to the age of the purchaser and the delivery driver will be required to check photo ID from the purchaser for proof of age. The applicant is prepared to be flexible over the hours which they trade.

The Police have objected to the application citing concerns over prevention of crime and disorder, prevention of public nuisance and protection of children from harm.

The Police have not provided in their written presentation any evidence of a history of concerns or of a likelihood of these occurring to support their concerns.

The Police if the application is granted have requested eleven conditions including CCTV, recordings of which are to be made available to the Police on request.

The applicant has agreed to these conditions.

There are no other objections or representations from statutory or responsible authorities.

In determining this application, the Committee reminded itself, this is a Licensing Act 2003 matter. Matters to consider are:

- a) the prevention of crime and disorder
- b) public safety
- c) the prevention of public nuisance; and
- d) the protection of children from harm

The licence can be granted with or without additional conditions.

The Committee reminded itself that when considering the application and any conditions it must do so acting on the evidence.

The Committee also noted the advice from the ICO on the subject of CCTV and licensed premises.

ICO view on CCTV and alcohol licenses

“If there has been no history of crime or antisocial behaviour associated with your premises and no likelihood of future trouble, it is difficult to see how the installation of CCTV can be justified as a licensing condition to prevent crime or antisocial behaviour. ...”

The ICO view where licensing condition provides for CCTV images to be provided to the local police “on request” is that this wording “does not fit in with the provisions of the Data Protection Act 1998 (GDPR) which requires a prejudice test.”

Accordingly, as Members had not been presented with any evidence upon which to base a reasonable belief that these premises would have a detrimental impact on the licencing objectives, or grounds to depart from Policy and or Guidance, the application is granted as applied for with the following conditions:

1. Not to start trading before 7am.
2. Sales to be in sealed containers
4. Staff training on underage sales to be to the standard requested by the Police.
5. All delivery drivers must be over 18.
6. Delivery drivers to require photo ID of age on delivery.
7. Deliveries only to a fixed postal address
8. Each delivery must be accompanied by an accompanying bill, except for returns.

The Members noted the intention of the applicant to install CCTV but are not imposing a condition for the provision of CCTV or the supply of images to the Police

on request. Any Police request for images will have to follow the appropriate application process.

Whilst noting the interest of the Police in ensuring that the licensing objectives are maintained, the Sub-Committee considered it was not appropriate or proportionate to impose any other conditions.

Authority is therefore delegated to the licensing officer to issue the licence with the additional conditions set out above.

The meeting ended at 11.26 am

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services