

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Tuesday, 22nd December, 2020, 11.00 am

Councillors: Manda Rigby (Chair), Steve Hedges and Karen Warrington

Officers in attendance: Terrill Wolyn (Senior Licensing Officer) and Shaine Lewis (Legal Services Manager)

54 WELCOME & INTRODUCTIONS

The Chair welcomed those present to the meeting and introduced the other members of the Sub-Committee and the officers in attendance.

55 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

56 DECLARATIONS OF INTEREST

There were none.

57 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

58 LICENSING PROCEDURE

The Chair explained the procedure for the meeting and all parties confirmed that they had received it.

59 REVIEW OF PREMISES LICENCE APPLICATION - THE BIRD BATH, 18-19 PULTENEY ROAD, BATHWICK, BATH BA2 4EZ

The Senior Licensing Officer presented the report which was a review of the Premises Licence for The Bird Bath, 18-19 Pulteney Road, Bathwick, Bath. She outlined the licensable activities and grounds for the review to the Sub-Committee.

She reminded the meeting that photos and a statement from the review applicant had been circulated in advance of the meeting, along with a statement from the general manager (designated premises supervisor) who was now Jonathan Walker not Christopher Hardwicke. All members of the Sub-Committee confirmed receipt of the additional information which would be added to the published agenda.

She explained that some of the issues outlined in the review applicant's statement were a separate regime to licensing.

The review applicant Arthur Dyer read out his statement to the Sub-Committee. He outlined his concerns – noise from people in the hot tub, bar and outside areas, playing of amplified music from 10am to midnight, music played out of hours – all of which had a significant impact on his premises. He had provided photos and video evidence to the Sub-Committee. The Legal Adviser reminded Members that the

focus of the meeting was the prevention of public nuisance and how licensable activities impact on the licensing objectives. The Sub-Committee first had to determine whether the music was regulated entertainment or incidental and second if it were regulated entertainment whether it was a public nuisance. Issues such as light pollution, boundary and privacy issues, competition, harassment and a smoke-free zone could not be considered as they were not the remit of the Licensing Sub-Committee. The Licensing Act 2003 was clear on what could and could not be taken into account. The following questions were raised:

- The review applicant confirmed he had made complaints to planning enforcement and licensing over a few years, initially he had thought the issues would be temporary not permanent;
- He did not think there had been any change since the new general manager had taken over, there were still people playing music and the manager was seen lighting fires in the outside area (fires could not be taken into account);
- The review applicant stated he had been advised not to engage with the premises due to serious implications;
- It was confirmed that speakers were built in and attached to the boundary wall. Speakers had been moved to the front of the building and he felt they needed removing;
- There was a direct noise impact on his building due to the music and large numbers of people talking and he could no longer provide a quiet area for his customers;
- The review applicant said he had provided emails from Environmental Protection regarding noise nuisance however, it was noted that no representations had been received from the responsible authorities;
- He confirmed the venue was advertised as a party venue not a music venue and he had provided evidence;
- The Senior Licensing Officer explained the licensed area outlined in Annex C.

The other review applicant Reverend Neil Cocking joined the meeting. He confirmed his support for the review and said there had never been problems before but explained that there had been a gradual encroachment into the hotel car park since becoming a party venue, with a marquee and outside speakers the nuisance had increased. The premises were in a respectable residential area and was more like a nightclub now although he was not as affected as Mr Dyer.

Leo Charalambides (Barrister for the premises) presented their case. He stated that the licensing process was a very particular legal regime constrained by relevance. The Council's legal adviser had addressed this. He was concerned that the threshold for relevance had not been met and the nuisance was a private issue where the neighbour had concerns, with rival commercial interests. There was no evidence of statutory nuisance but evidence that the applicant could complain and Licensing Officers had visited and changes were made, speakers moved, Bluetooth turned off in the hot tub and signage put up. He explained that noise could be intrusive but that did not make it a public nuisance. The High Court ruled that inaudibility was unlawful. The venue was being developed as a boutique hotel, away from the previous party venue and the outside area was being used in a Covid-safe manner. Efforts had been made to engage with the review applicant unsuccessfully and the premises were happy to engage with environmental health, licensing and planning.

Questions followed:

- The general manager confirmed that there were speakers at the front but they would not be replaced, the speakers at the back had been removed;
- The hot tub was in a private room with a terrace, licensing did cover the sale of alcohol but residents could consume alcohol that they had brought with them in a private room;
- It was confirmed that the photo of the hot tub was for publicity;
- As regards any conditions being proportionate the barrister stated there were clear notices to guests to respect local residents, the speakers at the rear had been removed, there was signage in the hot tub and outside area.

Following summing up the meeting adjourned for Members to consider their decision.

RESOLVED that no action be taken on the review of the premises licence application for The Bird Bath, 18-19 Pulteney Road, Bathwick, Bath.

Reasons for decision

Members have determined an application for a Review of a Premises Licence at The Bird Bath, Pulteney Road, Bath. 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. Members reminded themselves that each application must be considered on its own merits and in this instance the objective of prevention of public nuisance had been raised.

The applicant for the review stated there had been a number of problems with the premise over the last 2-3 years since it had morphed into a party venue. Photographs, video images and emails were produced in support of the application showing the nature of the business model and the nuisance they experienced from light pollution, building works and music and voice arising from the premises outside areas. This nuisance, it was stated, is particularly intrusive as a result of attractions such as a jacuzzi, photobooth and marquee placed in close proximity to neighbouring properties. Further, fixtures have been unlawfully attached to boundary walls and in one instance water was running off a shed on to neighbouring land. The applicants added that, with large groups gathering, talking loudly, signing, screaming and listening to music in areas previously used as a carpark, the hotel was operating as a party venue causing neighbours to feel unsafe, intimidated and harassed in their gardens.

In response the Bird's representative stated these were classic private nuisance issues and there was no evidence of an actionable public nuisance in terms of the Licensing Act 2003. Further, there was no evidence or representation from Responsible Authorities and in any event, there is case law against imposing an inaudibility condition should a nuisance be found.

It was further stated that a new DPS had taken responsibility for the premises who had some 38 years' experience and he had attempted to engage with the neighbours and will continue to do so. Nevertheless, it remained unclear whether Mr Dyer's concerns were as a competing business or concerned resident and that since taking over he had been working to change direction of the business as a result of the pandemic. For example, the marquee will no longer be erected, outdoor speakers in the rear had been removed and the hot tub closely monitored. Further, staff will keep music to background level, monitor noise levels and guests using the hot tub will no longer be issued with the Bluetooth code. It was also stated the licensee had taken the Review application seriously and it was hoped that this would be a starting point for an ongoing conversation with neighbours as it was not in the premises' interest to cause undue disturbance to its guests, neighbours and local residents.

In determining this application Members were careful to take account of relevant written and oral representations and balance their competing interests. Whilst Members were mindful of other statutory regimes, however, they were careful not to duplicate these. Therefore, Members disregarded issues such as private nuisance and nuisance under the Environmental Protection Act, matters arising from water runoff from a shed, light pollution, party or boundary wall issues and planning matters. Moreover, privacy, civil property rights, business model, competition and smoke free zone were disregarded as were allegations of intimidation and harassment as they all fall outside of the Licensing Act regime.

Members asked themselves whether the recorded music could be described as a licensable activity or incidental and noted it was a matter for them to decide on the facts of the case. Members noted there was no charge for entry, guests were not arranged as an audience and the venue was not advertising music as an attraction; such as a night club. Accordingly, and when taken together with the photos and videos, Members concluded music played outside was not capable of being treated as a licensable activity for the purposes of this Review.

With regard to public nuisance Members were aware it is for Licensing and Responsible Authorities to consider what constitutes this and what is appropriate to prevent it. Accordingly, Members reminded themselves that public nuisance is not narrowly defined, and it is important to remember that public nuisance could include low-level nuisance affecting a few people living locally. Whilst noting music was audible in neighbouring gardens, however, neither the Police nor Environmental Protection had made a representation. Members therefore found music in these circumstances could not reasonably be described as falling within the scope of the Licensing Act 2003 as causing Public Nuisance.

In all the circumstances, and whilst encouraging the parties to continue discussions and engagement, Members do not find the application met the Licensing Act 2003 threshold and accordingly take no action.

The meeting ended at 12.47 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services