

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Thursday, 21st April, 2022, 10.00 am

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

Officers in attendance: Michael Dando, Rebecca Jones, Christopher Jennings and Corrina Haskins

86 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the emergency evacuation procedure.

87 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

88 DECLARATIONS OF INTEREST

There were none.

89 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

90 MINUTES OF PREVIOUS MEETING: 10TH MARCH 2022

RESOLVED that the minutes of the previous meeting be agreed as a correct record and signed by the Chair.

91 LICENSING PROCEDURE

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

92 APPLICATION FOR THE VARIATION OF A PREMISES LICENCE FOR SUB 13 COCKTAIL BAR, 4 EDGAR BUILDINGS, GEORGE STREET, BATH. BA1 2EE

The Senior Licensing Officer presented the report which was a Variation of a Premises Licence.

The applicant's case

The applicant's agent presented his case and drew attention to the following:

1. The current licence was for the sale of alcohol, performance and dance and there was no proposal to add to the licensed activities, the application was for a variation to the licence.
2. The variation proposed no change to the current times, but to add non-standard activity times on bank holidays to 0300 and on specific Sundays to

0400. This would be 4 or 5 times a year and would mirror the hours on the licence for Monday – Saturday.
3. Previously a Temporary Events Notice (TENS) licence had been applied for to allow the variation to times on certain dates. By applying for a variation, this would allow appropriate conditions to be attached.
 4. The police had not raised any objection following pre-application consultation.
 5. The original application included a proposal for recorded music to be played in the garden, but this was subsequently withdrawn as a result of concerns raised by the Environmental Health Officer. A dedicated member of staff would be on duty in the garden area to further mitigate concerns.
 6. It was hoped that this would allay the fears of the local residents who had objected to the application.
 7. There had also been two representations of support for the application.

Following questions, the applicant/agent confirmed the following:

1. The application sought the removal of certain conditions and offered further measures which could be approved as conditions in order to promote licensing objectives. The proposed timings had previously been authorised as TENS and had not therefore been subject to conditions.
2. Previous TENS applications had been granted.
3. The music was controlled inside the venue and the volume levels had been set after 11pm at a level agreed with Environmental Health Officers.
4. A member of staff would be responsible for ensuring that the door to the garden would be shut.
5. There were no plans for additional sound proofing, on the additional nights proposed by the variation, the venue would operate the same way as Monday-Saturday.
6. A DJ playing pre-recorded music was defined as recorded music but if the DJ was creating new music this was classified as live music.
7. According to the fire risk assessment, a maximum of 80 people could be situated in the garden although it was not anticipated that the garden would be occupied to the maximum capacity.

Other parties

The committee heard representation from local residents.

Richard Brown, local resident, made the following comments:

1. He was that he objecting to the application on the grounds of preventing public nuisance.
2. The garden was in close proximity to a number of residential dwellings.
3. There were 22 objections to the application.
4. Local residents had previously complained about the level of noise from amplified/DJ dance music and the behaviour of customers.
5. The application did not comply with the Council's objective of improving people's lives.

In response to a question about noise complaints, the Environmental Health Officer confirmed that allegations of noise nuisance had not been proven and evidence was required before a noise abatement notice could be served. He confirmed that the evidence also needed to demonstrate the correct premises that was responsible for

exceeding noise levels. He stated that where there was evidence of a breach, the Council had a statutory duty to service a noise abatement notice.

Neil Ireson, local resident, confirmed that local residents could hear a substantial level of noise from the properties and that it was not practical for residents, especially elderly residents, to allow an Environmental Health Officer into their property in the early hours of the morning to monitor noise levels.

Malcolm Baldwin, speaking as chair of Circus Area Residents Association (CARA), stated that CARA objected to the application on the grounds of preventing public nuisance and upholding the rights of residents.

The responsible authorities

The Environmental Health Officer reported as follows:

1. Due to the nature of complaints, he met with the applicant and agent to discuss how they could better promote licensing objectives.
2. He had been concerned about the original application which sought to withdraw the condition "There will be no regulated entertainment carried out in the garden" to play recorded music in the garden, but due to the applicant agreeing to withdraw this part of the application and agreeing that a member of staff would be on duty in the garden, he had withdrawn his objection.

In response to questioning, the Environmental Health Officer confirmed that if complaints were substantiated, there could be enforcement action or a review of the licence.

It was also noted that there were planning restrictions on the premises that would require planning permission, but that planning was a separate process and did not affect the licence application.

Summing Up

Each party was given the opportunity to sum up.

Adjournment

All parties withdrew from the meeting while the Committee considered the application.

The meeting reconvened to hear the Committee's decision.

RESOLVED that authority be delegated to the licensing officer to issue the licence as detailed below:

Background

The premises license holder for Sub 13 had applied for a variation to his license. As there were objections Members had to judge the weight and evidence of those

objections against the reasons for the application and determine the application for the license variation.

In doing so they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's Licensing Policy, including the Cumulative Impact 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. The licensing objectives being:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm.

Members reminded themselves that each application must be considered on its own merits and as an application for a variation, this was not a review of the existing license. In dealing with a variation application Members considered (a) what was being applied for and (b) what, if any, detrimental impact granting the variation could have on one or more of the four licensing objectives.

Therefore Members had to look for evidence the premises is/or may have a detrimental impact should the application be granted. The evidence had to be directly attributable to the premises and should be tested for.

Members should grant as applied for or cut the application back and or attach additional conditions. If Members believe nothing they could do would 'promote' the licensing objective then Members may consider a refusal.

Cumulative Impact (CI)

Sub 13 lies within the central Bath Cumulative Impact area. The CI creates a rebuttable presumption that all applications for new premises licences or club premises certificates or variations which relate to "on trade" premises within the identified area will be refused if relevant representations are received.

To rebut this presumption, applicants must demonstrate that the operation of the premises will not add to any cumulative impact already being experienced. Applicants can do this by way of evidence of existing use (e.g. a history of Temporary Event Notices without issue) or a suite of additional measures/conditions to mitigate any potential issues.

The Members could grant the application as requested in full or part, refuse the application or grant with additional conditions.

Members reminded themselves that when considering the application and any conditions they must do so acting on the evidence.

The Applicant

The Applicant stated this application is under s 17 Licensing Act 2003 for a variation of a premises licence for Sub 13, 4 Edgar Buildings by altering standard hours on a

limited (maximum of six) days per year, by removing several conditions specified in the license operating schedule, adding new conditions, to add non-standard activity timings that would alter the current conditions relating to the playing of recorded music, the performance of dance, the provision of late night refreshment and the sale of alcohol on and off the premises and to add non-standard opening times. As set out in detail in the application.

The Applicant offered measures he considered would promote the licensing objectives.

The Applicant stated that the reason for the application to vary the license conditions was to include in the conditions changes for public holidays or days adjacent to public holidays and to avoid the need to serve Temporary Event Notices for those days and instead to have them authorised under the license and so covered by the license conditions. This included the regulated activity outdoors to cover a DJ playing background music outside. The license holder does not wish to act in any way that would lead to a review of the license. The use of Temporary Event Notices has shown that the conditions can be well managed.

In consideration of the objections from members of the public of public nuisance due to the regulated activity of playing music in the garden, the Applicant has agreed to withdraw the application for an extension of the hours for playing music in the garden and to agree to have a garden monitor on duty in the garden from 01:00 hours until the garden is vacated.

Responsible Authority Objections

Environmental Protection: Objected on the licensing objective of the prevention of public nuisance.

The application is to increase the operating hours of the garden area from a closing time of 01.00hrs to 03.00hrs, this will include regulated entertainment. Due to the number of unsubstantiated complaints of noise nuisance from this premises, specifically relating to the use of the garden area I wish to make a representation on the grounds that this application will not support the prevention of public nuisance licensing objective.

The Applicant and Environmental Protection agreed in writing to the following measures:

"There will be no regulated entertainment carried out in the garden" remaining on the licence. "On occasion when the garden is used beyond 01:00 hours a dedicated member of staff will be on duty in the garden from 01:00 hours until the garden is clear of patrons".

Therefore should the amendments be made to this application the Environmental Team would withdraw this representation against the application.

The Members noted the Applicant agreed to the measures proposed by Environmental Protection

There were no other Responsible Authority objections.

Objections from the Public

There were twenty two objections from members of the public. All lived nearby and raised concerns about the prevention of public nuisance, with two also raising concerns about the prevention of crime and disorder and one of public safety.

Concerns about the prevention of public nuisance mainly raised issues about existing problems with noise and disturbance from loud music, which was already played until late at night, often beyond the time stated in the conditions on the existing licence. Some stated this had been raised with the licensing authority, but no action had been taken. Many objectors referred to the effect on sleep, especially for children and the elderly and the need to keep windows and doors shut to block the noise. The public safety objection referred to the effect of lack of sleep. The crime and disorder objection raised issues of general disturbance when leaving the premises.

Members of the public who attended the LSC raised concerns about the impact of the noise from Sub 13 late at night on the adjoining residential area. They raised questions about the control of the speakers in the garden, the volume of music inside the building, noise leakage from inside the building, the use of staff in the garden to supervise the public late at night. They maintained their objection to the variation of the existing license by extending non-standard hours as in the application, due to the increased impact on their right to quiet enjoyment of their property. This applied to residents in St Andrews Terrace, Miles Buildings and some of the residents in The Circus and George Street.

Support from the public

There were two letters of support from the public, one from the BID and another from a member of public who stated the premises were well run.

Cumulative Impact Assessment

Members noted that there were no objections from the police and the objection from Environmental Protection had been withdrawn on the agreement of the Applicant to withdraw the application to extend the hours of regulated entertainment in the garden and to provide supervision until the garden is vacated.

Licensing Sub-Committee Decision

The Members considered each variation requested separately and on its merits.

The application proposed the following:

The playing of Recorded Music:

From normal activity start time on Christmas Eve, Boxing Day, and the Sunday falling immediately before Easter Monday Bank Holiday, May Day (Early May Bank Holiday), Spring Bank Holiday Monday and August/Summer Bank Holiday Monday, until 03:00 hours the following morning.

The proposed variation from “indoors only” to “both” (indoors and outdoors) is limited only to Christmas Eve, Boxing Day and the Sunday falling immediately

before a Bank Holiday Monday as detailed below, and to New Year's Eve, for which the non-standard timings will remain as per the current licence.

LSC Decision: Granted until 02:00 indoors only on the specific days requested in the application. No extension to existing license conditions for the playing of recorded music in the garden. The music to be played at volume levels agreed with Environmental Protection. Staff should monitor to ensure external doors are not left open.

The Performance of Dance:

Indoors from normal activity start time on the Sunday falling immediately before Easter Monday Bank Holiday, May Day (Early May Bank Holiday), Spring Bank Holiday Monday and August/Summer Bank Holiday Monday, until 03:00 hours the following morning.

On occasion when Christmas Eve or Boxing day fall on a Sunday the hours will be from normal activity start time until 03:00 hours the following morning.

LSC Decision: Granted until 02:00 indoors only on the specific days requested in the application. No extension to existing license conditions for the performance of dance in the garden.

Late Night Refreshment:

Indoors from normal activity start time on the Sunday falling immediately before Easter Monday Bank Holiday, May Day (Early May Bank Holiday), Spring Bank Holiday Monday and August/Summer Bank Holiday Monday, until 03:00 hours the following morning.

On occasion when Christmas Eve or Boxing Day fall on a Sunday the hours will be from normal activity start time until 03:00 hours the following morning.

LSC Decision: Granted until 02:00 on the specific days requested in the application.

The Supply of Alcohol 'On' and 'Off' the premises:

From normal activity start time on the Sunday falling immediately before Easter Monday Bank Holiday, May Day (Early May Bank Holiday), Spring Bank Holiday Monday and August/Summer Bank Holiday Monday, until 03:00 hours the following morning.

On occasion when Christmas Eve or Boxing Day fall on a Sunday the hours will be from normal activity start time until 03:00 hours the following morning.

LSC Decision: Granted until 02:00 on the specific days requested in the application.

The Applicant proposed the following opening times:

From normal opening time on the Sunday falling immediately before Easter Monday Bank Holiday, May Day (Early May Bank Holiday), Spring Bank Holiday Monday and August/Summer Bank Holiday Monday until 04:00 hours the following morning.

On occasion when Christmas Eve or Boxing Day fall on a Sunday the hours will be from normal opening time until 04:00 hours the following morning.

LSC Decision: Granted until 03:00 on the specific days requested in the application.

The Applicant sought the removal of the following conditions:

In the event that only Sub 13 Cocktail Bar (which also incorporates the subbasement Champagne Lounge) is trading, and the premises trades beyond midnight, there will be a minimum of one member of SIA regulated door staff on duty from at least 23:00 hours.

LSC Decision: Agreed

There will be no regulated entertainment carried out in the garden.

LSC Decision: Refused

Customers are not permitted to bring open or sealed bottles or glasses on to the premises.

LSC Decision: Agreed

All alcohol sold for consumption off the premises shall be in sealed containers except when sold for consumption in the area covered by a table and chairs permit.

LSC Decision: Agreed

The garden will be closed to the public after 01:00 hours.

LSC Decision: Refused

When the premises trades beyond midnight Monday to Thursday, there will be a minimum of 2 SIA registered door staff on duty from 23:00 hours until 30 minutes after the premises closes.

LSC Decision: Agreed

When the premises trades beyond midnight on Fridays and Saturdays there will be a minimum of 3 SIA registered door staff on duty from at least 23:00 until 30 minutes after the premises closes.

LSC Decision: Agreed

On 24 December (Christmas Eve) and 26 December (Boxing Day) of each year: 11:00 to 03:00 hours. When falling on a Sunday time to be 11:00 to 23:00 hours.

LSC Decision: Granted to 02:00 for those days when falling on a Sunday

Opening times to be 08:00 to 04:00 hours of the following day following on 24 December (Christmas Eve) and 26 December (Boxing Day) of each year. When falling on a Sunday, times to be 11:00 to 23:30 hours.

LSC Decision: Granted to 03:00 for those days when falling on a Sunday.

The Applicant proposed the following measures to promote the licensing objectives:

When the premises (basement, sub-basement, ground floor and garden) trades beyond midnight, there will be a minimum of three SIA registered door staff on duty from at least 23:00 hours until 30 minutes after the premises close.

LSC Decision: Agreed

When only the ground floor and garden trades beyond midnight, there will be a minimum of one SIA registered door staff on duty Sunday to Thursday, and a minimum of two registered door staff on duty on Friday and Saturday from at least 23:00 hours until 30 minutes after the premises close.

LSC Decision: Agreed

All alcohol sold for consumption off the premises shall be supplied in sealed containers except when sold for consumption in an area covered by a table and chairs permit, pavement licence or similar, that has been issued to the premises.

LSC Decision: Agreed

Only customers who have previously been seated in an external area covered by a tables & chairs permit, pavement licence or similar, shall be permitted to bring their open bottles or drinking glasses on to the premises.

LSC Decision: Agreed

No regulated entertainment shall be provided in the garden with the exception of Recorded Music played on Christmas Eve, Boxing Day, New Year's Eve and the Sunday falling immediately before a Bank Holiday Monday.

LSC Decision: Refused, no extension or removal of the existing conditions on the premises license for playing recorded music in the garden.

No Late-Night Refreshment shall be provided in the garden.

LSC Decision: Agreed

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

93 EXCLUSION OF THE PUBLIC

The following item was deferred and so there was no requirement to exclude the public from the meeting.

94 APPLICATION TO RENEW COMBINED HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS LICENCE - CONSIDERATION OF FIT AND PROPER - 22/00233/TAXI

This item was deferred and would be considered at a future meeting.

The meeting ended at 12.20 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services