

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Wednesday, 27th July, 2022, 10.00 am

Councillors: Rob Appleyard (Chair), Michael Evans and Steve Hedges

Officers in attendance: Rebecca Jones (Deputy Team Leader, Legal Services) and Geoff Cannon (Public Protection Officer - Licensing)

39 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer advised the meeting of the procedure.

40 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were no apologies or substitutions.

41 DECLARATIONS OF INTEREST

There were no declarations of interest.

42 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was no urgent business.

43 MINUTES OF PREVIOUS MEETING: 14TH JULY 2022

The Sub-Committee **RESOLVED** that the minutes of the previous meeting be agreed as a correct record and signed by the Chair.

44 LICENSING PROCEDURE

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

45 APPLICATION FOR A NEW PREMISES LICENCE FOR THE CORK AND TRUCKLE, 4 ABBEY GREEN, BATH. BA1 1NW

The Public Protection Officer (Licensing) presented the report to the Sub-Committee. He explained that an application had been received from The Cork and Truckle Limited for a new premises licence for The Cork and Truckle, 4 Abbey Green, Bath, BA1 1NW. The premises is described as "A quality wine and cheese merchants retailing a selection of locally produced wines, spirits and cheeses and other complimentary products".

The original application proposed the following licensable activities:

- The supply of alcohol for consumption on and off the premises 09:00hrs to 21:00hrs every day.

- The application proposes the following opening times:
09:00hrs to 21:30hrs every day.
- The following measures have been offered by the applicant to promote the licensing objectives:
 - As the premises is primarily a retail outlet, the sale of alcohol for consumption "on the premises" shall be limited to occasional tasting/promotional events, and the official period of Bath's Christmas Market (including any soft opening for residents) whilst customers browse/shop in store.
 - All staff are to be trained in the prevention of under-age sales to a level commensurate with their duties. The training shall be clearly documented and signed and dated by the trainer and member of staff receiving it. The documentation shall be available to the Police and the Licensing Authority upon request.
 - CCTV shall be installed and maintained to the satisfaction of the Police and in accordance with ICO guidelines. Recordings shall be of evidential quality, retained for a minimum of 28 days, and produced at the request of the Police or Licensing Authority. A notice advising CCTV is in operation shall be displayed at the entrance.
 - Alcohol sold for consumption off premises shall be supplied in sealed containers except for:
 - i) alcohol sold for consumption within an area for which a table and chairs permit, pavement licence or similar has been issued to the premises.
 - ii) alcohol sold during the Bath Christmas Market, for example, mulled wine.
 - A Refusal/Incident Log shall be maintained, kept at the premises, and produced for inspection by the Police or Licensing Authority upon request.
 - No more than 8 customers shall be permitted in the basement at any given time.
 - No more than 16 customers may attend a promotional tasting event held at the premises.
 - Measures offered in respect of the installation of CCTV, the keeping of a Refusal/Incident log, staff training in respect of under-age sales, the implementation of "Challenge 21" and the limit on the number of customers who may attend a tasting/promotional event at the premises shall all serve to promote the prevention of public nuisance licensing objective.
 - A "Challenge 21" age verification policy shall be implemented at the Page 16 premises.

- Signage shall be prominently displayed at the premises advising "Challenge 21" is in operation.
- In respect of telephone and online orders, customers will be notified that deliveries of alcohol can only be made to persons aged 18 years or over, and that age verification will be required upon delivery.

In response to a query, the Public Protection Officer (Licensing) explained that the provision of small samples of alcohol for tasting purposes does not require a licence.

Decision and Reasons

Members have determined an application for a new Premises Licence for the Cork and Truckle at 4 Abbey Green, Bath BA1 1NW. In doing so they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's Policy which includes 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. Members reminded themselves that each application must be considered on its own merits.

The proposed premises falls within BANES' Cumulative Impact Area which means that pursuant to the Council's policy there is a rebuttable presumption that applications relating to "on trade", premises will be refused if relevant representations are received, unless the applicant can demonstrate that the operation of the premises will not add to the cumulative impact already being experienced. "On trade" means the sale of alcohol for consumption on the premises.

The Applicant indicated that as set out in his application, the business will be the retail sale for drinking away from the premises of wine and spirits with cheese and associated items. The Applicant has considered the concerns of the objector and has amended the application in two ways to take account of those concerns.

- To amend the time of closure time from 21:00 for the sale of alcohol and 21:30 for the closure of the premises to 18:00 for the sale of alcohol and the closure of the premises. Except during the official dates of the Bath Christmas Market including any soft opening for residents when the application is for non-standard hours of 21:00 for the sale of alcohol and 21:30 for the closure of the premises.
- To remove the proposal for on-site consumption of alcohol at promotional and wine tasting events. Except for the official dates of the Bath Christmas Market including any soft opening for residents, whilst customers browse/shop in store.

The objector was unable to attend and had indicated in correspondence with licensing officers that some of her concerns had been alleviated by the assurances from the Applicant. However, she did not withdraw her original objections that were set out in her letter and amended letter of objection which were considered by Members. In summary her objections relevant to the licensing objectives were:

- Nuisance: The nature of the proposed business (serving alcohol on and off site) will attract an increased amount of footfall throughout the day. Plus, noise from deliveries and cleaning outside of the opening hours of 9am to 9:30 pm. This will cause severe noise nuisance, effecting personal life and ability to work from home, with noise and confidentiality issues. Increased footfall of such business will increase litter in the area more so in front of her property.
- Increased risk of crime and disorder: The front door of her residential premises is located very close to the commercial unit's entrance and window. The distance between her front door and the commercial unit is less than 3 metres. There is no outside space for the commercial unit. This could lead to customers standing in front of her door obstructing her entrance and could potentially behave in such a manner, which amounts to anti-social behaviour. This raises safety concerns for her, her family and friends who visit her.

Members were careful to take account of the relevant written and oral representations both for and against the application and balanced their competing interests. *A copy of additional information considered prior to the hearing is attached as an appendix to these minutes.*

Members noted that there had been no representations from Responsible Authorities which includes the Police, Highways, Planning, Environmental Protection and the Licensing Authority.

The Licensing Officer advised that currently there were in the Abbey Green area several premises selling alcohol during the day and one in the evening. There were no existing concerns relating to these premises or the area. Oral and written submissions were made by the Applicant's agent about the nature of the proposed business, the amended application and the mitigating conditions offered by the Applicant.

Members were satisfied on the evidence they heard and read that the amended application, including the conditions offered, would promote the licensing objectives and would be unlikely to add to cumulative impact.

Authority is therefore delegated to the licensing officer to issue the licence with conditions consistent with the amended application and conditions offered by the Applicant and indicated below, which members consider to be appropriate and proportionate in the promotion of the Prevention of Public Nuisance and Prevention of Crime and Disorder licensing objectives:

Hours

- The hours for the Sale of Alcohol shall be: Standard Activity Timings from 09:00 until 18:00 every day. Non-Standard Activity Times from 09:00 until 21:00 during the official period of Bath's Christmas Market including any "soft opening" for residents.
- The hours Premises are Open to the Public: Standard Opening Times from 09:00 until 18:00 every day. Non-Standard Opening Times: From 09:00 until

21:30 during the official period of Bath's Christmas Market including any "soft opening" for residents.

Conditions offered by the Applicant to be included in Annex 2

- As the premises is primarily a retail outlet, the sale of alcohol for consumption "on the premises" shall only take place during the official period of Bath's Christmas Market (including any soft opening for residents) whilst customers browse/shop in store.
- All staff are to be trained in the prevention of under-age sales to a level commensurate with their duties. The training shall be clearly documented and signed and dated by the trainer and member of staff receiving it. The documentation shall be available to the Police and the Licensing Authority upon request.
- CCTV shall be installed and maintained to the satisfaction of the Police and in accordance with ICO guidelines. Recordings shall be of evidential quality, retained for a minimum of 28 days, and produced at the request of the Police or Licensing Authority. A notice advising CCTV is in operation shall be displayed at the entrance.
- Alcohol sold for consumption off premises shall be supplied in sealed containers except for: i) alcohol sold for consumption within an area for which a table and chairs permit, pavement licence or similar has been issued to the premises. ii) alcohol sold during the Bath Christmas Market including any soft opening for residents, for example, mulled wine.
- A Refusal/Incident Log shall be maintained, kept at the premises, and produced for inspection by the Police or Licensing Authority upon request.
- A "Challenge 21" age verification policy shall be implemented at the premises.
- Signage shall be prominently displayed at the premises advising "Challenge 21" is in operation.
- In respect of telephone and online orders, customers will be notified that deliveries of alcohol can only be made to persons aged 18 years or over, and that age verification will be required upon delivery.

The meeting ended at 11.10 am

Chair

Date Confirmed and Signed

Prepared by Democratic Services

This page is intentionally left blank

<u>Page(s)</u>	<u>Content</u>
1	Index
2-3	Email from Police following pre-application consultation
4-6	Letter to representor dated 7 July 2022
7	E-Newsletter from Leader of the Council 7 July 2022
8-10	Excerpts from B&NES Council's Statement of Licensing Policy in respect of Cumulative Impact & measures to rebut the presumption of refusal
11	Daniel Thwaites Decision re "real evidence"
12	Brewdog v Leeds City Council

Preapplication consultation with the Police

From: Paul Kendall <Paul.Kendall@avonandsomerset.police.uk>

Sent: 01 June 2022 13:23

To: Terrill Wolyn [REDACTED]

Subject: FW: The Cork & Truckle - Draft application & DPS Consent Form for comment

Hi Terrill

I have had a look at the new premises application and from a police point of view am happy with the conditions offered.

Regards

Paul Kendall

Licensing Officer BANES

Neighbourhood and partnership directorate. Avon and Somerset Police

Bath Police Centre, Redbridge House, Bath BA2 3EW

Tel [REDACTED]

Email Paul.Kendall@avonandsomerset.police.uk

Email www.avonandsomerset.police.uk | Follow us on [Twitter](#) and [Facebook](#)

Avon and Somerset Police
SERVE. PROTECT. RESPECT.

From: Terrill Wolyn <[REDACTED]>

Sent: 31 May 2022 15:15

To: Paul Kendall <Paul.Kendall@avonandsomerset.police.uk>

Subject: The Cork & Truckle - Draft application & DPS Consent Form for comment

Hi Paul

I hope all is well,

Re: The Cork and Truckle - 4 Abbey Green, Bath

Further to my meeting with William Liebenberg at Sixes and Sevens last week, I have drafted as attached the new premises licence application in respect of the proposed wine and cheese shop.

I would be grateful if you could please take a look and let me know if you are happy with the draft in its current form, or whether you require any amens.

With thanks & kind regards,

Terrill

T. Wolyn Licensing

Email: [REDACTED]

Tel: [REDACTED]

FYI - This is the branding for the shop:



T. Wolyn Licensing

Email: [REDACTED]

Tel: [REDACTED]

Ms Breethy Ravikumar Jeya
Maisonette
4 Abbey Green
Bath
BA1 1NW

7 July 2022

Dear Ms Breethy Ravikumar Jeya

Re: The Cork and Truckle - 4 Abbey Green, Bath BA1 1NW

I am writing on behalf of my client Mr William Liebenberg in respect of the new premises licence application made under section 17 of the Licensing Act 2003 for The Cork and Truckle.

I have received copies of your representations of objection and related correspondence with BANES' Licensing Officer Geoff Cannon in which you express concern that the proposals within the application may impact on the licensing objectives.

In the first instance we would like to take this opportunity to re-assure you that the nature of the proposed premises is primarily a retail shop offering high end wines, cheeses, chutneys, and relishes for customers to purchase for consumption away from the premises, as well as other complimentary items/gifts such as chopping boards, ice-buckets, and luxury hampers. Excluding the limited occasions as stated within the application, the sale of alcohol at the premises will be for consumption "off premises" i.e., for consumption at home, or purchased as gifts.

To confirm, the sale of alcohol for consumption "on the premises" has only been requested within the application to enable The Cork and Truckle to provide occasional customer events in the form of wine and cheese tastings, and to enable customers to purchase festive beverages such as mulled wine to consume whilst browsing for gifts during Bath's Christmas Market. On no occasion would there be a bar at the premises, and indeed no bar has been detailed on the licensing plan accompanying the application.

We have carefully considered the concerns you have raised within your representations and subsequent correspondence and note that issues detailed relating to private nuisance, planning matters relating to "use" of the premises as a retail/commercial unit, public safety off the premises, and concerns relating to applications for pavement licences/tables and chairs permits are not matters for consideration under the Licensing Act 2003 and as such we shall be respectfully asking the Licensing Sub-Committee to disregard these elements.

We also acknowledge that after receiving notification of the measures we have offered within the application to promote the licensing objectives from Geoff Cannon on 27 June, that by reply, you advised him that some of your concerns had been alleviated.

Therefore, to further mitigate against any outstanding concern you may have, we are offering to withdraw the request for the sale of alcohol for consumption "on premises" during

occasional tasting events for customers, and this will also be removed from our customer offering. Instead, we shall re-purpose the area designated for these customers events for our hampers.

We shall still however pursue our request for the sale of alcohol for consumption “on premises” during the official period of the Bath Christmas Market and during any “soft opening” for local residents. The rationale for this is:

1. The Cork and Truckle would very much like to be part of the Bath Christmas Market Experience and trade alongside the chalets that will be situated in Abbey Green.
2. The sale of alcohol for consumption on the premises cannot be authorised for the duration of the Christmas Market by way of Temporary Event Notices (TENS) as the law limits the maximum duration of a TEN to 7 days, after which a 24-hour gap between “event periods” is required.
3. It is not uncommon for premises licences in Bath to have a non-standard timing provided on the licence for the Christmas Market, and I can confirm that several premises close to the Cork and Truckle have a provision specifically for the market on their premises licence e.g. The San Francisco Fudge Factory.

Notwithstanding the above, we are willing to amend the timings originally proposed so that the last permitted sale of alcohol at 21:00 hours, and closing time at 21:30, ONLY apply during the official period of Bath’s Christmas Market and any “soft opening” for residents. At all other times (standard hours) we are proposing the hours for the sale of alcohol and opening to be: 09:00 hours to 18:00 hours daily in line with other premises trading in Abbey Green.

To achieve this, we are proposing that the condition specifying the times during which alcohol may only be sold for consumption on the premises be changed from:

As the premises is primarily a retail outlet, the sale of alcohol for consumption "on the premises" shall be limited to occasional tasting/promotional events, and the official period of Bath's Christmas Market (including any soft opening for residents) whilst customers browse/shop in store.

To read:

“As the premises is primarily a retail outlet, the sale of alcohol for consumption “on the premises” shall only take place during the official period of Bath’s Christmas Market (including any soft opening for residents) whilst customers browse/shop in store”.

This means that at all other times the sale of alcohol shall be for consumption “off premises” only.

Furthermore, as we are proposing to remove customer tasting events from our offering the following measure would need to be removed from the operating schedule as it would no longer be appropriate:

“No more than 16 customers may attend a promotional tasting event held at the premises”

The Cork and Truckle LSC 27 July 2022 - Additional Information

In summary, our proposal to reduce the hours for the sale of alcohol and the times the premises are open to the public would be as undernoted:

Sale of Alcohol

Standard Activity Timings: From 09:00 until 18:00 every day
Non-Standard Activity Times: From 09:00 until 21:00 during the official period of Bath's Christmas Market and during any "soft opening" for residents.

Times Premises are Open to the Public

Standard Opening Times: From 09:00 until 18:00 every day
Non-Standard Opening Times: From 09:00 until 21:30 during the official period of Bath's Christmas Market and during any "soft opening" for residents.

We would have liked to have fully discussed your concerns during the consultation period, however this was not possible as we only had sight of the issues you have raised after 2pm on the last day of the consultation period.

We appreciate how busy you must be following the sale of the maisonette (stc), however we would be grateful if you could please advise at your earliest convenience whether these measures, in addition to the conditions offered within the operating schedule (following pre-application consultation with the Police), will serve to mitigate your concerns.

We shall request that this letter be included as additional information within the report papers for the Licensing Sub-Committee. Any agreement we reach in advance of the hearing would then be considered by the Members at the hearing.

Yours sincerely

Terrill Wolyn

Licensing Consultant for the Applicant

cc. BANES' Licensing Services

Mr William Liebenberg

E Newsletter from the Leader of the Council

A message from Cllr Kevin Guy, Leader of Bath & North East Somerset Council

Bath was at its best this week when it hosted the [Birmingham 2022 Queen's Baton relay](#). The Baton was only with us briefly as part of its tour, but a huge amount of work went into organising the event which drew the crowds and was a real success. Nine Batonbearers, including 97-year-old Normandy veteran Stan Ford from Bath completed the relay from its starting point at the Royal Crescent, via the Roman Baths to the end of its journey through the city at the Guildhall. Thank you to all the Batonbearers and the Ermine Street Guard, who formed a guard of honour as the Baton arrived. Special thanks also go to pupils from St Andrew's primary school who stood alongside the guard resplendent in their togas.

Despite the challenges of recovering from the pandemic our area is bouncing back and the city is looking forward to a busy summer. The council has been doing well with letting its commercial premises in Bath city centre, keeping our city vibrant and attractive.

And attractions like the [Torchlit Summer Evenings](#), which see the Roman Baths open until 10pm every evening this summer, are helping to bring in visitors and locals alike.

Excerpts from B&NES Council's Statement of Licensing Policy

Cumulative Impact

15.2

The effect of the Cumulative Impact Assessment is to create a **rebuttable presumption** that applications for new premises licences, club premises certificates or variations relating to “**on trade**” premises situated within the Cumulative Impact Assessment area, will be refused if relevant representations are received.

In order to rebut this presumption, applicants must demonstrate that the operation of the premises will not add to the cumulative impact already being experienced.

The Cork and Truckle Limited is not in the main an “on trade” operation.

With the proposed amendment to remove occasional wine and cheese tasting events from the offering, the applicant is proposing the sale of alcohol for consumption “on premises” to be limited ONLY to the official period of Bath Christmas Market, including any soft opening provided for residents.

15.11

The measures the Licensing Authority would wish to be included on a premises licence application within the cumulative impact assessment area will depend on the **nature and type of the premises**.

The nature of the premises to be known as The Cork and Truckle is predominantly a retail shop offering high end wines (for consumption off premises), cheeses, relishes, chopping boards, caviar etc...with the unique opportunity for customers to have their chosen purchases made into a beautiful hamper.

There will be no bar at the premises.

The measures would need to be individual to that premises.

1. CCTV at the premises to be properly maintained

The following measure has been offered within the operating schedule:

CCTV shall be installed and maintained to the satisfaction of the Police and in accordance with ICO guidelines. Recordings shall be of evidential quality, retained for a minimum of 28 days, and produced at the request of the Police or Licensing Authority. A notice advising CCTV is in operation shall be displayed at the entrance.

2. Security Industry Authority (SIA) door staff

As the proposed premises is a small retail shop as opposed to a late-night drinking venue, a measure offering door staff would be neither proportionate or appropriate in this case.

3. Toughened or plastic glass, no bottles

Not applicable to this type of premises.

4. Free calls to taxi firms for departing customers at the end of the night

Not appropriate or proportionate given the nature of the premises.

5. Outside areas to be cleared at a reasonable time (time to be stated)

The shop has no outside area.

6. Signs to be displayed at each exit to encourage patrons to minimise noise and not to congregate in the street at close.

Not appropriate given that the proposed premises is a retail shop.

7. To be a member of the local Nightwatch (or any other similar scheme)

Not relevant given the nature and type of premises.

8. No open containers of alcohol to leave the premises

The following measure has been offered within the operating schedule:

- Alcohol sold for consumption off premises shall be supplied in sealed containers except for:
 - i) Alcohol sold for consumption within an area for which a table and chairs permit, pavement licence or similar has been issued to the premises.
 - ii) Alcohol sold during the Bath Christmas Market, for example mulled wine.

9. To supervise entry and exit of the customers from the premises at busy times.

Customers will be monitored to ensure capacities set out in the Fire Risk Assessment are not exceeded.

10. Facilities for people to dispose of cigarette ends and provisions for reducing noise from people smoking outside the premises.

Not applicable given the nature and type of the premises.

11. A limit on the number of customers permitted on the premises at one time.

Whilst capacities will be detailed within the business's Fire Risk Assessment, the following measures have been offered within the application:

- No more than 8 persons shall be permitted in the basement at any given time;
- No more than 16 customers may attend a promotional tasting event held at the premises (N.B. this will not be relevant if tasting events are removed from the offering).

12. A requirement that the public spaces in the premises should be predominately seated.

Not applicable given that the nature of this business is primarily a retail shop.

The SOLP continues to advise:

This list is not exhaustive and is only intended to provide a brief description and guide to applicants.

In consideration of this it is important to note that to further promote the licensing objectives the following additional measures have been offered:

- All staff are to be trained in the prevention of under-age sales to a level commensurate with their duties. The training shall be clearly documented and signed and dated by the trainer and member of staff receiving it. The documentation shall be available to the Police and the Licensing Authority upon request.
- A Refusal/Incident Log shall be maintained, kept at the premises, and produced for inspection by the Police or Licensing Authority upon request.
- A Challenge 21 age verification policy shall be implemented at the premises.
- Signage shall be prominently displayed at the premises advising “Challenge 21” is in operation.
- In respect of telephone and online orders, customers will be notified that deliveries of alcohol can only be made to persons aged 18 years or over, and that age verification will be required upon delivery.

Daniel Thwaites plc v

Wirral Borough Magistrates' Court

The Saughall Massie Conservation Society (First Interested Party)

Wirral Metropolitan Borough Council (Second Interested Party)

QUEEN'S BENCH DIVISION

6 MAY 2008

The Hon Mrs Justice Black

MY OVERALL CONCLUSIONS

[63] It would be wrong, in my judgment, to say that the magistrates failed to take account of the licensing objectives. At the outset of their Reasons, they correctly identify those which are relevant. Similarly, as the First Interested Party submits, whilst they did not articulate that the curtailment of the hours sought was "necessary" to promote those objectives, it is implied in their decision that they did take this view and it can also be inferred from their comment that because of the concept of migration, public nuisance and crime and disorder would be "an inevitable consequence" of leaving the hours as granted by the Local Authority. **However, in my view their approach to what was "necessary" was coloured by a failure to take proper account of the changed approach to licensing introduced by the Act. Had they had proper regard to the Act and the Guidance, they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstances of the case.**

BREWDOG V LEEDS CITY COUNCIL 2012

Cumulative Impact Policy Case

District Judge Roy Anderton upheld the appeal.

Key points:

- It cannot be the intention of the Cumulative Impact Policy to bring the iron curtain clanging down.
- **A simple increase in footfall is not a rational reason to refuse** BrewDog entry to Leeds.
- **The type of clientele** a premiss attracted had a material part to play in the decision.