

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Thursday, 1st December, 2022, 10.00 am

Councillors: Rob Appleyard (Chair), Steve Hedges and Sally Davis (in place of Karen Warrington)

Officers in attendance: Carrie-Ann Evans (Team Leader, Legal Services), John Dowding (Lead Officer - Licensing) and Geoff Cannon (Public Protection Officer (Licensing))

73 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer drew attention to the Emergency Evacuation Procedure.

74 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Councillor Sally Davis was present for the duration of the meeting as a substitute for Councillor Karen Warrington.

75 DECLARATIONS OF INTEREST

Councillor Rob Appleyard declared an other interest in respect of Agenda Item 11 'Application for a Variation of a Premises Licence for: The Rising Sun'. He explained that he had received correspondence from one of the parties objecting to the application and had notified the Legal and Licensing teams on receipt.

He added that no further engagement took place and that the correspondence would have no impact on the decision that he would make today.

76 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

77 MINUTES OF PREVIOUS MEETINGS: 11TH AUGUST 2022 / 25TH AUGUST 2022 / 8TH SEPTEMBER 2022

The Sub-Committee **RESOLVED** to approve the minutes for the meetings held on 11th August 2022, 25th August 2022 and 8th September 2022 and they were duly signed by the Chairman.

78 LICENSING PROCEDURES

The Chairman referenced the procedures for each of the applications before the Sub-Committee and stated that all parties would be given an equal opportunity to make their representations.

79 EXCLUSION OF THE PUBLIC

The members of the Sub-Committee agreed that they were satisfied that the public interest would be better served by not disclosing relevant information, in accordance with the provisions of Section 100(A)(4) of the Local Government Act 1972.

It was **RESOLVED** that the public be excluded from the meeting for the following items of business and the reporting of the meeting be prevented under Section 100A(5A), because of the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Part 1 of Schedule 12A of the Act, as amended.

80 APPLICATION FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE: 22/01714/TAXI

The Lead Officer, Licensing introduced the report to the Sub-Committee. He explained that they were being asked to determine an application for the grant of a combined Hackney Carriage/Private Hire Driver's licence.

He stated that as part of the standard licencing procedure the Disclosure & Barring Service (DBS) was requested to carry out a check of the applicant's background. The results of the DBS check were received in September 2022 and disclosed previous convictions.

The Lead Officer, Licensing handed out copies of the Disclosure and Barring Service Certificate as well as the applicant's written statement to the Members for them to read.

The Sub-Committee adjourned for a short period of time to allow the Members to read the information contained within the DBS Certificate and the statement.

When they reconvened, the Sub-Committee asked the applicant a number of questions and he responded accordingly.

The Chairman asked the applicant if he felt he had given the Sub-Committee as much information regarding the application as he could.

The applicant replied that he had.

Decision and Reasons

Members have had to determine an application for a combined Hackney Carriage/Private Hire Driver's Licence where the DBS results revealed two previous convictions. In doing so they took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council's Policy.

The applicant made written representations in which he indicated that he could not remember the details of his conviction from 1988. In relation to his conviction from 2005 he explained that he immediately admitted the offending to the complainant when it was identified; he admitted the offences to the police and pleaded guilty at court. He served his sentence and repaid the funds to the complainant.

Members took account of the applicant's oral representations and his written statement and balanced these against the information contained in the Disclosure and Barring Service Certificate.

Members noted that the applicant had remained conviction free for well in excess of the period expected in the policy.

In all the circumstances Members find the applicant to be a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence given the time he had remained conviction free and the genuine remorse that he showed for the historic conduct that led to his latest conviction.

Authority is delegated to the licencing officer to issue the licence subject to the applicant completing all steps required by the licencing process.

81 RETURN TO PUBLIC SESSION

82 APPLICATION FOR VARIATION OF A STREET TRADING CONSENT, PITCH 24, JIMMY'S KEBAB, TERRACE WALK, BATH.

The Public Protection Officer, Licensing introduced the report to the Sub-Committee. He explained that an application has been received from Mehmet Yilmaz, Operator of Jimmy's Kebab mobile food van to vary the Street Trading Consent times for Jimmy's Kebab, Pitch 24, Terrace Walk, Bath, from finishing at 03:00hrs to finishing at 03:30hrs every day (to trade 30 minutes later).

He stated that the times applied for are: 20:30hrs to 03:30hrs every day (to trade 30 minutes later. The start time is unaltered).

He informed the Sub-Committee that an objection had been received from The Abbey Hotel and that it is alleged that:

The Abbey Hotel already suffers disturbances coming from Jimmy's Kebab and that guests staying at the Abbey Hotel will be further impacted by the additional 30 minutes trading time.

The applicant's solicitor explained why the variation was being sought. He and the applicant were both asked questions by the Sub-Committee and both responded accordingly.

The solicitor on behalf of the objectors stated their case for why the application should be refused. He was asked questions by the Sub-Committee and responded accordingly.

The Chairman asked both parties to make their closing submissions.

Following this, he asked them if they felt they had given all the evidence necessary for their respective arguments.

Both parties agreed that they had.

Decision and Reasons

Members have had to determine an application to vary a Street Trading consent at Pitch 24, Terrace Walk, Bath, to increase the hours of operation by half an hour at the end of each day. In determining the application, Members had regard to the Local Government (Miscellaneous Provisions) Act 1982, Council Policy and Human Rights Act 1998.

Angus McWilliams, solicitor, addressed the Sub-Committee on behalf of the applicant. He submitted that there is no evidence to support the fact that the noise and disturbance was originating from Jimmy's Kebabs particularly as there are nightclubs and a taxi rank in the vicinity. He indicated to members that the extension as sought would allow an extra 30 minutes to prepare for closing, serve the last few customers and for his client to set himself up to close at the proper time, this would also allow his client to meet a demand. The applicant indicated that he had employed extra staff in order to serve customers quickly and manage noise.

Mr McWilliams submitted that the photographs provided by the objector's solicitors were not time stamped and, in any event, this was not the proper forum to deal with an alleged breach of the street trading consent. On questioning it was accepted that the photographs were timed and dated as indicated, as the objector had brought the camera with him to prove this. He also submitted that the fact the application had come before the Sub-Committee in July was irrelevant.

There was a written representation from The Abbey Hotel. It was submitted that the hotel already suffers disturbances coming from this pitch and guests staying at the hotel will be further impacted by the additional 30 minutes trading.

George Domleo, solicitor, addressed members on behalf of the Abbey Hotel. In his submissions he disputed that this is not the right forum for the photographs. He indicated that this shows Jimmy's Kebabs are clearly trading beyond their permitted hours and the Hotel has no confidence that if the extension was granted, the pitch would actually close at 3:30am.

Mr Domleo indicated that during the 3-4 years that Jimmy's Kebabs has been at the pitch there has been an increase in antisocial behaviour and whilst people might come from the Labyrinth and Second Bridge nightclubs, they go to Jimmy's Kebabs which acts as a magnet. The Hotel has had to pay compensation or offer alternative rooms due to the disturbance caused by the pitch to the guests.

Members noted that additional information submitted by the objector's solicitor had been shared with the applicant. This comprised a covering letter and two photographs which were said to show the pitch in use beyond the permitted hours on 8th and 9th October 2022. Members noted that this is not a review of the existing street trading consent nor is it to consider alleged breaches of the consent however, they can have regard to evidence that is relevant to the potential impact of the extension sought. Members noted that there was no dispute regarding the time and date of these photographs. They received an explanation from the applicant for why customers were at the pitch after 3am on these occasions.

Members were mindful that this application was to be considered on its own merits regardless of any application that came before it in July.

Members noted that there were no representations from consultees such as the Police, Environmental Protection or Highways Department.

In reaching a decision Members took account of the relevant representations and balanced the competing interests of the applicant and the objector.

Members noted that the principle of the pitch had already been established and this application concerns an increase in hours of operation from 0300 to 0330 daily.

Members are mindful that their Policy anticipates a street trading environment that is sensitive to the needs of residents alongside providing diversity and consumer choice, amongst other things.

Members had sympathy for Mr Yilmaz in relation to his commercial aspirations, however they were not relevant to this determination and found on the evidence that they had heard and read as indicated above, that there was likely to be an increase in nuisance and annoyance to residents of the Abbey Hotel that could not be mitigated by the standard or additional conditions. For that reason, they did not think that a shorter period of consent as a trial was appropriate either. Accordingly, they refused the application.

83 APPLICATION FOR A VARIATION OF A PREMISES LICENCE FOR THE RISING SUN, CHURCH STREET, PENSFORD. BS39 4AQ

The Chairman addressed all who were present and explained that the Sub-Committee were solely hearing this application to vary the layout and design of the premises in accordance with the submitted plan. He said that the changes consist of permitting the use of an external bar at the rear of the premises.

The Public Protection Officer, Licensing introduced the report to the Sub-Committee. In addition to the outline of the application from the Chairman he highlighted the following areas from within the report.

- The internal licensable area of the premises is to remain unchanged from its current permission.
- The locations of fire safety and other safety equipment subject to change in accordance with the requirements of the responsible authorities or following a risk assessment.
- Any detail shown on the plan that is not required by the licensing plans regulations is indicative only and subject to change at any time.
- All other hours, activities and conditions currently permitted by the premises are to remain unchanged by this application.

The Chairman asked the Public Protection Officer if the external bar area was already in operation and if so, had any complaints relating to its use been received.

The Public Protection Officer replied that the external bar area had been in use for a number of years and that no complaints had been received regarding it by either Licensing, Environmental Health or the Police.

The applicant's solicitor, Ewan Macgregor addressed the Sub-Committee. He stated that the applicant purchased the premises in 2019 and were now taking the appropriate steps to formalise the use of the external bar.

He reminded those present that regardless of the decision made today that customers will remain allowed to consume alcohol in the garden area. He added that the external bar would not be open all day every day, but when it was in use it would be staffed at all times.

He asked the Sub-Committee to note that no representations have been received from any of the Responsible Authorities.

He explained that external bars had become more popular since the pandemic and that its use would assist with customer flow on the premises.

The Chairman asked for confirmation that drinks purchased inside the premises could be consumed in the outside area. He also asked if the external bar would be staffed at all times.

Ewan Macgregor replied that there would be staff in place at all times whilst the bar was in use and that there would also be CCTV in operation. He added that staff would still supervise the outside area even when the bar was not in use.

The objectors to the application that were present took it in turns to address the Sub-Committee.

Paul Baxter stated that he believed that a licence to use the outdoor area did not truly exist and said that when it has been in use the noise levels of the music have been far too high.

He added that residents are concerned with regard to future activity as they have seen advertisements from the premises to both use the facilities and seek events staff.

Councillor Steve Hedges reminded all who were present that the Sub-Committee were today not dealing with the issue of other permissions that premises has under its current licence.

Richard Garland said that having a bar outside really was an issue of concern for residents as they feel that this will lead to an increase in functions being held in that area.

He added that he had recorded levels of between 51 – 56 decibels in his home when the playing of music outside had occurred during events and weddings.

Kenneth Jones commented that excessive noise already occurs when events are held at the premises and reiterated the point that residents are worried that having the outside bar in use will lead to further events being organised.

He added that a member of staff from the premises has approached residents on this matter and that this action could be considered as bullying.

He also questioned whether planning permission for a change of use or building regulations had been applied for and approved.

The Chairman stated that Planning is a separate regime to Licensing and asked if they had reported their noise complaints.

Paul Baxter replied that complaints had been made directly to the brewery.

Chris Danson said that when he has complained directly to the pub about excessive noise they have simply responded by saying they have a licence and therefore there was nothing that residents could do.

He added that at some events held the live music had gone on for at least 10 hours. He said that a private investigation relating to the current licence was ongoing as the Council are unable to prove that use of the garden is already licensed.

The Chairman said that he understood the concerns that were being raised, but that they were not under consideration at the hearing today.

Chris Danson stated that if the variation is granted it will affect the residents greatly. He suggested that a stipulation should be added to the licence to block the use of amplified music.

The Chairman asked the Public Protection Officer to confirm that the current licence allows for music to be played in the outside area.

The Public Protection Officer confirmed that under the current licence the premises is able to have Live and Recorded Music, both indoors and outdoors at the following times.

Monday to Thursday 11:00 - 00:00

Friday and Saturday 11:00 - 01:00

Sunday 12:00 - 22:30

The Chairman explained that the Sub-Committee cannot remove those elements of the licence at the hearing today. He added that there were routes of action to take if members of the public were unhappy with a specific premises. He said that matters should be reported to the Licensing and Environmental Health teams.

Layla Malt commented that some local people have felt intimidated when they have raised concerns directly to the premises. She acknowledged that she expected a certain level of noise from the pub when she bought her house.

She stated that there would be no impact to the trade of the pub if the variation was refused, but that it would impact the residents if it was granted. She added that 80% of the objectors live in the immediate vicinity of the premises.

Sue Wilmott-Lerway said that events are always unannounced and are overwhelming when held.

John Crane stated that the volume of music from the premises was just too much.

The Team Leader, Legal Services sought confirmation that all parties were satisfied that they had given their submissions to the Sub-Committee.

All parties confirmed they had.

The Sub-Committee received closing statements from a representative from the objectors and the applicant's solicitor.

Paul Baxter said that he was sure that the granting of the variation would lead to an additional noise nuisance as more events would be held at the premises.

Ewan McGregor stated that St Austell Brewery have not had any enforcement taken against them with regard to these premises and added that a previous review of the licence had resulted in no action being taken against them by the Council.

He reminded the Sub-Committee that no representations had been received from any of the Responsible Authorities and said that if residents do have concerns, then the proper process would be to call for another review.

He said that supervision of the outside area would be in place whilst the bar was in use and that the balance of local opinion received were in support of the application.

Decision and Reasons

Members have determined an application to vary a Premises Licence at The Rising Sun, Church Street, Pensford, BS39 4AQ. 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 this is not a review of the existing Premises Licence, and the applicant should not come away with less than is already permitted under the terms of that licence. Members reminded themselves that each application must be considered on its own merits.

Members noted that this application is to vary the layout and design of the premises in accordance with the submitted plan, the changes seek permission for the use of an external bar at the rear of the premises as noted on the plan submitted with the application.

The Applicant

Members noted that the applicant had submitted one lot of additional information prior to the hearing comprising an 8 page document including photographs entitled Submissions on behalf of St Austell Brewery Limited (the Applicant). Members had regard to this additional information.

The applicant's solicitor, Ewan McGregor, addressed members in oral submissions. He referred members to the 8 page submissions document provided on behalf of the applicant. He indicated to members that the external bar will assist with customer flow and supervision in the outside area and will avoid patrons having to purchase their drinks from within the premises and walk across the car park to the outside area. Mr McGregor noted that there were a number of residents present to show their support for the application, but he did not propose to call them to give evidence. Mr McGregor submitted that it was key that there were no representations from responsible authorities including the Police and Environmental Health Officers. He confirmed the conditions offered by the applicant in order to promote the licensing objectives.

The Interested Parties

Objections

There were 12 written representations received from a former resident and residents of Pensford, objecting to the application. The prevention of public nuisance and the protection of children from harm licensing objectives were cited. The representations indicated that the bar would result in an increase in noise that would disturb residents, including children trying to sleep.

Members heard from Paul Baxter, Sue Wilmott-Lerway, Kenneth Jones, Richard Garland, Layla Malt, Chris Danson and John Crane in oral representations who amplified their written representations. In summary, and in so far as is relevant to the application before Members, there were concerns that the bar would make the garden more appealing thus resulting in increased noise disturbance, antisocial behaviour and public nuisance. Layla Grant asked members to consider the fact that 80% of the opposing submissions come from people living in the immediate vicinity to the pub whereas 30% of those in support live in the immediate vicinity. In summing up, Mr Baxter indicated that when the bar is open there is a persistent noise nuisance.

In support

There were 18 representations in support of the application received from residents of Pensford. They indicated that the bar in the outside garden area had not been and would not be a source of noise nuisance to them and could not identify any negative impact if the application is granted. Some indicated that they did not think there would be any crime as a result of the application, if granted. In fact, the benefits of a manned bar were cited in terms of financial safety and propriety.

Members noted that persons in support had attended the hearing.

Responsible Authorities

Members noted that there were no representations from Responsible Authorities which include the Police in terms of crime and disorder or Environmental Health relating to nuisance.

Members

Members noted that the external bar the subject of the application was in situ and being used when the applicant took over the premises in 2019 and that the applicant mistakenly believed it was permitted, this application is to regularise such use. Members reminded themselves that the external area is currently used and may continue to be used under the existing Premises Licence for the consumption of alcohol by customers of the premises and for the provision of live and recorded music, regardless of the outcome of this application.

Members were careful to take account of the relevant written and oral representations both for and against the application and balanced their competing interests. Members also noted the additional information presented by the parties.

Members were careful to disregard irrelevant matters falling outside of the scope of the licensing regime and/or outside of the scope of the application before them, such as parking, the prevention of harm to children not on the premises, wildlife, the status of the external areas, historic licensing regimes and noise from live and recorded music from the external area.

Members empathised with the concerns of Interested Parties against the application. On the balance of probabilities, however, Members found that the application if granted would not undermine the promotion of one or more of the licensing objectives and with the conditions being offered as part of the application, Members find it appropriate and proportionate to grant the premises licence as applied for.

Members delegate authority to the licensing officer to issue the licence as applied for with conditions consistent with the Operating Schedule.

The meeting ended at 2.00 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services