

BATH AND NORTH EAST SOMERSET

MINUTES OF LICENSING SUB-COMMITTEE MEETING

Wednesday, 8th June, 2022

Present:- **Councillors** Rob Appleyard, Michael Evans and Steve Hedges

Also in attendance: Carrie-Ann Evans (Team Leader (Barrister), Legal Services) and Geoff Cannon (Public Protection Officer (Licensing))

17 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer advised the meeting of the procedure.

18 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

19 DECLARATIONS OF INTEREST

There were none.

20 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

21 LICENSING PROCEDURE

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

22 APPLICATION FOR A NEW PREMISES LICENCE FOR: FLUTE, GROUND FLOOR AND BASEMENT, 9 EDGAR BUILDINGS, BATH. BA1 2EE

The Public Protection Officer (Licensing) presented the report to the Sub-Committee. He explained that an application has been made under s.17 Licensing Act 2003 by Book My Table Limited for Flute, Ground Floor and Basement, 9 Edgar Buildings, Bath. He advised that the premises is located within the BANES Cumulative Impact Area and the Cumulative Impact Policy is relevant to this application.

He stated that relevant representations have been received within the statutory period.

He informed the Sub-Committee that the application proposes the following licensable activities:

Live Music indoors 08:00hrs to 02:00hrs every day.

Recorded Music indoors 08:00hrs to 02:00hrs every day.

Late Night Refreshment indoors 23:00hrs to 02:00hrs every day.

Supply of Alcohol for consumption on and off the premises 08:00hrs to 02:00hrs every day.

Non – Standard timings: from normal opening time on New Year's Eve to opening time the following day for all licensable activities above.

Piers Warne, solicitor for the applicant, addressed the Sub-Committee and explained that revisions had been made to the application and that these had been shared with the interested parties.

He also advised that discussions have taken place with the interested parties as part of the application process in the lead up to this meeting.

He was questioned by the Members and the interested parties present regarding the application and these are summarised within the decision.

Georgia Nixon, one of the interested parties, addressed the Sub-Committee and said that despite the proposed reduction in licensing hours they still had concerns. She added that they also remain worried about noise emanating from the premises when music is played.

She was questioned by Members regarding these concerns and these are summarised within the decision.

Decision and Reasons

Members have determined an application for a new Premises Licence at Flute, ground floor and basement, 9 Edgar Buildings, Bath. 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, where it considers the application promotes the licensing objectives and would be unlikely to add to the cumulative impact, the Licensing Authority will grant the application.

Piers Warne, solicitor for the applicant addressed members and indicated that the application had been amended pursuant to the updated operating schedule attached to these minutes, and changes had been indicated in bold.

Mr Warne addressed Members in relation to the representations of objection and noted that they fell into three categories, namely (1) noise from inside the building;

(2) noise from dispersal; and (3) cumulative impact. In dealing with those he noted that in relation to (1), the proposed conditions offer a significant number of conditions to prevent noise from inside premises. Mr Warne put it on record that when they refer to vicinity in the wording of the proposed conditions, vicinity includes the residents above. Mr Warne explained that whilst it is a planning matter, the applicant has engaged an acoustician to make sure that the premises will be noise compliant. He also noted that nobody outside of the building has raised an issue about noise breaking out.

In relation to point (2) Mr Warne indicated that the operating schedule includes a condition for patrons to leave quietly, there is a condition regarding a dispersal policy, the business is very well versed in managing patrons leaving premises quickly and quietly, and there is a new proposed condition preventing people coming in for last hour/ half an hour which would mitigate the potential for disturbance.

(3) On cumulative impact Mr Warne noted that there are no representations from Responsible Authorities nor the Licensing Authority as guardians and custodian of the Policy; neither of those parties felt the need to do so even before the operating schedule was amended. Mr Warne highlighted to Members that none of the objectors took issue with a premises licence in principle, their issue related to the hours and the applicant had made concessions to the residents in relation to that.

Mr Warne submitted that clientele is relevant when considering the impact a premises might have on an area in the context of cumulative impact and a simple increase in footfall is not a rational reason to refuse an application (*Brewdog Bars Limited v Leeds City Council* [2012] in the Leeds Magistrates' Court).

On questioning from Members and in closing submissions Mr Warne indicated that:

- in relation to the condition concerning drums, that would include electronic drums pads and kits.
- The applicant was agreeable to a condition that all windows at the premises would be closed during regulated entertainment.
- The applicant was agreeable to an amendment to the existing condition regarding bottles to provide that additionally bottles will not be emptied outside, outside of the hours of 0900 and 1700.

There were written representations of objection from two households who are residents within the same building as the premises; they felt the licence if granted would undermine the Prevention of Public Nuisance licensing objective. In particular, they expressed concerns in relation to noise emanating from the premises from live and recorded music and the fact that the proposed conditions do not afford protection to residents within the same building.

Georgia Nixon, who is one such resident, addressed Members in person and expressed thanks to the applicant for engaging with them. She indicated that in principle they no longer oppose the application, the real issue is the licensing hours as they have early mornings and wake up particularly early. They feel the operating hours would impact on wellbeing. Ms Nixon indicated that her partner works on Saturday as well, so the closing time of 2am on a Friday would impact him. She

explained to Members that the noise from music and guests, from the proposed cocktail lounge, is 3 or 4 metres maximum from the window where they sleep. Ms Nixon submitted to members that hours of 0800 to 2330 Sunday to Thursday inclusive and 0800 to 0100 Friday to Saturday and any evening preceding a Bank Holiday was reasonable.

In determining 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 noted that there had been no representations from Responsible Authorities nor the Licensing Authority.

Members noted that licensing and planning are separate regimes.

Members were satisfied on the evidence they heard and read that the application, including updated operating schedule and additional/amended conditions offered, would promote the licensing objectives and would be unlikely to add to cumulative impact, for the reasons indicated by Mr Warne in his oral submissions set out above.

Authority is therefore delegated to the licensing officer to issue the licence with conditions consistent with the updated operating schedule subject to the following additions offered by the Applicant and indicated below, which members consider to be appropriate and proportionate in the promotion of the Prevention of Public Nuisance licensing objective:

Additions to updated operating schedule:

Under Public Nuisance

“The collection of empty bottles etc to take place between 0900 hours and 1700 hours only” shall be amended to say “The collection of empty bottles etc to take place between 0900 hours and 1700 hours only. Bottles etc will not be emptied outside, outside of the hours of 0900 and 1700 hours.”

“No more than 2 musicians will perform at any one time. No live drums will be permitted as part of live music.” Shall be amended to say “No more than 2 musicians will perform at any one time. No live drums, including electronic drum pads and electronic drum kits, will be permitted as live music.”

“All windows to the premises will be closed during regulated entertainment.”

The meeting ended at 12.31 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services

FLUTE: Bath

Opening Hours:

Sunday to Thursday 08:00 to 00:00

Friday, Saturday and any evening preceding a Bank Holiday 08:00 to 02:00 the following morning

Licensable activities (Late night refreshment to begin at 23:00):

Sunday to Thursday 08:00 to 23:30

Friday, Saturday and any evening preceding a Bank Holiday 08:00 to 01:30 the following morning

For the avoidance of doubt, New Year's Eve to remain as applied for.

Operating Schedule

General

- The premises will trade as a restaurant and wine bar with substantial food available.
- Substantial food in the form of tables meals and/ or 'small plate' dining will be available up to one hour prior to the terminal hour for sales of alcohol.
- Save for customers in the rear lounge area, alcohol will only be served by waiter and waitress service to persons seated at tables.
- **Last new entry to customers will be as follows: Sunday to Thursday except any evening preceding a Bank Holiday 23:00, Friday, Saturday and any evening preceding a Bank Holiday 00:30**
- **No 'all-inclusive' promotions will be offered, where an unlimited amount of alcohol is available for a set price.**

Prevention of crime and disorder

- A CCTV system will be installed at the premises to the satisfaction of the police. The CCTV equipment shall be maintained in working order and continually record when licensable activity takes place. The recordings shall be retained for 31 days and made available to the police in line with current data protection laws. All recordings will be produced containing the date and time.
- Notices to be displayed near the entrance advising that CCTV is in use on the premises
- A record will be kept of refused sales, crimes reported and incidents. This record will be made available to Avon and Somerset Police on request.

Public Safety

- All off sales of alcohol shall be in sealed containers unless it is to be consumed in the area covered by a valid Tables and Chairs permit.

Public Nuisance

- The collection of empty bottles etc to take place between 09:00 hours and 17:00 hours only.
- The front of the premises shall be cleared of rubbish at the close of business every day.
- Notices shall be erected and maintained at the exit to the premises requesting patrons leave the premises quietly.

- Noise shall not emanate from the premises at a level likely to cause a public nuisance for residents in the immediate vicinity.
- A dispersal policy will be drawn up and implemented by the DPS to ensure that customers leaving the premises do so quickly and quietly.
- No music or vibrations will cause a public nuisance outside the premises or in any adjoining building.
- Music will be at a level so as not to cause a public nuisance to residents in the immediate vicinity.
- A manager or other member of staff will undertake periodic noise checks outside the premises during regulated entertainment to ensure levels are unlikely to cause a public nuisance.
- No more than 2 musicians will perform at any one time. **No live drums will be permitted as part of live music.**
- **Contact details (mobile phone) for the manager of the Premises will be provided to residents living above the Premises on request.**

Protection of Children from Harm

- A policy relating to prevention of sales of alcohol to under 18's, such as 'Challenge 21' or 'Challenge 25' shall be drawn up and implemented at the premises. The policy will be made available to officers from the council or police upon request.
- All staff involved in sale or supply of alcohol will be trained in relation to the law relating to alcohol sales prior to serving customers. Training records will include a completed schedule of training, names of staff, dates of training, subjects tested and any refresher training.