

## **BATH AND NORTH EAST SOMERSET**

### **LICENSING SUB-COMMITTEE**

Thursday, 19th October, 2023

**Present:-** Councillors Steve Hedges (Chair), Ann Morgan and Shaun Hughes

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

#### **41 EMERGENCY EVACUATION PROCEDURE**

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

#### **42 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

#### **43 DECLARATIONS OF INTEREST**

There were none.

#### **44 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR**

There was none.

#### **45 MINUTES OF THE PREVIOUS MEETINGS: 24TH AUGUST 2023 & 7TH SEPTEMBER 2023**

The Sub-Committee **RESOLVED** to approve the minutes for the meetings held on 24th August 2023 and 7<sup>th</sup> September 2023 and they were duly signed by the Chair.

#### **46 LICENSING PROCEDURE**

The Chair referenced the procedure and stated that both parties would be given a fair amount of time to make their statements and give their evidence to the Sub-Committee.

The applicant and other parties that were present confirmed that they had received and understood the licensing procedure.

#### **47 APPLICATION FOR A TABLES AND CHAIRS PERMIT - FLUTE, 9 EDGAR BUILDINGS, BATH, BA1 2EE**

The Team Leader, Legal Services addressed the Sub-Committee to explain that an email from one of the objectors to the application, Mr Paul Kentish, had been received in the afternoon of 18<sup>th</sup> October. She informed the meeting that the email contained a photo that he wished to submit as evidence. She confirmed that the

photo had been shared with the applicant and that they had no objection to it being submitted. Members were content in the exercise of their discretion to admit this into evidence. A copy of the photo was handed out to all members of the Sub-Committee so that they could consider its contents.

The Public Protection Officer (Licensing) introduced the report to the Sub-Committee. He stated that they were being asked to determine an application for a Tables and Chairs permit for an outside seating area in front of Flute, 9 Edgar Buildings, Bath, BA1 2EE.

He informed the meeting that the times applied for the use of the permit were 08:00 to 23:00 every day.

He stated that objections to the application had been received from B&NES Highways Team, 5 members of the public and Councillor Paul Roper (Kingsmead Ward).

He explained that during the statutory consultation period, as a result of the objection from B&NES Highways Team to the original application, the applicant submitted an amended plan showing a reduced number of tables and chairs applied for and the B&NES Highways Team withdrew their objection having considered the amended plan. A copy of the amended plan was sent to all parties who had objected to the original application.

At the request of Malcolm Baldwin, Chair of the Circus Residents Association and with the approval of the applicant, a large scale copy of the amended plan was handed out to all parties present at the meeting.

Piers Warne, solicitor for the applicant addressed the Sub-Committee. He informed them that the area applied for would now comprise of 4 tables and 10 chairs rather than the 11 chairs that were shown on the amended plan.

He said that it was their view that there is significant distance between the proposed area and the dropped kerb / pelican crossing and that the pedestrian flow would naturally turn before reaching the seating area either after or before completing the crossing of George Street.

He added that the tables and chairs would also not block the vision of those people exiting Bartlett Street.

He stated that many premises within the city now have permits for the use of tables and chairs and that these can be utilised as a window for the whole premises to show members of the public what is on offer.

He said that following the withdrawal of the objection from the B&NES Highways Team he saw no reason why the application should not be granted as applied for.

He informed the Sub-Committee that if the permit was granted, they would have to re-apply in April 2024 for a subsequent one as the process in place does not allow for it to be automatically renewed. He added that this would therefore give an opportunity to show how the area would work in practise.

Councillor Shaun Hughes asked if any calculations of footfall or pedestrian movements had been carried out as part of the application.

Piers Warne replied that issues such as this are taken into account when an application is made and said that there were rules to follow to ensure safe pedestrian access. He added though that the applicant is not required to carry out such calculations as part of the tables and chairs permit application process.

Councillor Hughes commented that he needed to be confident that if the permit was granted there would be enough space for pedestrians to manoeuvre around it safely.

Piers Warne replied that he should have confidence in this following the removal of the objection from the Highways Team. He added that he had himself stood at the proposed area this morning and said that if granted the throughway would be unblocked and that pedestrians naturally turn prior to reaching the proposed area.

Councillor Hughes asked what time they expected to serve food until.

Piers Warne replied that main dining would cease at 22.30.

Roger Payne, Chairman of Premises Licence Holding Company added that 'small plates' would then be available until 01.30.

Councillor Hughes asked for assurance that if granted, the pavement would be cleared by 23.00 every day.

Roger Payne replied that they anticipated the area would cease to be in use from 22.30 to allow time for the area to be cleared by 23.00.

The Chair commented that as shown in the photo on page 55 of the agenda pack he was aware that the area was heavily used by tourist groups visiting the city.

Piers Warne replied that this area of the pavement was a dynamic flow point and that in his view the group in the photo were not within the proposed seated area.

Roger Payne added that the pavement / street furniture already in place leads pedestrians away from the proposed area.

Malcolm Baldwin asked how the applicant believes that there will be enough space for the proposed area and peak levels of tourist groups to access the pavement safely.

Piers Warne replied that many areas within the city operate adjacent to a narrower pavement area. He added that the overall pavement width is wide and the proposed area would only use one third of it.

Malcolm Baldwin said that he would describe the area outside of the premises as a holding area.

Piers Warne said that he respectfully disagreed with that view and said that it was a dynamic area.

Malcom Baldwin asked if there was to be a further area to be used by smokers associated with the premises.

Piers Warne replied that this would be directly adjacent to the proposed area and managed appropriately by members of staff.

Paul Kentish said that in his view there were two fundamental defects with the application and that the Highways Team had only addressed one of them. He said that they had not taken into account the sloping pavement to the right hand side of the premises and asked what other issues might they have missed.

The Team Leader, Legal Services said that it was not the place for the applicant to speculate on the deliberations and decisions made by the Highways Team.

Paul Kentish asked how the 4 tables and 10 chairs would fit into the proposed area.

Roger Payne replied that they intended to use relatively small sized furniture and that barriers would be in place so that they would not be able to encroach onto other areas of the pavement.

Paul Kentish asked where the tables and chairs would be stored when not in use.

Roger Payne replied that they would be stored off street in a courtyard to the rear of the premises.

Malcolm Baldwin addressed the Sub-Committee. He said that if the applicant had carried out due diligence a different area would have been proposed for the permit.

He stated that he strongly objected to the proposal and had been contacted by a number of local residents, some of whom were disabled who also agreed that any grant of the permit would be flawed.

He said that footfall in the area was extremely busy and that Bartlett Street was also regularly used for deliveries and vehicle access to properties.

He stated that it was his view that pedestrian access would be impeded if the application was granted and that it would add to the cumulative impact of premises within the area.

He suggested that a compromise of 2 tables and 4 chairs be trialled in an area around half the size of that proposed and that the area cease being in use from 22.00 because of residents directly above the premises.

Councillor Hughes asked if the vehicle use of Bartlett Street was that high.

Malcolm Baldwin replied that it was not high, but that the residents of St Andrew's Terrace required ongoing access.

Councillor Hughes asked if given the numbers of bars, clubs and restaurants within the area already, would the grant of this application adversely affect the residents.

Malcolm Baldwin said that he would describe the area as a hospitality hub but felt that if permitted the addition would have a significant effect on the residents above the premises due to cumulative impact.

The Team Leader, Legal Services said that the matter of cumulative impact has been raised but advised the Sub-Committee that this was not for their consideration today as that was a matter to be decided upon under the Licensing Act and that this application was being determined under a separate process.

Paul Kentish addressed the Sub-Committee. He said that there were many items of fixed street furniture in place in an already busy area of the city. He said that he uses Bartlett Street on a regular basis and advises visitors to do so for access to the Assembly Rooms and Circus.

He stated that his prime concern was the depth of the area applied for and proposed that half of the area be granted. He maintained his earlier comment that the furniture would not fit into the proposed area and felt that the area would be stretched by the applicant.

The Public Protection Officer (Licensing) stated that any area granted would be formally marked out prior to its use.

The Chair asked the applicant if they would be willing to agree to the compromised proposal of 2 tables with 2 chairs in an area of half the applied for size.

Piers Warne, on behalf of the applicant replied that they would not and noted that they had already comprised and that had resulted in the amended plan that had been submitted.

The Chair asked all parties to submit a summing up statement.

Malcolm Baldwin said that he supports the concept of new businesses within the city, but had been contacted by residents over concerns about pavement access. He asked the Sub-Committee to consider the compromise that had been proposed by him and that if minded this would be the area that is used for the next six months.

Paul Kentish said that he endorsed the submission made by Malcolm Baldwin and that he did not have an issue with the venue gaining its premises licence. He added that given the area proposed he did not feel that tables and chairs would be suitable within this location.

Piers Warne stated that any trial of a smaller area would not allow the applicant to show that their proposed application would work. He said that there would be no adverse impact on the area if it were to be granted and that no other local businesses had objected to their application.

He reminded the Sub-Committee that the B&NES Highways Team had withdrawn their objection following the submission of the amended plan.

The Chair thanked all parties for their contributions to the meeting.

### Decision & Reasons

Members have had to determine an application to place tables and chairs on the highway outside of the premises at Flute, 9 Edgar Buildings, Bath, BA1. In doing so they took account of the Highways Act 1980, the Local Government (Miscellaneous Provisions) Act 1982 and the Human Rights Act 1998 and took into account the representations from the objectors, which included a BANES Councillor, Transport Development Management and the applicant.

In reaching a determination Members had to decide whether the application was likely to obstruct the free passage of pedestrians, cause a public nuisance in highway terms or be a hazard in its real sense.

Members noted that there was some late additional material submitted by Mr Paul Kentish comprising an e-mail dated 18/10/23 and associated photograph. The applicant took no issue with its admission and Members were satisfied in the exercise of their discretion for this to be admitted into evidence.

Members had regard to the application, amended plan and oral representations on behalf of the applicant made by their solicitor Piers Warne and Roger Payne, Chairman of Premises Licence Holding Company.

Mr Warne confirmed before Members that the application had been revised as per the 'Second and Final Amended Plan' at Annex B, page 40 of the agenda reports pack. He further indicated that the amended proposal was for 10 chairs not 11 and would not include the chair shown outside of the bottom right-hand corner of the proposed permit area outlined in red on that plan. In his oral submissions, Mr Warne noted that if the application as amended is granted, the permit will only run until April and the applicant would need to re-apply as there is no renewal process, this would effectively be a 6-month trial. Mr Warne further noted that in the amended proposal the permit area is modest in size, he described to Members how pedestrians would be unobstructed by the proposed permit area and how it would not block access for the residential properties, furthermore he noted that the applicant had removed the table and chair closest to Bartlett Street which should significantly remove any concerns from the objectors. Mr Warne submitted respectfully to Members that if Highways deem the amended proposal safe, after close and careful scrutiny, he suggests Members can grant the proposal.

Mr Warne indicated that Mr Payne lives in Bath City Centre and walks in the area up to 8 times a day; the applicant is not trying to do anything that would put anyone in jeopardy. It was noted that the neighbouring retail premises had not made an objection to the application. The applicant disputed that there would be any effect of the proposal on pedestrian access, noting that the street furniture was away from and slightly down the road from the proposed permit area. Mr Warne indicated to Members that the applicant's business will be managed properly, the applicant is experienced in this area and the clientele are not such that would cause a disturbance.

Members had regard to the written objections and photographs from 4 members of the public, Malcolm Baldwin as Chair of the Circus Residents Association and Councillor Paul Roper. Members also heard in oral submissions from Malcolm Baldwin and Paul Kentish who was one of the members of the public that had made a representation.

The objections identified concerns relating to congestion with reference to existing street furniture, reduced visibility coming out of Bartlett Street, reduced waiting area for the Pelican crossing over George Street, the effect on access for residents who live above the premises, the effect on businesses nearby around public nuisance and visibility of those premises, the sloped pavement which the proposal would have been partially located on, the potential impediment to disabled persons, those using mobility scooters and less mobile persons. Pedestrian safety was the concern at the heart of the objections.

In oral submissions both Mr Baldwin and Mr Kentish indicated to Members that they are not against the principle of tables and chairs but have concerns about the proposal in this specific site, as noted above. They indicated however, that they would support 2 tables and 4 chairs within a permit area of half the depth of the amended proposal.

Members noted that there had been an objection from Transport Development Management in relation to the original proposal as there were concerns that there would be obstruction of the tactile paving at the signalled crossing which would present an increased risk to those with mobility or visual impairment, but that objection was not sustained in relation to the amended plan. The Transport Development Management officer indicated in writing that the alterations to the proposal would mean that the tactile paving would be avoided, and earlier safety concerns would be overcome.

Members noted that there had been no representations from the police, Property Services, Environmental Protection Team or Development Control.

Members carefully weighed in the balance the representations both for and against the application and in the exercise of their discretion decided to grant the application based upon the amended plan at Annex B, page 40 of the agenda reports pack entitled "Second and Final Amended Plan" to include only 10 chairs as described above. They found that the application was not likely to obstruct the free passage of pedestrians, cause a public nuisance in highways terms or be a hazard in its real sense and in reaching this view they had particular regard to the fact that the Transport Development Management team had no objections to the amended proposal. Furthermore, Members noted that:

- Pedestrians and those with mobility and/or visual impairments should be able to pass and re-pass safely without obstruction alongside of the area where it is proposed to site the tables and chairs.
- The tactile paving would be avoided by the amended permit area proposal removing any safety concerns of the Transport Development Management Team.

- The amended proposal would not encroach onto the sloped part of the pavement.
- It would be a standard condition of the permit that the holder should not cause any unnecessary obstruction of the highways or danger to persons using it and should not permit persons to gather so as to cause a nuisance or annoyance or danger to any person lawfully using the highway and that any breach of such condition may be dealt with under section 115K of Highways Act 1980.
- The permit will only run to April when the applicant would have to re-apply should they wish to have another tables and chairs permit.

Authority is delegated to the licensing officer to issue the permit based upon the “Second and Final Amended Plan” referred to above, for no more than 10 chairs, with the attachment of the standard conditions.

The meeting ended at 1.12 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**