

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Wednesday, 24th April, 2024, 10.00 am

Councillors: Steve Hedges (Chair), Toby Simon and Ann Morgan

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

111 EMERGENCY EVACUATION PROCEDURE

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

112 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

113 DECLARATIONS OF INTEREST

There were none.

114 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

115 LICENSING PROCEDURE

The Chair referenced the procedure that would be followed during the course of the meeting.

Those that were present confirmed that they had received and understood the licensing procedure.

116 APPLICATION FOR A NEW PREMISES LICENCE FOR: 10 GREEN STREET LIMITED, CHELTENHAM YARD, 5-9 CHELTENHAM YARD, BATH. BA2 3EX

The Public Protection Officer (Licensing) introduced the report to the Sub-Committee. He explained that the application proposes the following licensable activities:

- The sale of alcohol for consumption on the premises from 12:00 to 22:00 every day.

He stated that the application also proposes the following opening times: 12:00 to 22:15 every day.

He said that the applicant had also supplied some additional information which had been circulated to both the objector and the members of the Sub-Committee prior to the meeting.

Terril Wolyn, agent for the applicant, addressed the Sub-Committee and stated that the application was for a licence for the sale of alcohol, alongside a pop-up restaurant in the courtyard of a premises already owned by the applicant.

She explained that the premises was within a mix of residential and commercial properties and that the application was modest, in terms of the hours that were being applied for.

She said that alcohol sales would only be allowed for consumption on the premises, no regulated entertainment would take place and there was to be no late night refreshment.

She stated that the applicants are of a responsible nature and have a number of local businesses that are run at a high standard. She added that they invest carefully in their premises and train their staff thoroughly.

She informed the Sub-Committee that as part of the licensing process they had consulted with the Police Licensing Team and said that they had decided that the conditions proposed were proportionate in order to support the licensing objectives. She said that no representation had been received from the other Responsible Authorities.

In addressing the one objection from the member of the public regarding the prevention of public nuisance and the protection of children from harm she said that this only relates to when children are on the premises and not where any such incident might affect their sleep / bedtime. In addition, she reminded those present that the conditions offered by the applicant had been deemed proportionate by the police to support the licensing objectives.

She explained that the applicant had considered the hours proposed within the application for a long time and that in mitigation signage would be placed on the premises to ask customers to leave quietly.

She stated that the style and nature of the premises would be that of a restaurant and that table service will be provided. She added that already having a business on site would mean that litter would not be an issue.

She said that the applicant wishes to maintain a good relationship with its neighbours and that they believe that the business will enhance the local area.

Councillor Toby Simon asked if access to the toilets for the premises were from the outside courtyard area.

Terrill Wolyn replied that they were.

Councillor Toby Simon asked how they had decided upon the hours to apply for, for the use of an outdoor area.

Terril Wolyn replied that legislation regarding off sales had been introduced following the Business & Planning Act 2020 which had deemed that outside areas could trade until 23.00. She added that this legislation was currently in place until 2025.

Councillor Toby Simon asked if the large gates to the premises would be open or closed during the proposed operational hours.

Terril Wolyn replied that the large gates would be closed and that access to the courtyard would be through a smaller gate. She added that no alcohol will be allowed to be taken off the site.

Councillor Toby Simon asked if the premises had the applicable planning status to use the courtyard for this purpose.

Debbie Still, the applicant, replied that it did and that this had been checked by her son.

The Chair asked how they would prevent the removal of alcohol from the premises.

Debbie Still replied that this would be covered thoroughly within the staff training and that they have good control measures in place in their other premises within the local area.

The Chair asked what the expected capacity of the premises would be.

Debbie Still replied that they have a figure of around 60 / 70 in mind, but would not want to overuse the site as the quality of the experience to be offered is important to them.

The Chair asked if they would ask noisy customers to leave the premises.

Debbie Still replied that this again would be covered in all training to staff and that they would have a zero-tolerance approach to any customers or groups that were causing a disturbance. She added that she wouldn't want this type of behaviour to affect the customers, staff or residents.

Emma Sinden, the objector to the application, informed the Sub-Committee that she lived directly opposite the main gates to the premises and asked if they planned for these to be replaced as they were quite old.

Debbie Still replied that they do intend to install new gates and to visually improve the area.

Emma Sinden asked if the use of the courtyard area would mainly be in the summer months.

Debbie Still replied that this was primarily the plan and that use would be weather dependent.

Emma Sinden asked if they had considered any measures to tackle the local issue of seagulls as they have been known to take food from resident's gardens.

Debbie Still replied that no food would be left out in the open and that tables would be cleared as soon as possible once customers had finished eating.

Emma Sinden addressed the Sub-Committee to make a statement regarding her objection. She stated that the local area was a mix of residential and commercial properties, with around 50 homes in the vicinity of the premises.

She said that she believed that 80% of the homes had children, with most around the age of 6-7 years old. She explained that in the summer months most of the homes need to have their windows open as they get very warm and so this could cause a potential problem from hearing noise from the premises.

She added that she felt that if the application is granted there would be a significant increase in noise in the street from people and traffic that will impact their daily lives. She said that she would have no complaints if the premises were to close at either 7.00pm or 8.00pm.

She informed the Sub-Committee that noise can be heard sometimes from the front outside area of a similar local premises Nowhere.

In summing up Terril Wolyn said that this was a simple application that was not looking to operate late hours and the applicants believe the premises will enrich the area.

She reiterated that no representations had been made by any of the Responsible Authorities.

She said that the application was a new concept for the existing business on site and that it would not be in use all year round.

Emma Sinden made a closing statement. She said that she felt that the hours / days of use of the courtyard area were unclear.

She stated that her objection remains in place as if the hours applied for are granted it will be detrimental to their quality of life.

Decision & Reasons

Members have determined an application for a new Premises Licence at 10 Green Street Limited, Cheltenham Yard, 5-9 Cheltenham Yard, Bath, BA2 3EX. 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 each application must be considered on its own merits.

Members had regard to 1 lot of additional information provided on behalf of the applicant and circulated to the objector in advance of the hearing, this comprised 8 pages.

Terril Wolyn, agent for the applicant addressed members in oral representations. Ms Wolyn described the location of the premises to be a mixture of commercial and

residential with a railway track behind and a garage nearby. There are high stone walls surrounding the premises with gates at the front and it is proposed to erect lean-tos to help contain any noise emanating from the premises. Ms Wolyn explained that the applicant had carefully considered their application and the residents; they had applied for only one licensable activity modest in its nature, there was no application for late night refreshment or regulated entertainment. Ms Wolyn submitted to members that the protection of children from harm licensing objective was not engaged in relation to the objection before them. Ms Wolyn referred to the statutory guidance at paragraph 2.32 and noted that whilst the protection of children from harm includes moral and psychological harm, this relates to protecting children from harm when on the licensed premises. In relation to the prevention of public nuisance licensing objective, Ms Wolyn referred to paragraph 2.27 of the Statutory Guidance and the fact that it says beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in antisocial behaviour is accountable in his own right.

In further submissions Ms Wolyn noted that as part of the legislative changes made by the Business and Planning Act 2020, premises that did not have off-sales of alcohol, during the time they were open on the premises, were able to trade for sale of alcohol off premises, until the cap of 2300 hours. Ms Wolyn noted that the applicant had taken this into account when thinking about the proposal for this premises.

Ms Wolyn noted that there had been no representations from the Responsible Authorities and submitted that the proposals and measures offered in the operating schedule were appropriate and proportionate; she referred to the fact that this has been confirmed by the Police Licensing Officer in their e-mail contained in the additional information.

Members had regard to the written objection from Ms Sinden who is a resident that lives directly opposite the premises, and they heard from her in oral representations. Ms Sinden expressed concerns that the proposal would undermine the prevention of public nuisance and protection of children from harm licensing objectives. In her written objection and orally she explained that the street is now almost entirely residential with a lot of families with young children living there. She explained that the way the houses are built means that they need to open the windows for ventilation when it is warm. The proposal to sell alcohol until 10pm would be hours after the children had been put to bed and the bedrooms face directly onto the street. Ms Sinden expressed concerns about clients loitering, drunken behaviour, people urinating on the street and up against their doorways, as well as the noise. She thought there would be a significant increase in noise.

On questioning, Ms Sinden indicated that she has no objection to something that finished earlier at 7 or 8pm. Ms Sinden further expressed concerns that the mitigations being put forward by the applicant were a bit vague in her view and having a restaurant selling alcohol would be detrimental to her quality of life due to noise.

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. Whilst Members understood Ms Sinden's keenness to

address them on all issues that gave her cause for concern, they disregarded issues not contained in her validly made written representation before them and irrelevant issues unrelated to the premises, such as anti-social behaviour associated with the AirBnBs in the vicinity and parking. Similarly, they could only consider the validly made representation before them, to the extent that parts of it were relevant.

With regard to paragraph 2.32 of the statutory guidance Members agreed with Ms Wolyn that the protection of children from harm licensing objective was not engaged as the representation of objection addressed concerns for children whilst in their homes, rather than on the premises. These concerns were related to potential public nuisance impacts on children, which members did have regard to.

Members noted that there had been no representations of objection from Responsible Authorities and that within the applicant's additional information, there was an e-mail from the Police Licensing Officer to the applicant's agent, indicating that they thought the proposals regarding how the business would be run, would promote all four licensing objectives and that the measures offered by the applicant are proportionate.

The Committee carefully considered the noise likely to emanate from the normal operation of an outdoor dining establishment, in a what is a dense residential area, and the impact in particular on young children if their window is open. On the other hand, there is significant urban noise in the area and intermittent noise from the elevated railway line. On balance the Committee did not consider the likely nuisance level to be such as to justify restrictions on the opening hours beyond those applied for as Members were satisfied that the measures offered by the applicant would promote the prevention of public nuisance licensing objective.

Authority is therefore delegated to the licensing officer to issue the licence as applied for.

The meeting ended at 12.16 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services