

# BATH AND NORTH EAST SOMERSET COUNCIL

## LICENSING SUB-COMMITTEE

Tuesday, 1st October, 2013, 9.30 am

**Councillors:** Manda Rigby (Chair), Patrick Anketell-Jones and Roger Symonds

**Officers in attendance:** Andrew Jones (Environmental Monitoring and Licensing Manager), Kirsty Morgan (Licensing Officer) and Simon Barnes (Principal Solicitor)

### 37 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

### 38 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

### 39 DECLARATIONS OF INTEREST

The Chair announced that she had been copied into email correspondence received from the parties since the agenda had been published, but had had no conversations with any of them and had an open mind.

### 40 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

### 41 MINUTES: 29 JULY AND 3 SEPTEMBER 2013

These were approved

### 42 LICENSING PROCEDURE

The Chair drew attention to the licensing procedure, copies of which had been made available to those attending the meeting.

### 43 APPLICATION FOR A PREMISES LICENCE FOR THE PORTER, 15 GEORGE STREET, BATH, BA1 2EN

Applicant: Hector Main (applicant and proposed DPS), accompanied by Giles Thomas (Owner) and Simon Dehany (Group Events and Marketing Manager)

Other Persons: Ian Perkins (The Abbey Residents Association), Mr and Mrs Davies, Henry Brown, Mr and Mrs Dougall

The parties confirmed that they had received and understood the licensing procedure.

The Licensing Officer summarised the application, which was for a new premises licence as detailed in section 4 of the report. Representations had been received from local residents' associations and from local residents relating to the licensing

objective of the prevention of public nuisance. She explained that although the applicant was currently trading under a valid premises licence, this application had been made so that the second floor could be included within the licensed area. She invited the Sub-Committee to determine the application.

Mr Thomas stated the case for the applicant. He introduced himself as owner of the building and a director of the business. He explained that the aim was to include two areas on the second floor within the licensed area, which would be used for conferences and private dining. He said that he understood the problems that residents had had from the premises under the previous owners, so the application sought a terminal hour of 02:00 instead of the current licence's 03:00. The building had been in a poor state of repair, so he had completed an extensive programme of refurbishment. The premises had previously been targeted at the student market, with an emphasis on cheap alcohol and bass-heavy music. £12,000 had been spent on additional sound proofing and the maximum volume of the sound system had been reduced. These measures had been introduced to prevent noise from the basement disturbing customers who were dining on the second floor and their serviced apartments next door. They would also reduce the likelihood of noise nuisance to local residents. It was true that the Porter had become synonymous with unruly youth, drunkenness, noise and vomit on the streets. He understood the apprehensions of local residents – his own mother lived on Gay Street. However, the premises were now aimed at a more sophisticated clientele. It was hoped that the Porter would become a hub for business people. Cultural events had been held there. He noted that all the representations had been submitted before the Porter had reopened and hoped that local residents could now see the improvement in the management of the business. Since reopening there had been no complaints about litter or anti-social behaviour. He submitted that most of the previous problems with the Porter arose from the nature of the clientele, but it was no longer an establishment aimed at students. A reduction in trading hours had been proposed; the refurbishment of the basement had made it more like a lounge area than a nightclub; there had been a reduction in the number of public bars and beer was mostly served in half pints. He submitted that the contribution of the premises to cumulative impact in the area had been reduced and that the refurbishment had improved the character of the area, even stimulating the owners of neighbouring properties to improve them.

In reply to questions from Members, Mr Thomas stated:

- the premises had been open for four weeks and students had not resorted to them; the ambience of the premises was more like a five-star hotel than that of a student venue; we do not want our investment to be ruined by students
- though a terminal hour of 02:00 had been applied for, the premises would probably usually close at 00:30; people sometimes came to the premises at 22:00 or 23:00 and wanted a meal, which could not be provided if the premises had to close at 00:30; some people from ITV had visited late and wanted a meal; it was useful to be able to be able to serve customers who arrived later, even if just as a private party
- he was very aware of the problems that had occurred in the past; he and his two colleagues had extensive experience of dealing with difficult customers in

the challenging environment of London; they employed door staff who could talk to customers rather than just use muscle

- escape of noise from windows was not really an issue; the highest level of sound would be generated in the basement and there were eight layers of sound insulation between this and the floor above, as they did not wish diners to be disturbed by noise from below; there were windows on the first and second floors, but these were lounge areas where people would be sitting in armchairs having relaxed conversations while drinking coffee

The Other Persons were invited to put questions to the applicant.

Mr Brown said that it might very well be that people sometimes arrived late hoping to have a meal, but why should the hours of the premises not be the same as other restaurants? Mr Thomas replied that people arrived throughout the evening, some after going to the theatre, for example. He did not see the relevance of restaurant hours as the premises were not intended to be a restaurant, but an establishment where various activities would be taking place throughout the day. The premises would normally cease trading at 00:30, but on occasion it would be useful to be able to go on until later.

The Other Persons stated their cases.

Mr Perkins said that his association was not campaigning against the Porter, but it had to be acknowledged that this was an application for a premises licence in a sensitive area where there were many residents. Unacceptable behaviour in the area had reached an extreme level. He said the Porter's new licence should have a condition attached requiring them to sweep up litter, as was customary on new premises licences in the area. He thought that it was important that a maximum noise level for the basement should be set by Environmental Health. There had been problems with noise in the past, and though management had been quick to respond when contacted about it, it had happened and caused disturbance to residents. He queried what business model the management had in mind when they applied for the hours they had.

Mr Davies said that he supported everything that Mr Perkins had said. There had undoubtedly been an improvement under the new management, but the terminal hour was still an issue. Why did it need to be 02:00? In conversations with residents Mr Thomas had said that this had been chosen to protect the value of the licence if the current management ever decided to sell the business. He submitted that the hours allowed to licensed premises should reflect only the current character of the premises. Mr Thomas had said that the premises would usually cease trading at 00:30; Mr Davies submitted that this should be the conditioned terminal hour.

Mr Brown said that he lived just round the corner from the Porter. He welcomed the change of character the new management had brought to the premises. The emphasis on dining and cultural events betokened a very civilized ethos. There were a number of good restaurants already in the area, none of which found it necessary to have three bars. Why was it necessary for the premises to be able to trade until 02:00 every night including Sundays? Did the book club and the knitting circle require this? A terminal hour of 02:00 plus fifteen minutes drinking up time would mean that people coming from the premises would be on the street at 02:30. Even

civilized people could be very noisy after they had been drinking. His usual bedtime was 23:00. People on the street in the early hours were more likely to cause and be the victims of crime and disorder. He issued a challenge to the applicant to think again and accept a terminal hour of 00:00 on Mondays to Saturdays and 23:00 on Sundays. That would be adequate for the dining part of the business. It would put him on a par with other high-end restaurants, so that he would suffer no competitive disadvantage. He submitted that that would be the socially acceptable conclusion to this application.

Mrs Dougall said that she was concerned that noise would escape when the doors were opened. She also wondered whether customers leaving the premises would be supervised.

A Member asked Mr Brown if he had kept a record of incidents of noise nuisance. He replied that he had not, but there was noise in the area every night. Mr Perkins said that the resident associations had prepared a detailed report on the impact on residents of the drink culture in the area.

A Member asked whether residents had noticed any change in noise levels in the area since the Porter had reopened after being closed for a while. Mr Davies replied that the noise level had certainly dropped when the Porter was closed. He honestly did not think it had increased since it had reopened. There had been a lot of noise in Freshers' Week, but this had been associated with Moles, not the Porter. Mr Perkins thought very little noise could be attributed to the Porter since it had reopened. Mr Thomas said the maximum level of the sound system had been reduced from 3KW to 1KW.

The parties were invited to sum up.

Mr Thomas said that the new application actually reduced the opening hours. He was willing to modify the application and accept a terminal hour of 00:00 on Sundays. The character of the premises was no longer what it had been. There had been no complaints since reopening. The front of the premises was swept every night and every morning. The alterations to the premises had actually reduced its capacity. Sound insulation had been improved, to prevent noise from the basement irritating customers dining on the first floor. The ambience of the premises was now reminiscent of a hotel.

Mr Brown said that Bath was a world heritage site from which people expected a certain quality of experience. He recalled that Beau Nash had specifically opposed late night drinking and in his view it should not be allowed now. He welcomed the applicant's concession on the Sunday terminal hour. He referred to a report on the harm caused by excessive consumption of alcohol and suggested that the licensing trade should face the consequences of this and requested the applicant to reconsider the terminal hour.

The Chair requested the Principal Solicitor to clarify the options open to the Sub-Committee. The Principal Solicitor said that the overriding duty of the Sub-Committee was to promote the licensing objectives. He noted that representations had been received in relation to the licensing objectives of the prevention of public nuisance and the prevention of crime and disorder. A decision to reduce the hours applied for had to be based on evidence and the licensing objectives. The Sub-

Committee had to consider whether the application was likely to increase the cumulative impact of licensed premises in the area. The Sub-Committee should also remember that the premises already had a licence and that the Licensing Act 2003 provided a review procedure for premises licences if there were any problems. Finally, he noted that there had been no representations from the Responsible Authorities.

Following an adjournment, the Sub-Committee **RESOLVED** to grant the licence as applied for. Authority was delegated to the Licensing Officer accordingly.

### **Committee Decision and Reasons**

Members have today determined an application for a new Premises Licence for the Porter.

In doing so they have reminded themselves of the Licensing Act 2003, Statutory Guidance, the Council's Statement of Licensing Policy and the Human Rights Act 1998.

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 to promote the licensing objectives based on the evidence before them.

In this case the relevant licensing objectives were crime and disorder and public nuisance.

Members heard that the premises are under new management and the business is now food-led but requires the flexibility to conduct licensable activities up until 2am. Members noted that noise is a particular issue and to this end the premise has been sound proofed and the operator has a vested interest in not causing noise nuisance due to their diners upstairs and their serviced apartments next door. Members noted the evidence from residents that since the re-furbished premises opened, there has been no evidence of problems attributable to the Porter. Members also noted that the premises already has a licence which it can fall back on were this licence to be refused.

In reaching their decision Members took account of all relevant representations, disregarded irrelevant representations and were careful to balance the competing interests of the Applicant and Interested Parties.

Members have therefore decided to grant the application as applied for because members are satisfied that:

- the premises is unlikely to cause a nuisance;
- it would not add to the cumulative impact of licensed premises in the area as the Porter already has a licence and the new licence would have shorter licensed hours; and
- there is the possibility that the licence could be reviewed if there are problems in the future.

Members noted that the Applicant was willing to accept a reduction in hours on Sundays until midnight but felt there was no evidential basis to justify imposing such a condition. However, the Applicant could close voluntarily at midnight on Sundays.

The conditions as set out in the operating schedule will be attached to the licence together with the mandatory conditions.

Authority is delegated to the Licensing Officer to issue the licence accordingly.

Finally, members noted that the Applicant sweeps the street outside the premises every day and would encourage that to continue. Members would also encourage the Applicant to participate in any Pubwatch or similar schemes.

The meeting ended at 11.00 am

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**