

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Tuesday, 12th July, 2016, 10.00 am

Councillors: Les Kew (Chair), Michael Norton and Mark Shelford

Officers in attendance: Alan Bartlett (Public Protection Team Leader), John Dowding (Senior Public Protection Officer), Terrill Wolyn (Senior Public Protection Officer) and Carrie-Ann Evans (Senior Legal Adviser)

10 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

11 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Councillor Michael Norton substituted for Cllr Caroline Roberts.

12 DECLARATIONS OF INTEREST

There were none.

13 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

14 MINUTES OF PREVIOUS MEETING - 14TH JUNE 2016

These were approved as a correct record and signed by the Chair.

15 EXCLUSION OF THE PUBLIC

The Committee having been 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, **RESOLVED** that the public should be excluded from the meeting for agenda item 17 and the reporting of this item 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.

16 TAXI PROCEDURE

The Chair drew attention to the procedure to be followed for the next item of business.

17 APPLICATION FOR A COMBINED HACKNEY CARRIAGE/PRIVATE HIRE LICENCE - MR CJD

The hearing of this application had been deferred from 14th June 2016.

Mr CJD confirmed that he had received and understood the procedure to be followed for the meeting.

The Senior Public Protection Officer summarised the report and provided Members with copies of a DBS certificate, a written statement from Mr CJD and a reference submitted on his behalf. The hearing was adjourned to allow Members time to study these documents.

After the hearing reconvened, Mr CJD stated his case and was questioned by Members.

Following further adjournment the Sub-Committee **RESOLVED** to refuse Mr CJD's application for a combined Hackney Carriage/Private Hire Driver's Licence.

Reasons

Members have had to determine an application for a combined Hackney Carriage/Private Hire Driver's Licence. 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.

Consideration of this application had been deferred from 14th June 2016 when the applicant was unable to attend. Mr CJD had been warned that should he fail to attend for this hearing, the matter could be dealt with in his absence.

Members had to decide whether the applicant was a fit and proper person to hold a licence taking into account all the circumstances.

Members took account of the applicant's written statement, reference and his oral representations and balanced these against the information disclosed on the DBS certificate.

Members noted that BANES' Policy expects that an applicant will not have been convicted of a serious motoring offence during the previous five years. This part of the policy was relevant to Mr CJD as he has a conviction for serious motoring offences in 2012.

Whilst Mr CJD was very frank about his past conduct and accepted that his record was bad; he explained that he used to think he was untouchable.

Taking into account the Council's policy, the lack of mitigating circumstances for Mr CJD's offending behaviour and breach of community orders, he did not satisfy members that he was a fit and proper person to hold a combined hackney carriage/private hire driver's licence. As such, his application is refused.

18 LICENSING PROCEDURE

The Chair drew attention to the procedure to be followed for the next item of business.

19 APPLICATION TO VARY A PREMISES LICENCE FOR THE VILLA MAGDALA HOTEL, HENRIETTA ROAD, BATH BA2 6LX

Applicant: Eiderdown Ltd, represented by Nicola Smith (Solicitor), Ian Taylor (Owner of Villa Magdala), Caroline Browning (General Manager & DPS), Jonathan Walker (Managing Director)

Other Persons: Ceris Humphreys (Chair, Henrietta Park Residents Association), Mrs Tucker (Resident)

The parties confirmed that they had received and understood the procedure to be followed for the hearing.

The Senior Public Protection officer summarised the application. She explained that the applicant was seeking to vary the current premises licence as set out in paragraph 5.3 of the report. Representations received from the Other Persons related to the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. Additional information from the applicant, the Henrietta Park Residents Association and Mr and Mrs Herve and a representation from Mr and Mrs Tucker, submitted in time but originally wrongly rejected as irrelevant, had been circulated to Members and the parties after the publication of the agenda. She invited the Sub-Committee to determine the application.

Ms Smith, for the applicant, requested leave to submit in evidence letters of support for Villa Magdala received by the applicant but rejected by the Senior Public Protection Officer in advance of the hearing on the grounds that they were positive representations received out of time. Ms Smith submitted that the letters were additional information and not representations, and so were not subject to the 28-day time limit for the submission of representations. The Sub-Committee adjourned to receive advice from the Senior Legal Adviser.

Following the adjournment the Senior Legal Adviser informed the parties that she had advised the Committee that in her view the additional statements were representations. This was because Regulation 18 of the Hearing Regulations taken together with sections 34 and 35 of the Licensing Act 2003 and paragraph 9.39 of the Secretary of State's Guidance provide that representations are statements about the likely effect of an application on the licensing objectives, and can be statements in favour of, as well as against, an application. In response Ms Smith submitted that the statements were not, in fact, about the likely effect of the application on the licensing objectives, and so were additional information. Mrs Humphreys was given the opportunity to comment on the legal advice given and the request for late admission of these letters. She said that if the Sub-Committee decided that the statements were additional information, she would object to their admission at this late stage, as she believed that the applicant had had previous opportunities to share them with the Residents' Association. She also noted that people who had wished to submit representations to the application out of time had had them rejected.

Following a further adjournment the Sub-Committee ruled that the statements were representations which had not been submitted in time and could not be taken into consideration.

Ms Smith stated the case for the applicant. She noted that the Other Persons had raised issues relating to covenants, legislation and the conservation area. She submitted that remedies could be sought in relation to these under separate and

specific legal processes, and that the issues were not relevant to this hearing. She would therefore focus on the impact of the application on the licensing objectives. She said that the application was a relatively simple one. Villa Magdala was a luxury bed and breakfast hotel, whose reputation was very important to the applicants. She drew attention to the photographs of the premises on pages 119-122 of the agenda and to the summary history of the hotel given in Mr Taylor's statement on page 127. She said that the hotel has a total of 21 bedrooms and was formerly two houses which had operated as a hotel since 1984 and had benefited from a premises licence since 2012.

She said that the current variation was being sought because the applicant would like to be able to serve families of residents in the dining room and to serve non-residents, so that people from the locality would be able to come in for lunch and enjoy a bottle of wine with their meal, and residents would be able to meet their friends at the hotel. There was no intention of turning the hotel into a bar; alcohol would not be available 24 hours a day to non-residents as it is to residents. Alcohol would only be available to non-residents for limited hours. Before deciding on what hours to apply for, the applicant had researched the hours of other premises serving alcohol in the locality. She noted that there had been no objections to the application to serve late night refreshment within the premises.

She said that conditions for the operating schedule had been discussed with the Police and Environmental Health and the applicant had been happy to accept an amended condition on staff training as proposed by the Police. She referred to the plans of the premises at pages 64-67 of the agenda. She said that there were bedrooms above, below and adjacent to the dining area, so it was very much in the interests of the applicant to prevent noise nuisance. She said that the bar/servery proposed for the dining room, the plan for which was shown on agenda page 123, would be a dispensing point only. The applicant was offering a condition prohibiting the consumption of alcohol in the strip of land between the car park and Henrietta Lodge. She drew attention to the revised conditions offered in Mr Walker's letter of 11 July:

1. The current condition on the licence requiring Challenge 21 to be updated to Challenge 25.
2. The condition proposed requiring all service of alcohol in the garden area to be by waiter or waitress service to be updated to ensure this is only to persons seated.
3. The condition regarding the number of chairs to be amended to provide maximum numbers of chairs in the front and rear garden areas (20 and 22 respectively (following clarification orally)).
4. We will install an external CCTV camera/cameras which as a minimum shall provide coverage of the seating areas and the entrance/exit into the grounds from Henrietta Road.

Closing her submission she referred the Sub-Committee to paragraph 9.42 of the Secretary of State's Guidance: steps taken to promote the licensing objectives should be evidence-based and proportionate. She reminded Members that no representations to the application had been made by the Responsible Authorities.

In response to questions from Members and officers Ms Smith and other representatives of the applicant stated:

- If the variation were granted, it would be no more likely that patrons would take drink into Henrietta Park or Henrietta Gardens than it is now; management supervision would be the same as at present.
- The average occupancy rate of Villa Magdala is 95%.
- The number of people drinking in the garden would be limited by the condition that the service of alcohol has to be to persons seated only.
- Non-residents visiting the premises would comprise guests, their friends and family and people from the locality and further afield.
- The lower ground floor would not be included in the licensed area.

In reply to questions from Mrs Humphreys Ms Smith stated:

- The maximum possible number of patrons in the hotel would be 84, if the dining room (42), the front garden (20) and the rear garden (22) were all full at the same time.
- The possibility of patrons taking drink into Henrietta Park was included in staff training scenarios and staff were tested on this.
- Toilets were available to non-residents.

Mrs Humphreys stated her case. She submitted on behalf of the Henrietta Park Residents' Association that this application could not be permitted. It was, they felt, ill thought-out and took no account of the location of the premises. The application was likely to give rise to Public Nuisance. The premises were situated in a conservation area and the Association felt the application was unlawful. The Senior Legal Adviser informed Mrs Humphreys that Planning and Licensing are separate regimes and the fact that the premises are in a conservation area was not relevant to a Licensing Act application and that Members would not be able to take it into consideration.

Mrs Humphreys said there was likely to be noise nuisance, which would impact adversely on the residents of neighbouring properties. She believed that the representation from the Association had provided evidence of occasions when license conditions had not been complied with.

She emphasised the special character of the area, which is well-known to residents of Bath. It was, she said, a unique characteristic of the Bath World Heritage Site that it comprises areas of varying character, with quiet residential areas close to the city centre. The Chair advised her that factors such as Bath's World Heritage Site status were planning issues, and that the Sub-Committee could take not account of them.

She said that the application would have an adverse impact on vulnerable residents. There were elderly people, some in their 80s or 90s, and children living in the

immediate vicinity of the premises. The document she had submitted on 4 July showed premises where elderly persons and children were living. Mr Glyde, who lived in Henrietta Lodge, was severely disabled and unable to move to another room or close the window if he was disturbed by noise. People drinking outside, she submitted, tend to talk a little louder than usual. Henrietta Villa, where Mr and Mrs Tucker lived, was a listed building, and there were restrictions on the installation of double glazing and other sound-proofing measures. Mr Tucker's bedroom directly overlooks the garden of Villa Magdala. Mrs Tucker said that in September/October last year there had been a wedding group of about ten people in the garden of Villa Magdala, and the noise had been very intrusive.

Mrs Humphreys said that if the Sub-Committee was minded to grant the application, very strict noise conditions should be attached to the licence.

In reply to questions from Members, she stated:

- The principal evidence of noise nuisance is contained in Mr Glyde's statement.
- Mr Glyde is confined to his home and only gets fresh air when the French windows are open.
- Residents had no problems at all with Villa Magdala until it got its first alcohol licence. Until 2012 the owner made a room available to the Henrietta Park Residents' Association for meetings. The staff of Villa Magdala are polite and helpful when contacted by residents about concerns they have, but there is high staff turnover and the staff are mostly not English and appear not to be fully aware of licensing law.

Ms Smith intervened to say that the applicant was willing to offer a room to the Residents' Association for their meetings. In reply to questions from Ms Smith Ms Humphreys stated:

- Thirty-eight households were members of the Residents' Association.
- Information about the application was circulated to all members of the Association and other people who had been in touch about the 2012 application. Some respondents had been distressed and concerned while the others had been at best ambivalent.
- The Residents' Association were aware that they could apply for a review of the premises licence.
- She particularly wanted to stress the vulnerability of the two immediate neighbours of Villa Magdala.

The parties were invited to sum up.

Mrs Humphreys said that she believed that the selling of alcohol should never have been permitted at all in this location. If the application was granted, she submitted that there should be a condition, as suggested in her representation, that there

should be no audible noise in the nearest noise-sensitive premises, but better still that there should be a reduction in the number of people permitted in the garden, regardless of whether they were seated or not, and the playing of any kind of amplified music should be prohibited on the premises and in the garden. There should be a condition requiring late night refreshment to be consumed within the premises and a condition about where smoking was permitted.

Ms Smith said late night refreshment would be confined to the premises. There was no evidence that smoking had given rise to any problems. Noise conditions were usually applied in relation to applications to provide regulated entertainment by way of live or recorded music. The applicant's proposed condition that alcohol should be served in the garden to seated persons only, had been designed very deliberately to limit noise nuisance. She submitted that the number of people in the garden was not directly related to licensable activity, and that a condition that limited the number would be unjustified and disproportionate. The application had been discussed in advance with the responsible authorities, and they had made no representations to the application. She referred to the additional conditions offered in Mr Walker's letter of 11 July 2016. The review procedure was available if the variation gave rise to nuisance to residents.

The Senior Public Protection clarified that authority for Regulated Entertainment by way of the exhibition of film and the provision of Late Night Refreshment were sought for indoors only.

After an adjournment the Sub-Committee **RESOLVED** to grant the application for the reasons and subject to the conditions detailed below. Authority was delegated to the Senior Public Protection Officer to issue the licence accordingly.

REASONS

A. Preliminary Point

Members have had to consider a preliminary application made by the applicant in relation to the admissibility of what was described by them as "additional evidence" and "letters in support" of the application. The applicant sought to rely upon regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005 ("The Regulations") in support of the application.

Members were given legal advice in relation to regulation 18, section 34 and 35 of the Licensing Act 2003 and paragraph 9.3 of the Statutory Guidance. The legal advice was that the representations were "relevant representations" within the meaning of the law and guidance which should have been submitted in the 28 day statutory period.

Members heard from the applicant's solicitor and interested parties in relation to this legal advice. The applicant accepted that the correct law and guidance had been referred to, but submitted that those representations had not been made in relation

to the *“likely effect of the grant of the application on the promotion of the licensing objections”*. Reference was made by the applicant’s solicitor to the LSC’s discretion to admit information and accepted this was a matter for the LSC. The representors endorsed the council’s legal advice and robustly objected to the introduction of this “information” at this late stage.

Members determined that the “additional evidence” were relevant representations within the meaning of the Licensing Act 2003, Hearing Regulations 2005 and Statutory Guidance, and since this had not been submitted within the strict 28 day period, it was not admissible. For the sake of completeness they considered what they would have done in the event that this information was not representations and was simply “additional information”. They had regard to bullet point 3 of their procedure at page 32 of the report pack and regulation 18. They would not have been willing in all the circumstances to admit the information at this late stage, in any event.

B. Substantive Hearing

Members have today determined an application to vary a premises licence at Villa Magdala Hotel, Henrietta Road, Bathwick, Bath. In doing so they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council’s 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 in the promotion of the licensing objectives based on the information put before them. Members noted that the application should be considered on its own merits.

Members were careful to take account of the relevant written and oral representations made and were careful to balance their competing interests. Members were however careful to disregard irrelevant matters such as issues relating to covenants on the property and matters which are the remit of the planning regime.

The Applicant

The application was for a variation to the premises licence to:

- approve refurbishment works to the hotel;
- allow the sale of alcohol for consumption on and off the premises but with off premises consumption being restricted to hotel garden areas only;
- amend a condition regarding staff training;
- remove conditions in relation to who the premises will be open to and who alcoholic drinks can be sold to;
- add late night refreshment Sunday to Thursday from 2300 to 2330 and on Fridays and Saturdays from 2300 to 2400; and
- to include the exhibition of films without restriction as to times.

The applicant’s solicitor noted that various matters had been raised by the interested parties including historical planning conditions, covenants, the Human Rights Act 1998, the Equality Act 2010 and conservation and submitted that there are other

legal regimes and rights and other remedies in relation to those matters, to the extent relevant.

The applicant's solicitor sought to focus her submissions on steps appropriate to promote the licensing objectives. She clarified that the Premises comprises the ground, first and second floor. The lower ground floor as indicated on the plans submitted with the application was simply for illustrative purposes.

She stated that the hotel is a boutique, small, luxury hotel and the licence holder is part of a group of experienced hotel operators in Bath. She submitted that the licensable activities sought as part of the application would remain an ancillary part of the hotel's operation.

The applicant's solicitor stated that the variation would allow the hotel more flexibility of operation, which would include the sale of alcohol and late night refreshment to non-residents, but would not be a high-volume vertical drinking establishment. She indicated that the application does not seek to turn the premises into a public bar.

In relation to late night refreshment and exhibition of films, the applicant's solicitor noted that there had not really been any representations in relation to those matters and therefore she did not address those in submissions. It was noted by her that the Responsible Authorities had not made any representations at all in relation to the application.

The applicant's solicitor noted in submissions that, as part of an existing condition of the license, alcohol can already be consumed in the garden by residents and bona fide guests between 1200 and 2130 hours. In relation to alcohol sold for consumption off premises, it was stated that that would be restricted to the hotel garden areas only, and that the garden area would only be used for table service and consumption of alcohol between 1200 and 2130 daily.

The applicant's solicitor submitted that it is not in her clients interests for there to be public nuisance.

The applicant's solicitor referred to Mr Walker's addendum statement as setting out the detail of what was being offered to date by the applicant, subject to an additional condition being offered that there would be no over the counter service or draught beer.

Interested Parties

The Henrietta Park Residents Association ("HPRA") submitted that the sale of alcohol to the general public would cause a public nuisance and would fail to promote the prevention of the crime and disorder licensing objective.

In relation to public nuisance they stated that this licensing objective cannot be met, principally due to the noise that would arise from the garden and the pedestrian/vehicle traffic on and off the hotel grounds, due to the proposed increase in activities and the noise arising from late night dispersal.

HPRA stated that two neighbours who live within a close proximity of the premises for reasons of disability or medical condition are largely housebound, and would be significantly adversely affected by the proposed increase in the extension of the sale of alcohol to the general public.

The interested parties submitted that the sale of alcohol to the general public and which allows drinking in the garden, would drive drinking into the park and result in a contravention of the licensing objective of the prevention of crime and disorder.

The interested parties robustly submitted that in their view the case for the refusal of the application was overwhelming, particularly taking into account the vulnerable residents and the impossibility of being able to control the escape of noise. It was noted that the LSC can, and in the HPRA's view should, refuse the application and cited paragraph 9.39 of the statutory guidance in support of this contention.

The interested parties submitted that if the LSC was minded to grant the application, strict conditions would be needed and put forward a number of suggested conditions.

Responsible Authorities

There were no representations from Responsible Authorities.

Members

Members noted that the premises are located outside of the Cumulative Impact Area, but located in a residential area of Bath. Members were mindful that the Licensing Authority may not reduce the effect of the rights granted by the existing premises licence. Members noted that there had been no representations from any Responsible Authorities, but the applicant had sought an amendment to the staff training condition, in accordance with discussions with the Police Licensing Officer.

Members reminded themselves that Licensing and Planning are separate regimes, and that where an application is granted by the Licensing Authority which would require planning permission, this would not relieve the applicant of the need to obtain that permission. It will still be necessary for the applicant to ensure that he/she has all the necessary permissions in place to enable them to run the business within the law.

An Equality Impact Assessment had been completed with no adverse or other significant issues having been found. Members had due regard to the three aims of their public sector equality duty.

Members took on board that since the premises has been licensed in 2012 there have been no formal complaints to the licensing authority and no Responsible Authorities had objected to the variation application.

Members noted that in relation to paragraph 9.42 of the Statutory Guidance their determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. Members did take into account paragraph 9.39 of the Guidance referred to by the interested parties but did not feel that the application should be refused in all the circumstances, taking into account the available evidence and given that

conditions could be imposed which are appropriate for the promotion of licensing objectives.

Accordingly members resolved to grant the application subject to:

Removal of the following conditions from the current licence:

- “The premises will not be open to the public, except for person who have reserved rooms”
- Alcoholic drinks will be sold to hotel guests only.”

Amendment to the following condition on the current licence:

- From “the premises will operate a challenge 21 age verification policy” to “the Premises shall operate a challenge 25 age verification policy”.

Conditions consistent with the operating schedule save for an amendment to the offered condition in relation to waiter/waitress service which shall state as follows:

- “All service of alcohol in the garden area shall be by waiter or waitress only and only to persons who are seated in the chairs provided”

This amendment was considered by Members to be appropriate and proportionate to deal with the objectives of the prevention of public nuisance and the prevention of crime and disorder.

The varied licence will also be subject to the mandatory conditions and the following additional conditions as appropriate and proportionate to deal with the objective of the prevention of public nuisance and the prevention of crime and disorder:

- All service of alcohol will be by waiter or waitress service only.
- The number of chairs in the garden shall not exceed 42 and at any one time there shall be no more than 20 chairs at the front of the hotel and 22 chairs at the rear.
- No consumption of alcohol shall be permitted in the section of garden between the car park and Henrietta Lodge.
- An external CCTV camera /cameras shall be installed which as a minimum shall provide coverage of the garden seating areas and the entrance/exit into the grounds from Henrietta Road. Images shall be retained for a minimum of 28 days and shall be available for inspection on the reasonable request of the police or licensing authority.
- There will be no over the counter service or draught beer.

Whilst not conditions, members were pleased to note that the Villa Magdala has offered:

- a room for the use of the HPRA from time to time

- provision within its internal Operation and Dispersal policy in relation to a smoking area
- meetings with the residents at the hotel to have an open forum for discussion in relation to any continuing concerns.

Authority was delegated to the Senior Public Protection Officer to issue the licence.

The meeting ended at 2.52 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services