

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Thursday, 23rd November, 2017, 10.00 am

Councillors: Les Kew (Chair), Deirdre Horstmann and Caroline Roberts

Officers in attendance: Carrie-Ann Evans (Deputy Team Leader (Barrister)), Alan Bartlett (Public Protection Team Leader) and Terrill Wolyn (Senior Public Protection Officer)

55 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer advised the meeting of the procedure.

56 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

57 DECLARATIONS OF INTEREST

There were none.

58 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

59 TAXI PROCEDURE

The Chair drew attention to the procedure to be followed for agenda item 7.

60 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 the next item of business and that the reporting of this part of the meeting be prevented under Section 100A(5A), because of the likely disclosure of exempt information as defined in paragraphs 1, 2 and 3 of Part 1 of Schedule 12A of the Act, as amended.

61 FAILURE TO RETURN REQUIRED DBS CERTIFICATE - MR JLW

This matter had been scheduled for hearing on the 26th October 2017. The licence holder had not attended the meeting, or provided any reason for his absence. The Sub-Committee had resolved, for reasons of fairness, to defer the hearing to a future meeting. Notice was sent to the licence holder informing him that his case would be heard at today's meeting, and that if he failed to attend the case could be determined in his absence. The licence holder had not attended today's meeting, nor provided a reason for his failure to do so. The Sub-Committee noted that the licence holder had repeatedly failed to respond to attempts to contact him. Members considered whether or not the matter should proceed in the licence holder's absence or be

deferred again. On that preliminary issue the Sub-Committee resolved in the circumstances to proceed in Mr JLW's absence.

After discussion the Sub-Committee **RESOLVED** that Mr J L W was no longer a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence and authority was delegated to the Public Protection Officer to give notice revoking his licence.

Reasons

Members have had to determine whether or not the licensee continues to be a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence having failed to provide a copy of his Disclosure and Barring Service Certificate. In doing so they had regard to the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council's Policy.

The licensee failed to attend the hearing on 26th October 2017 as a result Members determined in the interests of fairness to defer the matter until the next Licensing Sub Committee meeting on notice to the licensee that should he fail to attend on the next occasion the matter may be dealt with in his absence.

The matter came before the Licensing Sub Committee for determination today having been deferred. The Licensee failed to attend and there was no information regarding his non-attendance. Members noted that the Licensee would have been put on notice that the matter may proceed in his absence. In the light of these circumstances Members decided to proceed in Mr J L W's absence.

Members took into account the contents of the report before them together with annexes. Mr JLW had not made any representations in writing and had not attended the hearing in person to make oral representations.

Members noted:

- i. That Mr JLW's licence had been issued on 29th January 2017 subject to "a satisfactory DBS Check".
- ii. The DBS web portal had confirmed that a certificate was issued by the DBS and sent to Mr JLW on 8th February 2017.
- iii. Mr JLW was sent a letter by the Taxi Licensing team on 27th June reminding him that he was obliged to provide a copy of his DBS certificate as soon as he received it. He was asked to produce the certificate within 7 days of the date of the letter and given advice regarding next steps in the event that a further DBS check was required. He was warned that failure to contact the Licensing office within 7 days would result in his licence being referred to the LSC for members to consider suspension or revocation of his Combined Hackney Carriage/Private Hire Driver's licence.
- iv. On 27th July 2017 Mr J L W was send a reminder letter in similar terms but on this occasion, it included a formal warning that he had until 17th August 2017 to contact the Taxi Licensing office to either a) produce

his DBS Certificate or b) complete a DBS application at his cost in the sum of £44. Mr JLW was warned that failure to do so would result in a report to the LSC to consider whether or not he continued to be fit and proper to hold a combined Hackney Carriage/Private Hire Driver's Licence. Mr JLW was informed that there would be no further warnings.

- v. Mr JLW failed to attend the LSC hearing on 26th October 2017 and provided no information regarding his non-attendance. The meeting had been deferred with notice that failure to attend on the next occasion may result in the matter proceedings in his absence.
- vi. Mr JLW failed to attend the LSC hearing today and there was no information regarding his non-attendance.

Applying their policy Members noted that the DBS Check is an important tool in determining whether or not a Licensee continued to be a fit and proper person to hold a licence and in the light of the circumstances and the absence of the DBS Certificate Members could not be satisfied that Mr JLW continued to be fit and proper.

Accordingly members resolve to revoke Mr JLW's licence under section 61(1)(b) Local Government (Miscellaneous Provisions) Act 1976.

Authority delegated to the Public Protection Officer to give notice to this effect under section 61(2A) Local Government (Miscellaneous Provisions) Act 1976.

62 LICENSING PROCEDURE

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

63 APPLICATION FOR A PREMISES LICENCE FOR SUGO, 66 WALCOT STREET, BATH BA1 5BD

Applicant: Macellen Ltd, represented by Magnus MacDonald (Director) and Mark Heather (Director)

Other Persons present: Michael Brett (representing Tramshed Ltd and The Abbey Residents' Association), Catherine Chambers (resident), Stephen Montgomery (resident)

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

The Senior Public Protection Officer summarised the report. She reminded Members that the hearing of this application had been deferred from 9th November 2017. Members noted that the premises were situated within the Cumulative Impact Area, that five representations had been received from Other Persons residing close to the premises. Between them these representations related to all four licensing objectives. There had been no representations from the Responsible Authorities. The applicant had offered conditions to promote the licensing objectives as detailed in paragraph 5.5 of the report. Tramshed and The Abbey Residents' Association had

proposed further conditions as set out in their written representation (agenda pages 74-75). The applicant already held a licence for the premises, which would be surrendered if today's application was granted.

Mr MacDonald and Mr Heather stated the case for the applicant. Mr MacDonald said that he had applied for this new licence after discussion with the Police Licensing Officer. It was felt that the existing premises licence was an unsatisfactory document and that the plan of the premises was not very accurately drawn. Work had been done to improve the building, access to it, and its relationship with neighbours. The old extractor fan had been undersized and sounded like a jet engine. The building had been in a pretty shocking condition. In consultation with the Police Licensing Officer and the Senior Public Protection Officer and others a more satisfactory licence had been drawn up. He explained that his professional background had been in building construction and restaurant design. He had been involved with the Glass Boat and half a dozen other restaurants in Bristol. It would be entirely counterproductive for any business to alienate its neighbours. The kitchen had been moved downstairs from the first floor, since an extractor fan could not be installed in the original location. The backyard had been in a terrible condition. In conclusion he said that the applicant wished to serve a wide range of customers. They wanted to provide a good quality breakfast early in the morning, a happy hour for children in the afternoon, and be a place where people could drop in for a drink after work, and then providing evening meals. There were few places at the moment where people could have a drink after a visit to the theatre without being deafened. He did not like to be subjected to noise and other nuisance from licensed premises, and saw no reason to inflict it on others. He had had connections with Walcot Street since the 1970s and understood the area and the spirit that it used to have. He hoped to contribute to reviving this, serving everyone from the oldest to the youngest.

Mr Heather said that he had had been a licensee for thirty years and had worked in licensed premises in most parts of Bath. He had had his own business, called the Raincheck Bar, for ten years and believed that the record would show that this was a well-managed establishment. It was proposed that he would be the day to day operator of Sugo with about six staff, and would be at the premises for most of the time. He hoped that the premises would contribute not just to the Walcot Street area, but to the whole city. He hoped that as an independent operator they could offer something the large pub chains could not.

The Other Persons did not wish to put questions to the applicant. In response to questions from Members Mr MacDonald and Mr Heather stated:

- 07:00 was when they wished to open to sell breakfast. They did not think there would be a great deal of demand for alcohol at that hour; perhaps someone would ask for a brandy once in six months and people sometimes liked bucks fizz with breakfast, and it would be nice to have the flexibility to serve them.
- Food would include pastries, really good coffee, bacon sandwiches and eggs. There would major on vegetarian food, with meat options.
- The rear courtyard would be closed at 23:00 every day. Most activity after 22:00 would be concentrated in the restaurant. The rear exit would be just a

fire exit. There would be tables and chairs at the front for use by smokers. The rear courtyard could not be used for smoking area as it was more than 50% covered.

A Member enquired how patrons gained access to the external area and Mr MacDonald responded that currently this was through the entrance of the restaurant on Walcot Street. The Senior Public Protection Officer pointed out that as there would be a condition requiring the rear courtyard to be cleared of patrons by 23:00, the rear entrance could not be used for late night entrance and egress by patrons thereafter.

Mr Brett stated his case. He said that he was Vice-Chair of The Abbey Residents' Association. He said that the premises backed onto Beehive Yard Estate. There is access to the premises via the estate road. The estate contains offices and flats, many occupied by households with children, and had hosted a succession of licensed premises. It should be noted that work was underway to increase the number of flats on the estate from 23 to 41. Relations between residents and licensees had always been cooperative, and there had been no cause to complain to the Council about them. Unfortunately the current application had adopted a different approach. Unlike previous licence holders, they had not consulted with residents about this application. Mr Brett submitted that the applicant had not shown that they were aware of the Council's Cumulative Impact Policy or demonstrated that there would be no impact, despite the long hours for the sale of alcohol applied for. It appeared, though it was not entirely clear, that the applicant intended to open the area at the rear of the premises; the work being done at the premises was not consistent with applicant's stated intentions. He submitted that the hours applied for were entirely inappropriate for the location of the premises. It would be wrong to grant a licence for up to 02:00 in the City centre. Complaints about nuisance caused by customers entering and leaving licensed premises were among the commonest received by TARA. In accordance with the licensing objectives of the prevention of public nuisance and the protection of children from harm he believed that the application should be refused. However, if the Sub-Committee permitted the application, he urged that it impose the additional conditions given in the bullet points on pages 74-75 of the agenda. These conditions would serve to give assurance to residents in the immediate vicinity of the premises.

Catherine Chambers stated her case. She said that she had been resident in Bath since 2002. She wanted to feel that she was contributing to the local area and she wanted to see successful businesses operating there. She appreciated that the Sub-Committee often had to listen to conflicting views from residents and businesses. However, she noted that the applicant had stated that they did not wish to alienate local residents. Residents owned Beehive Yard; they were responsible for its maintenance and management and ensuring its cleanliness and its safety. Access to the entrance at the rear of Sugo was by means of a private road, which was very narrow and easily blocked by people and cars. This rear area was of particular concern to her and other residents. The planning permission given to the previous licence holders had given them limited access to it. Unlike previous licence holders the applicant was not part of the Beehive Yard Estate. The applicant's management of the recent building works raised concerns about whether they would be good neighbours. She feared that the use of the rear area would intensify and that there would be a much greater flow of people and vehicles to it. She realised that some of these issues related to planning, but she submitted that some also related to the

licensing objectives and that they were therefore relevant issues for the Sub-Committee to consider. She said that double doors had been placed on a structure at the rear of the premises in a hitherto open area. She submitted that the doors were not of a kind that would be put on a staff or tradesmen's entrance, but appeared to be designed for the use of customers. She was concerned that nuisance would be caused when people exited through those doors to smoke, or if they were affected by drink. She did not think it was possible to manage this in a way that effectively promoted the licensing objectives. She therefore believed that use of the rear area should be strictly limited, as was the case in the premises licence before the current one.

The Senior Public Protection Officer clarified that the application before the Committee did not propose any changes to the way that the rear area currently operates.

Mr Montgomery said that he agreed with the statements made by his two colleagues and did not wish to make a separate statement.

Mr MacDonald summed up for the applicant. He said that he cared about relations with local residents. He conceded that the building works had been a nightmare. This was because the state of the building had been considerably worse than he had been led to believe. The previous rear entrance had actually been much wider and more accessible than its replacement and quite ugly. He had wanted to tidy it up and make it look nicer. The roof of the existing lean-to had been improved. In addition, on the advice of the Environmental Health, a large filter and silencer had been installed. He envisaged that access through the back gates might make it convenient for people visiting the furniture store and residents to come in and have refreshments. He apologised for not attending the meeting of 9 November; this had been because of a medical issue.

Following an adjournment the Sub-Committee **RESOLVED** to grant the application, subject to the mandatory conditions and conditions consistent with the operating schedule. Authority was delegated to the Senior Public Protection Officer to issue the licence.

Reasons

Members have had to determine an application for a new Premises Licence for Sugo, 66 Walcot Street, Bath, BA1 5BD. In doing so, they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's Policy and the Human Rights Act 1998.

The hearing of the application had been adjourned from 9th November in accordance with Regulation 20 of the Licensing Act 2003 (Hearings) Regulations 2005.

Members are aware that the proper approach under the Licensing Act is to be reluctant to regulate in the absence of evidence and they 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 each application is 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.

The Applicant

Mr MacDonald on behalf of the applicant indicated that there is an existing licence on premises which he felt could be improved in terms of relationship with neighbours. He indicated that he had a background working with licensed premises and is a former Wiltshire Councillor. He informed members of the steps taken regarding the extractor system to reduce nuisance caused by that. He went on to say that he wants to offer premises which are about the community and where people could go for a quiet drink and to hold a conversation. Mr Heather also spoke on behalf of the applicant and indicated he had been a licensee in Bath for 30 years; will be the day to day operator and he would be there a lot of the time as managing partner.

It was confirmed by Mr MacDonald and Mr Heather in response to questions that they had tidied up the back yard area; put a new roof on but that as with the existing licence that courtyard area would still be cleared by 2300 hours each day. Mr Heather indicated that the area could not be used for smoking as he understood the law, as it is more than 50% enclosed.

The Interested Parties

The Interested Parties objected to the application on the grounds of the prevention of public nuisance, the prevention of crime and disorder, public safety and the protection of children from harm licensing objectives.

Specific concerns were raised regarding noise and drunken behaviour that may take place in the courtyard area of the premises, bearing in mind the proximity to Tramshed residents. Concerns were raised that patrons themselves and patrons' vehicles may block Beehive Yard causing issues for emergency vehicles, residents' free passage and safety; the implication being that this would create a nuisance. They indicated that the rear access to the premises through Beehive Yard was a cause for concern in terms of the prevention of public nuisance licensing objective.

Mr Brett on behalf of the Tramshed residents and The Abbey Residents Association (TARA) objected to the application on the grounds of the prevention of public nuisance and protection of children from harm licensing objectives. Mr Brett indicated that the Beehive Yard is a purpose built mixed use development with residents of varying ages. He explained that they have had no cause to complain regarding the previous licence but there had been no consultation with residents regarding the proposed licence and expressed the view that the applicant had not addressed the council's Cumulative Impact Policy. Mr Brett said that the hours requested are entirely inappropriate.

Members noted that Ms Chambers relied upon her written representations as set out in the report and sought to amplify them. Ms Chambers expressed public safety concerns related to the use of the rear double doors to the premises unless that use is limited. Ms Chambers acknowledged that planning issues were not the remit of the committee.

Responsible Authorities

Members noted that there had been no representations from Responsible Authorities, including the police.

Members

In reaching their decision 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 is intended to be achieved.

Members carefully considered the representations made on behalf of the Interested Parties, the Tramshed Limited, TARA and the Applicant.

Members noted specifically that the Cumulative Impact Policy relates to the ‘on trade’ sale of alcohol for consumption on the premises. They noted the existing premises licence as set out in Annex F to the report. Members were satisfied that the applicant had demonstrated taking into account all the relevant circumstances including the proposed conditions on the operating schedule that the proposed licence would not add to the cumulative impact being experienced.

Members considered that any effect on the licensing objectives would be addressed by the conditions consistent with the proposed operating schedule which they found to be appropriate and proportionate.

Accordingly, members resolved to approve the application subject to the mandatory conditions and conditions consistent with the operating schedule. Authority was delegated to the Public Protection Officer to issue the licence.

The meeting ended at 12.00 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services