

## BATH AND NORTH EAST SOMERSET COUNCIL

### LICENSING SUB-COMMITTEE

Thursday, 4th April, 2019, 10.00 am

**Councillors:** Les Kew (Chair), Rob Appleyard and Deirdre Horstmann

**Officers in attendance:** Terrill Wolyn (Senior Public Protection Officer) and Shaine Lewis (Team Leader Resources - Legal Team)

#### 76 EMERGENCY EVACUATION PROCEDURE

The Democratic Services officer advised the meeting of the procedure.

#### 77 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

#### 78 DECLARATIONS OF INTEREST

There were none.

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

There was none.

#### 80 MINUTES: 17TH JANUARY 2019

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

#### 81 LICENSING PROCEDURE

#### 82 APPLICATION FOR A PREMISES LICENCE FOR GARFUNKEL'S, ORANGE GROVE, BATH BA1 ILP

**Applicant:** The Restaurant Group (UK) Limited, represented by Clare Eames (Poppleston Allen) and Mary Wilcock (Managing Director, Brunning & Price Ltd)

**Other Persons:** Anne Robins (The Empire Owners' Association), Professor Stan Kolaczowski (Chairman of the Empire Owners' Association) and Ian Perkins (The Abbey Residents' Association)

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

The Senior Public Protection Officer presented the report. The application was for a new premises licence. There was an existing premises licence attached as Annex D to the report. Members noted that the premises were located in the Cumulative Impact Area, and that there was therefore a rebuttable presumption that the application should be refused unless the applicant could demonstrate that the application would not add to the cumulative impact of licensed premises in the Area. There had been eight representations from Other Persons, which collectively related

to the Prevention of Crime and Disorder, Public Safety and the Prevention of Public Nuisance Licensing Objectives. There had been no representations from the Responsible Authorities. Additional information from the applicant had been circulated since the publication of the agenda (attached as Appendix 1 to these minutes).

Ms Eames stated the case for the applicant. She said that the premises currently traded as Garfunkels and the licence was held by the Restaurant Group. The plan of the premises was not included within the premises licence in the agenda: it could be found in pages 10 and 11 of the additional information submitted by the applicant. The Restaurant Group operated over five hundred restaurants and had recently acquired Wagamama. Today's application had been made in the name of the Restaurant Group. The company wished to rebrand Garfunkels as a Brunning and Price business and to make a significant investment in Bath. As part of this investment the premises would be substantially upgraded. On pages 12 to 21 of the additional information there were photographs of Brunning and Price premises in Chelmsford and Beaconsfield, which gave a flavour of what was planned in Bath. A Brunning and Price brochure had been submitted with the application.

The current Garfunkels' licence came into force in November 2005 following its conversion from the old licensing regime. The current licence required the sale of alcohol to be ancillary to the sale of food, a condition inherited from the old licensing regime. She submitted that this condition was somewhat ambiguous and a hangover from legislation that had been repealed. She suggested that in general the conditions in the current licence were not very clear, and that the fifteen conditions offered as part of this application resulted in a more robust operating schedule more in keeping with present-day circumstances. The application actually proposed a slight reduction in trading hours with an earlier terminal hour on several nights, despite the fact that the proposed starting hour for licensable activities was 09:00, rather than 10:00 as at present. She submitted that a 09:00 start was common in the trade, and provided the operator with flexibility to serve customers who might want to have a glass of champagne for a celebration, for example. There was no evidence from any part of the country that beginning at this hour had led to problems.

She stated that the application had not been drawn up until the applicant had met local residents.

She said that another significant difference between the application and the current licence lay in the significant restrictions on the use of the external terrace that were proposed. At the moment there were no restrictions, but the new conditions proposed that the terrace had to be cleared of customers by 22:30, that customers using it had to be seated, and that it should be serviced by waiter/waitress service. In addition the applicant would accept a condition which limited the number of people on the terrace to 30. Residents had raised concerns relating to the use of the terrace as a smoking area; the applicant would be content with a condition prohibiting smoking there.

She drew attention to the lack of representations from the Responsible Authorities.

She noted concerns expressed by Other Persons that the premises might be converted to a pub. In fact in today's extremely competitive conditions the operators of licensed premises had to provide as comprehensive an offer to the public as they

could, and it was increasingly difficult to define what a “pub” or “restaurant” was. She submitted that the premises were well run and that there was no evidence that they were undermining the licensing objectives. Other Persons had raised concerns about vertical drinking, but this was something that the current licence did not prevent. The redesign actually slightly reduced the floor space. The applicant was not planning to create a “megabar”; the bar area remained much the same and the number of covers was nearly the same. About 170 covers were provided at the premises now, but the applicant would accept a condition limiting this to 150.

Other Persons had raised planning issues, which were not relevant to the Licensing Act regime, but the applicant wished to be open about these with residents. Listed Building Consent was required for the internal works at the premises, but change of use was not required.

Other Persons had expressed concerns about a possible future change of ownership of the premises. She could reassure them that Brunning and Price had no intention of moving, but nevertheless they would be happy to accept a licence that was limited to them. They would make a significant investment in the business, and wanted to find a modus operandi that allowed a harmonious relationship with the residents.

If residents wanted a condition requiring a quarterly meeting with the licence holder, the applicant would be pleased to accept this.

Mary Wilcock said that her desire was for a licence that worked in the interests of the applicant and the residents.

In response to question from Other Persons Miss Eames and Ms Wilcock stated:

- There had been no intention to mislead about the trading hours, which it was true would slightly increase. However it was the terminal hour that was the usual trigger for concerns about cumulative impact; she could not recall cumulative impact having been raised anywhere in relation to morning opening.
- As the Licensing and Planning regimes were separate, it would not have been appropriate to include any feedback received on the noise report submitted as part of the Listed Building Application with the licence application.
- The applicant did have other premises that had residential accommodation in the same building, but to the side and not above. The applicant always strove to be a responsible member of the community in which they were located. No complaint had ever been received from neighbouring residential premises.

In reply to questions from Members they stated:

- The problem of customers wishing to smoke was one that all licensed premises faced, but over time customers had become more reconciled to the fact that if they wished to smoke they had to go outside. This was the case in workplaces as well.

Replying to the Team Leader (Legal) Ms Eames confirmed that a condition prohibiting smoking on the terrace could include vaping.

The Chair asked whether the applicant wished specifically to address cumulative impact. Ms Eames submitted that there was an argument that as the premises was already licensed, cumulative impact was not engaged by this application. If however that was not the case, she drew attention to the fact that in the application licensable activities never ran past midnight and that a robust set of conditions had been proposed for the replacement licence, compared with the absence of restrictions on the existing licence. It was also noteworthy that the Responsible Authorities had made no representations to the application. The Team Leader (Legal) said that in his view cumulative impact was engaged by this application. The Council's policy was quite clear that cumulative impact applied to all applications within the Cumulative Impact Area and therefore to this application, regardless of the fact that the premises was already licensed.

Anne Robins stated her case. She said the first point she wished to make was demographic: the average age of residents of The Empire had been 79 for many years and five of the current residents were over 90. The potential impact of Public Nuisance had to be understood in that context. If the application was approved, a huge pub would be created in a building surrounded by elderly people's homes. The condition that the supply of alcohol should ancillary to the provision of food had been imposed over twenty years ago, to protect residents from drink-related nuisance. She begged the Sub-Committee not to remove this protection. Licence conditions should reflect the dominant use of the building, which was residential. There was the potential to create a large vertical drinking establishment operating till midnight in a city with a large student population. It is clear from their website that Brunning and Price regards itself as a pub operator. There were many licensed premises in the vicinity, and Grand Parade and Orange Grove area are always thronged with evening drinkers.

Professor Kolaczowski stated his case. He said that he was emeritus professor in chemical engineering of the University of Bath, and with his technical expertise had acted as an advisor to applicants and local authorities about the environmental impact of developments. He was here today in his capacity as an owner and Chairman of The Empire Residents' Association. He said that residents were very concerned about the proposed change of use, and feared that if allowed without additional conditions it would increase crime and disorder and public nuisance. He said that it was clear from the photograph on page 2 of the additional information submitted by the applicant that The Empire is a predominantly residential block with two restaurants at its base. It was entirely the wrong place to try to make money by a change of use from a restaurant. The applicant wished to replace the main eating area with a mega-bar, and they should be concerned about the consequences. The noise impact assessment had been submitted very late for this hearing and was very superficial and selective. The residents' own noise consultant had provided many helpful suggestions in his reply to the applicant's report and had fundamentally confirmed residents' concerns. Residents were not opposed to the granting of a premises licence, but wanted their welfare to be protected. After careful consideration of the problem in consultation with an independent noise expert, residents were suggesting a number of conditions that should be attached to the licence, and felt sure that the applicant would find them helpful. The first condition relates to internal noise: a noise level of 75dBA not to be exceeded within the

premises. The applicant had included a limit of 74dBA in the Listed Building Application, so 75dBA should be attainable. The noise limiter should be set so that there is no audible noise in apartments, the dining area or entrance hallway. The noise limiter level should be reviewed regularly. There should be an interlock of the noise limiter with the sound system and there should be an indication when background noise has been exceeded. The noise limiter should be kept in a locked cupboard with access only to the licensee. With regard to external noise, residents suggest that the number of seats on the terrace should be restricted and that the applicant should consider siting umbrellas with noise-reducing properties there, that there should be no queues outside the premises after 18:00, and that there should be controlled dispersal of customers after closing. The last proposed condition related to operating hours as detailed by other representors.

In reply to a question from a Member he suggested that in its proposals for noise control the applicant had just provided a wish list; what he had done was to provide specific numbers for noise levels which were generally accepted as appropriate.

Mr Perkins stated his case. He said that the premises were an important part of the night-time economy in Bath, but were in a very sensitive location. The applicant had failed to convince local residents that it had an adequate plan to mitigate nuisance. Residents were looking for reassurance through the imposition on the licence of robust and enforceable conditions. In the course of the hearing the applicant had made useful suggestions for additional conditions.

The parties were invited to sum up.

Summing up for the Other Persons, Anne Robins said that residents wanted assurance that the premises were not going to become a pub and that conditions should be imposed that prevented that.

Ms Eames said that it was important that to have a licence that worked for everybody. The operating schedule contained detailed conditions designed to promote the licensing objectives. The Sub-Committee had to base its determination on evidence. The fact that the Responsible Authorities had made no representations showed that they had no concerns about this application. Representations had referred to the risk of nuisance, for example, but no evidence had been presented that this was actually occurring under the existing licences. The applicant had offered additional enforceable conditions in the course of the hearing.

Following an adjournment the Sub-Committee **RESOLVED** to grant the application with conditions as detailed below.

### Decision and reasons

Members have determined an application for a Premises Licence for Garfunkels, Orange Grove, Bath. 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 based on

information before them. Members noted that applications must be considered on their merits and on this occasion the Cumulative Impact Policy is engaged.

### **The Applicant**

The premises currently trades as Garfunkels. The applicant stated it operates in excess of 500 restaurants and gastro pubs across the UK and now wish to invest in these premises and rebrand them as Brunning and Price. Part of that process has included obtaining listed building approval for internal alterations and engagement with Resident Associations to tailor an application to specific concerns regarding the proposed changes. This process commenced in 2018 and the additional information provided gives a flavour of the type of business it proposes to operate. It was further stated that the new application includes 15 conditions relevant to 2019 dealing with how the premises will promote the licensing objectives and address any cumulative impact concerns.

The applicant stated they were committed to their responsibilities under the Licencing Act and associated legislation and confirmed the premises will be sympathetic to the community, continue to provide a strong food offer and be well run. To a certain extent the new application is a tidying up exercise and whilst an additional hour in the morning had been applied for the trading hours as a whole have been reduced and there is no suggestion nationally that additional hours in the morning have negative impacts on the licensing objectives. In terms of operation the restaurant covers remain similar to the existing, the bar size similar and the overall floor area is slightly reduced.

With regard to neighbours the applicant aims to continue working with them and the following additional realistic conditions are therefore offered.

There shall be no smoking or vaping on the terrace

The outside terrace area shall be limited to 30 persons seated

The number of covers limited at 150

The New Year's Eve terminal hour will be 01:00 am

The licence granted shall be limited to Brunning and Price &P only

Accordingly, it was considered that with no off sales, the premises implementing the Noise Impact Assessment recommendations and conditions consistent with the robust operating schedule the premises would be unlikely to add significantly to any cumulative impact being experienced, if the Policy applies, and the licence granted.

### **Other Persons**

Eight written representations objecting to the application were received from "other persons" as defined in the Act. Whilst not necessarily against a licensed premises in this location the representations raised concerns that the proposals could undermine the prevention of crime and disorder, public safety (relating to the use of the terrace) and the prevention of public nuisance licensing objectives.

The objectors stated the removal of the linkage between food and alcohol service represents a shift in the business from food led to a huge alcohol led venue with resultant noise and anti-social behaviour associated with high volume vertical drinking establishments. Further, given the current level of nuisance and anti-social behaviour experienced from the outside terrace and surrounding area, in terms of noise, litter and rowdy behaviour, there is a potential that longer hours could attract customers from other premises in the area which could impact negatively on residents. The objectors also had concerns about the efficacy of the noise mitigation measures proposed and the number of people on the terrace could be problematic in terms of public safety.

The objectors were worried that with the watering down of the restrictions in terms of planning, the lease and licensing the basis upon which they bought apartments could be undermined. This could make life intolerable for those in the building particularly as staff will inevitably change and there will be no point of contact in the event they needed to complain.

## **Members**

Members noted that the Licensing Act 2003 is a permissive regime intended to minimise the regulatory burden. Nevertheless, the regime encourages community involvement in the decision making process.

In terms of the premises Members noted they are in the Cumulative Impact area and as this is a new premises licence application there is a rebuttable presumption that the licence should be refused unless the applicant demonstrates they are unlikely to add significantly to cumulative impact being experienced.

Members noted all written and oral representations and were careful to balance their competing interests. Members, however, disregard irrelevant representations which on this occasion related to planning issues and leasehold matters. Members also noted that there were no representations from Responsible Authorities in particular the Police, Fire & Rescue and Public Protection Services.

With regard to opening and terminal hours Members reminded themselves of the general principal of staggered hours and that arbitrary restrictions would undermine the flexibility principal. Whilst noting the representations Members found no examples of anti-social behaviour directly attributed to the premises and did not consider there was a distinct possibility that migration would result in the licensing objectives being undermined as the hours were modest in extent particularly in the morning.

In terms of nuisance Members noted the premises had long been established in this location operating as a restaurant and bar. Whilst reference was made to a number of complaints to premises' management these were addressed and there was no history of complaint to Licensing or Environmental Protection services. In the circumstances, therefore, Members found that by implementing the recommendations in the Noise Impact Assessment, for example, plant and building modifications, operational adaptations and a suite of 15 new conditions, there would be greater protection for residents than under the existing licence.

In reaching their decision Members also reminded themselves that, whilst they should be mindful of other statutory controls, their decisions must not duplicate other statutory regimes. Moreover, conditions should not be overcomplicated as they must stand alone and be capable of enforcement by Licensing Officers. In terms of this application the issues raised were issues where duplication commonly occurs. For example, nuisance in the form of noise, smoke, and litter is governed by the Environmental Protection Act 1990, fire safety by the Fire Safety Reform Order 2010, planning and enforcement by the Town and County Planning Act 1990 and anti-social behaviour not directly attributable to the premises the police. In all the circumstances, therefore, Members found the application reasonable in extent and the conditions appropriate and proportionate to promote the licensing objectives without duplication or over complication.

Accordingly, Members found that with the imposition of conditions consistent with the operating schedule, Mandatory Conditions, additional conditions imposed by Members and those offered by the applicant that the premises would be unlikely to add significantly to any cumulative impact being experienced or undermine the licensing objectives. Members therefore resolve to grant the premises with the additional appropriate and proportionate conditions as follows:

- There shall be no smoking or vaping on the outside terrace
- The outside terrace area shall be limited to 30 persons seated
- The New Year's Eve terminal hour shall be 02:00 am

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

**83 APPLICATION TO VARY THE PREMISES LICENCE FOR HOMEWOOD PARK HOTEL AND SPA, HOMEWOOD, HINTON CHARTERHOUSE, BATH BA2 7TB**

**83 APPLICATION TO VARY THE PREMISES LICENCE FOR HOMEWOOD PARK HOTEL AND SPA, HOMEWOOD, HINTON CHARTERHOUSE, BATH BA2 7TB**

**Applicant:** Neil Glasspool (Managing Director)

**Responsible Authority:** Sara Chiffers (Senior Environmental Health Officer)(H&S))

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

The Senior Public Protection Officer presented the report. The applicant was seeking to vary hours and remove non-standard timings, add conditions agreed with the Police and revise the plan of the ground floor. In addition the variation sought to remove the Annex 2 condition:

No sale of alcohol is to take place in the spa area, or the champagne area. All drinks for the champagne bar to be purchased from the exiting hotel bar.

Environmental Health had made a representation objecting to the removal of this condition. No other representations had been received.



Mr Glasspool stated his case. He said that Homewood was part of the Kaleidoscope Collection, which owned three hotels in Bath, Homewood, 15 Great Pulteney and The Bird. Kaleidoscope had purchased Homewood from Longleat Enterprises in August 2018. Homewood had been very run down and required major investment. As part of that investment guest facilities were being improved including the Spa. There was a champagne bar in the spa, which he did not agree with. He felt that guests should usually go to the main bar to purchase drinks so that management could maintain control over the consumption of alcohol. He wanted to put a pop-up snack bar adjacent to the outside pool area to sell tea and coffee, snacks, soft drinks, wine and beer, but no spirits or fortified wine. Guests would be served in the existing patio area, where they can sit and drink already around the pool area. The snack bar would operate only in high season between May and September from 2pm to 6pm for guests and staff members. The applicant would wish to deter people from drinking excessively in the spa area. Guest safety is a primary concern. People can already purchase drinks from the main bar to take to the patio. The area will be staffed, giving management greater control over the consumption of alcohol by guests. The amount that guests can purchase from the pop-up bar during its four hours of opening will be controlled. The aim of the pop-up bar is not to make money, but to enhance the experience of guests by providing an additional service, and to allow the supervision of what goes on around the pool area. The champagne bar will be removed.

Ms Chiffers stated her case. She said that she had objected to the removal of the condition because of the well-documented risks of drinking alcohol before the use of spa facilities. How will management judge whether a guest has consumed too much from the pop-up bar? Having a bar near the spa facilities may encourage guests to indulge in unsafe behaviour.

Responding to questions from Members Mr Glasspool said:

- Staff serving from the pop-up bar would be skilled bar staff who would be able to decide from experience whether a customer had drunk too much.
- The pop-up bar would serve only wine and beer, but under the licence customers could buy spirits from the main bar and bring them to the pool area. The pop-up bar would limit the amount and types of drink immediately available to guests and would be open only for limited hours.
- There was CCTV monitoring on the premises.

Following an adjournment the Sub-Committee **RESOLVED** to grant the application as detailed below.

#### Decision and reasons

Members have determined an application to vary a Premises Licence for Homewood Park Hotel & Spa, Hinton Charterhouse, Bath. 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 based on information put before them. Members noted that an application must be considered on its merits.

**The Applicant**

The applicant stated the company operate a number of venues in the district and have invested and refurbished these premises which included the spa area. The application was designed to provide the flexibility to operate a pop up shack adjacent to the pool where guests can buy soft drinks, beer, wine and snacks during peak times in the summer months. Moreover, guests entering the spa area must sign in and that any sale of alcohol within the spa would be through trained bar staff.

**Responsible Authority**

The objector stated the consumption of alcohol prior to spa treatments etc. causes dehydration, heat exhaustion and is ultimately a safety risk. Further, it would be a difficult judgement for spa staff to make whether people were intoxicated and a bar in direct view of the spa would have the effect of encouraging unsafe behaviours.

**Members**

Members noted that the Licensing Act 2003 is a permissive regime intended to minimise the regulatory burden. In terms of representations, Members noted the written and oral representations and were careful to balance their competing interests.

Members reminded themselves that consumption is not regulated activity and guests are able to consume their own or purchase and consume alcohol from other areas before attending the spa. Further, as guests entering the spa would sign into the spa and any sale of alcohol therein subject to the normal controls these are additional safeguards for guests. Accordingly, members grant the application as applied for with conditions consistent with the operating schedule, mandatory conditions and delegate authority to the Licensing Officer to issue the licence.

The meeting ended at 1.07 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**