

BATH AND NORTH EAST SOMERSET

LICENSING (GAMBLING AND LICENSING) SUB-COMMITTEE

Thursday, 14th July, 2011

Present:- Councillors:- Douglas Nicol (Chair), Gabriel Batt and Gerry Curran

Also in attendance: Terrill Wolyn (Licensing Officer) and Shaine Lewis (Senior Legal Adviser)

10 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

11 ELECTION OF VICE-CHAIR (IF DESIRED)

RESOLVED that a Vice-Chair was not required on this occasion.

12 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

13 DECLARATIONS OF INTEREST

There were none.

14 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

15 MINUTES: 16TH MAY 2011, 31 MAY 2011 AND 8 JUNE 2011

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

16 LICENSING PROCEDURE

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

17 APPLICATION TO VARY A PREMISES LICENCE FOR JIKA JIKA, 4 PRINCES BUILDINGS, BATH BA1 2ED

Applicant: Jika Jika Ltd, represented by David Holley (Licensing Agent) and Paul King (Manager)

Responsible Authorities: Avon and Somerset Police, represented by Martin Purchase (Police Licensing Officer) and Inspector Steve Mildren; Jeremy Lockley (Environmental Health Officer)

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

The Licensing Officer summarised the application.

Mr Holley stated the case for the applicant. He introduced Paul King, the manager of the premises, who stated that he had been in post for 18 months. Mr Holley said that normally one of the directors of the company would have been present, but they were both engaged on other business. He said that the premises were unique among the licensed premises situated in George Street because of their layout and décor. They had been featured in the national press a couple of times. A lot of thought had been given to the application. The management of Jika Jika wished to address a business problem, which was that the early closure of the premises discouraged potential customers who wished to remain somewhere for the whole evening. There had been negotiations with the owners of the building, who had initially been opposed to longer hours, but had eventually expressed their contentment with the application. There had been discussions with The Abbey Residents Association and the Circus Residents Association, neither of whom had submitted a representation to the application. He said that the additional hours requested would allow the premises to have what would once have been normal licensing hours. He believed that conditions already on the licence would discourage those most likely to be involved in crime and disorder from entering the premises. The management did not wish to employ door staff as a matter of course, and were not enthusiastic about having them dressed in high-visibility jackets, which they felt would project the wrong image of the premises. However, they had offered a condition in the operating schedule that when regulated entertainment takes place on Friday or Saturday evenings a qualified security person may be employed at the entrance between the hours of 2100 till close at the discretion of the management and another condition that where a risk assessment by the DPS and/or at the written request of the Police, SIA door staff shall supervise all patrons queuing to enter the premises and when leaving to seek to ensure that they do so in a quiet and orderly manner and to wear yellow reflective jackets at all times when on duty. There was no opportunity for vertical drinking at the premises, because customers were seated at tables, though they might walk around occasionally. Food was available at all times. He felt it was noteworthy that the residents' associations had not made representations. He said that the applicant was happy to accept the condition proposed by the Environmental Health Officer that noise should not emanate from the premises so as to be audible or to cause a nuisance at the façade of the nearest residential premises. However, he submitted that the condition about keeping doors and windows closed at all times during performances of live music was too loose; doors would be opened when people were entering or leaving the premises. He submitted that the variation would not contribute to the problems occurring on George Street. Mr Holley then put questions to Mr King, who stated:

- after the closure of the kitchen, bar snacks would be available until the premises closed – people were always hungry, why would he not want to go on serving food?
- the aim was to operate the premises at night in the same way as they were operated during the day; the management did not wish to attract heavy drinkers

- several parties had been held under Temporary Event Notices without any complaints from residents
- music would not be loud, but gentle acoustic music, which the management would want to end by 22.30; the atmosphere in the premises would not be conducive to heavy drinking
- if they were problems with noise, the management would consider installing an acoustic curtain
- there were 96 tables in the premises

Mr Holley said that the applicant was now offering to terminate live entertainment at 22.30.

A Member noted Mr King's remark about wanting to sell food as long as the demand was there. However, he knew of another premises which changed from a restaurant during the day to a vertical drinking establishment at night. He wondered what safeguards were in place to prevent this happening at Jika Jika following a change of ownership. Mr Holley replied the application should be determined on the basis of the existing situation. The premises did not sell beer and, he suggested, there were other conditions in the licence which would stop it becoming just a drinking establishment.

A Member asked why the word "may" had been used in the condition about door staff when regulated entertainment was taking place. Why had the applicant not said that they will be used? Mr Holley replied that the management of Jika Jika did not like door staff because of the impression they gave and wanted the freedom to police their own premises.

A Member noted that in the current application stated that the premises would consider joining Pubwatch, but that at the hearing to consider the original licence application the management of Jika Jika had stated that they would join Pubwatch. Mr King replied that there had been another manager at the time of the previous application; Jika Jika would join Pubwatch if it was required to do so.

A Member asked about the meetings between Jika Jika and the residents' associations. Mr Holley replied that they had met with two members of both associations. It was an informal meeting to explain the application to them.

A Member asked about the provision of food. Mr King stated that it was intended to provide warm food until 22.00 and bar snacks afterwards.

Mr King agreed with a suggestion by the Chair that if staff were not available to meet customers at the door and escort them to a table, it was natural for them to head for the bar. The Chair suggested that it was therefore not correct to describe the premises as a "restaurant". Mr Holley explained that the "bar" was an area used for taking orders from customers for drinks and food, which were then served to them at a table, and from which serving staff collected food and drink orders before taking them to the tables. Drinks were not served directly to customers at the bar. Mr King said that he would describe the premises as a "lounge", where quality wines were

served. The Licensing Officer noted the reference to “bar snacks” and drew attention to the existing licence condition that alcohol could only be served when menu-based food was available. Mr Holley said that menu-based food would always be available, though it might not always be hot food.

In response to a question from Mr Purchase, Mr Holley reiterated that there would be no service of alcohol directly to customers at the bar. Mr Purchase suggested that groups of people from the street would want to enter the premises whenever there was live music and asked how they would be dealt with. Mr King said that management would employ door staff if necessary and live music would never be promoted as the main attraction. Mr Purchase and Inspector Mildren suggested that, as the Temporary Event Notices applied for by the premises had been for private parties, where people attending were known guests, the fact that there had been no problems gave no assurance that there would not be problems when there were live music events open to the general public. Mr King replied that the ambience and atmosphere within the premises would be unlikely to attract the kind of people who were causing problems in George Street.

The Chair asked that the applicant would do when more people were arriving at the premises than could be immediately seated at tables. Mr King replied that he would be pleased if it ever happened that all the tables were occupied, as that would ensure a very successful and profitable business. He did not think that it was likely to happen for some time, but if it did, the situation would be managed. Mr Holley added that the area in front of the bar was extremely busy and had to be kept clear to allow access by serving staff.

Mr Lockley asked about the condition about closing doors and windows. Mr Holley agreed that there was one window that could be kept shut when there was live music, but the door would be opened as people entered and left the premises. The Chair asked about fire exits. Mr King replied that there was a fire exit, which went down the side of the building on the inside.

Mr Purchase and Inspector Mildren stated the case for the Police. Mr Purchase submitted that the additional hours and licensable activities were granted, they would add to the problems in George Street, which was already a stressed area. Inspector Mildren submitted that Jika Jika was in fact a bar located in a crime and disorder hotspot. He suggested that the premises had changed over time from a coffee shop into a bar in an area where there were already many bars. He said that the information submitted by the Police showed a high concentration of crime and disorder incidents in the George Street area, particularly on Friday and Saturday nights.

The Senior Legal Adviser advised Members to focus only on the current application. Only an additional two or three hours for the sale of alcohol had been applied for, and it was not possible for the Sub-Committee to take away anything that was allowed by the current licence.

Mr Holley pointed out that the majority of incidents on George Street occurred during hours when, even with the variation, Jika Jika would be closed.

The Chair asked Inspector Mildren whether he believed door staff should be employed at the premises. He said he did.

Mr Lockely stated his case. He said that he was concerned about potential noise nuisance from live music to occupiers of the residential accommodation above the premises. He believed there should be a noise management plan containing an action plan, which could be activated if problems arose. He believed that doors and windows should be closed whenever there was live music at the premises. He noted that the applicant had indicated willingness to accept his proposed condition that there should be no noise nuisance at the façade of the nearest residential premises. In response to questions from Members, he stated:

- ending live music at 22.30, as offered by the applicant, would be helpful in reducing the possibility of noise nuisance
- it would be helpful if residents were given the telephone number of a supervisor at the premise whom they could ring if they were troubled by noise emanating from the premises

In reply to a question from Mr Holley, he said that a 22.30 cut off for live music would not absolutely guarantee that there would be no noise nuisance; a family with young children might be affected at an earlier hour. In his view, there should also be a noise management plan.

The parties were invited to sum up.

Mr Purchase said that the applicant was seeking to extend hours and add regulated entertainment to the licence of premises located in a stressed area. He requested the Sub-Committee to consider whether this could in fact be done without exacerbating existing problems in that area.

Mr Lockley said that the imposition of a condition requiring a noise management plan would encourage the applicant to give close attention to the impact on residents of activities at the premises.

Mr Holley said that the application was seeking only a meagre increase in hours. The Licensing Authority should not use the cumulative impact policy as a reason to refuse all new applications and variations. The premises had been well managed since the current licence had been granted and had not contributed to the problems on George Street. There was no bar at the premises, as had been clearly explained. The management considered that requiring door staff to wear high-visibility jackets would give a wrong impression of the nature of the premises. He submitted that it was significant that the residents' associations had made no representations to the application. The applicant had offered to terminate live music at 22.30. He submitted that the condition about there being no noise nuisance at the nearest domestic façade had proved effective when included in the licences of other premises. Only wine was sold at the premises.

Following an adjournment, the Sub-Committee **RESOLVED** to grant the application as applied for, subject to the following additional conditions:

- When regulated entertainment takes place and on Friday and Saturdays a SIA registered door supervisor shall be stationed at the premises from 21:00 till the close of the premises
- Notices shall be erected and maintained requesting patrons leave the premises quietly
- When Regulated Entertainment takes place doors and window shall be shut except for access and egress
- Noise shall not emanate from the premises so as to cause a nuisance at the façade of the nearest noise sensitive premises
- Regulated Entertainment shall cease Monday – Saturday at 22.30 hours

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

REASONS

Members have determined an application to vary a Premises Licence at Jika Jika, George Street, Bath. 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 2003 is to be reluctant to regulate in the absence of evidence and must only do what is necessary and proportionate to promote the licensing objectives based on the evidence before them.

Accordingly, Members listened carefully to the applicant, took account of the representations from the Responsible Authorities and were careful to balance the competing interests of all the parties.

Members reminded themselves of their Cumulative Impact Policy and noted it was not a 5th licensing objective. Instead, however, the Policy is a rebuttable presumption raised, by a relevant representation, that an application should be refused unless Members are satisfied that it is unlikely to add significantly to the cumulative impact of licensed premises in the area.

The applicant stated the premises are a model establishment in George Street and had been commended in the national press. However, due to the limitation of its current licence, which it has operated without problems for a number of years, it has been unable to offer meals into the evening which it would like to do. Moreover, the applicant would also like to provide live and recorded music situated to the rear of the premises and suited to the nature of the business that wouldn't extend beyond 22:30hrs. The applicant also stated that the premises would not become a high density vertical drinking.

The Police presented information showing reasons why the George Street, Broad Street and Milsom Street area included in the Cumulative Impact Policy, the area in which the premises are situated. The evidence suggested Saturday was the busiest

day and the busiest time in terms of Anti Social Behaviour was between 00:00 – 03:00. They also stated they are most often called to the area between 02:00 and 03:00. So far as particular reference to Jika Jika was concerned the Police representation stated the variation would change the nature of the premises to a bar and this could cause problems in the area.

Members noted the Police representation did not present any evidence attributing any of the incidences of Crime, Disorder or Anti Social Behaviour to Jika Jika. Moreover, Members consider the changing nature of premises without more was not a matter to be considered under the Licensing Act 2003 and in any event the premises remained a food led café without a stand-up bar and conditions to stop it becoming a high density vertical drinking establishment.

The Environmental Health Officer was concerned that regulated entertainment could lead to noise complaints because of the possibility that noise could leak causing nuisance. Although the Officer suggested a number of conditions Members did not find a noise management plan necessary, proportionate or enforceable from a licensing perspective considering that such matters fell to be dealt with under other statutory regimes.

Members find the premises are a food led café that has been nothing other than well managed. Members note the applicant is not seeking to remove the conditions preventing it from becoming a vertical drinking establishment but rather are seeking to extend that which they already offer with the addition of Regulated Entertainment appropriate to the venue. It would therefore be unnecessary to join the Pub Watch scheme.

Having considered all the evidence presented to them, Members find that with the existing conditions and those imposed by the Licensing Sub Committee as necessary, proportionate and enforceable to promote the licensing objectives the granting of this application is unlikely to add significantly to cumulative impact.

This is because the extension of hours does not put the premises inside the times of major concern to the Police. Moreover, the conditions remain in place of no bar service, no service without availability of menu food and service only by waiter/waitress to those seated at tables thereby preventing the premises becoming a late night stand up drinking venue. However, Members are concerned that given the nature of George Street a door supervisor stationed at the premise during regulated entertainment and on Friday and Saturday is necessary to the promote the licensing objective of crime and disorder and to ensure the continued good conduct of the premises through the control of patrons leaving and wishing to enter. Nevertheless, given the nature of the premises it would be unnecessary for door supervisors to wear yellow high visibility jackets.

The meeting ended at 1.40 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services