

LICENSING SUB COMMITTEE - LICENSING ACT 2003

5th April 2023

Present: Councillors Agar, Barnes and Mrs L. Hodgson

Officers: Georgina Coley – Legal Advisor

**Niall
McMenamin – Senior Practitioner –
Licensing**

**Nikki Jones – Technical Officer,
Licensing**

**Helen Cameron – Environmental Health
Practitioner**

16 Election of Chair

RESOLVED: That Councillor Mrs L Hodgson be appointed Chair.

COUNCILLOR MRS L. HODGSON IN THE CHAIR

17 Declarations of Interest

None.

18 Application for Variation of a Premises Licence re Food and Liquor, Sidbury, Worcester

The Sub-Committee considered an application for variation of the premises licence in respect of Food & Liquor, 55 Sidbury, Worcester, Worcestershire, WR1 2HU ('the Premises').

At the start of the meeting, the Chair made the following statement:

"Presentations to the Sub-Committee are not given under oath. However, I would like to remind all parties that the highest standards are expected and any deviation from these high standards could possibly influence any decision of the Sub-Committee."

All parties at the hearing were introduced. The Applicant was represented by a Planning Agent, Mr Philip Rawle. The Applicant confirmed he was satisfied with the proposed procedure. Also in attendance for the Applicant was Mr Ilir Fazilu, Designated Premises Supervisor (DPS).

The meeting was then adjourned at the Chair's request to enable Sub-Committee members to undertake a site visit to the Premises. The Council's Legal Advisor stressed that Sub-Committee members would not discuss any aspect of the application whilst on site.

Once the site visit had been concluded, the Senior Practitioner – Licensing presented the report on behalf of Worcestershire Regulatory Services. The Senior Practitioner – Licensing explained that on 10 February 2023 an application was received from Burgoyne Property Investments Limited for variation to the existing premises licence, which is as follows:

Activity	Days	From	To	Indoors /Outdoors
Late Night Refreshment	Everyday	23:00	- 01:00	N/A
Sale of Alcohol	Friday to Saturday	11:00	- 01:00	N/A
Sale of Alcohol	Sunday to Thursday	11:00	- 00:00	N/A

The opening hours of the premises

Days	From	To
Everyday	12:00	- 00:00

The Applicant had made the following changes to the Premises:

- Roof Terrace area extended
- Relocation of ground floor bar area
- Creation of first floor bar servery
- External Ground floor seating area
- Additional WC facilities
- Minor internal re-configuration at ground and first floor

The Applicant wished to change opening hours from 12:00 – 00:00 every day to 08:00 – 00:00 every day.

The Senior Practitioner – Licensing noted that in 2019, the premises was subject to a formal premises licence review application, submitted by a local resident. The application cited that the premises was undermining the prevention of public nuisance licensing objective and was supported by Environmental Health and two other parties. On that occasion having heard all of the evidence submitted by the applicant and the application supporters, the Licensing Sub-Committee made the decision not to take any action or make any changes to the premises licence at that time.

As part of the consultation process for the variation to the premises licence, all of the Responsible Authorities had been consulted and a representation has been received from Environmental Health, objecting to the variation of the application on the grounds of public nuisance.

A representation was also received from Councillor Denham, Councillor for Cathedral Ward, objecting to the variation of the application on the grounds of public safety, public nuisance, and protection of children from harm. During the consultation period, the police requested for conditions to be added to the licence. These were agreed by the Applicant.

5 additional representations had been received from other objectors, raising concerns about noise and planning issues. Officers noted that planning matters could not be taken into account in the Sub-Committee's deliberations, only those matters which related directly to the Council's Licensing Objectives.

A number of representations had been received from nearby residents and businesses, objecting to the application on a number of grounds. The Senior Practitioner, Licensing confirmed that the Sub-Committee is obliged to determine the application with a view to the promotion of the licensing objectives which are:

- Prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

All parties were offered the opportunity to ask questions of the Senior Practitioner – Licensing. The Applicant's representative clarified that the request for the licence to be varied to an 8am start was to allow for breakfast and brunch to be served at the Premises. The Premises was currently operating under a Temporary Event Notice (TEN).

The Senior Practitioner – Licensing advised the Sub-Committee that there were no plans for live, amplified or ambient music at the Premises, and that use of the external terrace and toilet area was prohibited after 11pm, as part of the conditions of the Applicant's planning permission.

In response to questions regarding noise levels, the Applicant's agent made reference to the high level of existing noise in the area due to the location of the Premises on City Walls Road, a busy dual carriageway in the centre of the City.

Sub-Committee members commented on the high quality of the building renovations both internally and externally. In response to a query, the Applicant's agent confirmed that the fans at first floor level had been in situ in the same location for approximately 20 years. Sub-Committee members questioned whether they were becoming noisier with age, and were advised that the fans were new.

The Applicant was due to meet with the Council's planning department in relation to planning conditions which were to be addressed relating to noise levels from chiller units.

An objector suggested that the extractor units had been moved from their previous location and the noise and food smells were causing a nuisance to neighbours. They also asked the Applicant what would happen when customers were asked to leave the outside terrace at 11pm, and whether these customers could be accommodated inside.

The Applicant's agent responded that if space was available inside the customers would sit down, if not, they would go home, in common with any other licensed premises.

The Premises DPS commented that it was predominantly a seated restaurant focusing on a food offer rather than being run as a bar or nightclub. Furthermore, he replied that hFe had extensive experience in running bars and restaurants and had never had an issue. Their aim was to be a responsible operator.

The Applicant's agent stated that they would be happy to reduce their licensed hours to midnight if no other conditions were added to their licence by the Sub-Committee. WRS Officers responded that this would be a matter for the Sub-Committee to decide.

Sub-Committee members enquired how issues of staff smoking by the fire exit would be addressed and were advised by the Applicant that it could be dealt with easily in the course of staff training.

Responding to questions from objectors regarding how drunk customers would be managed, the Applicant stressed that the Premises would be run predominantly as a restaurant and would not operate in the same way as it had previously.

One of the objectors commented that the relocation of the main entrance from the front to the side of the property was beneficial to neighbours in mitigating noise from customers entering and egressing the Premises.

The Applicant confirmed that a gate at the bottom of the fire escape would be reinstated.

The Environmental Health Practitioner had made their objection to the application in the light of historic problems at the Premises, and considered that some of these historic issues had been addressed by the new owner. A lack of noise insulation previously had not resulted in any statutory noise nuisance notices being served. The Officer commented that it may be a case of 'wait and see' whether any issues would arise once the Premises was in regular use.

The Ward Councillor cited issues with the previous owners of the Premises as a reason why objectors were concerned about the implications of the licence variation application. She stressed that the hope and expectation was that the new management would be good neighbours.

The Council's Legal Advisor reminded Sub-Committee members that issues relating to wildlife corridors and the suggested installation of a brick wall to replace railings were not matters the Sub-Committee were able to take into consideration in their decision-making.

The Applicant's representatives were invited to make their closing remarks. They stressed that the new ownership represented a break from the past history of the Premises and that the new operator had an impeccable track record. Their aim was to make a positive contribution to the food and drink offer in the City.

In response to questions about light pollution, the Applicant's agent confirmed that once the outdoor terrace closed at 11pm it may be possible to leave fire escape lights on but dim the rest of the exterior lighting, if this was considered Health and Safety compliant.

The Senior Practitioner – Licensing then summarized the options open to Sub-Committee members in arriving at their decision:

- (a) Grant the application as requested
- (b) Modify the conditions of the licence, by altering or omitting or adding to them.
- (c) Reject the application in whole or in part.

The Legal Advisor reminded Sub-Committee Members that appropriate weight should be given to representations received from members of the public even if they had not attended the hearing in person.

All parties with the exception of the Members of the Sub-Committee and representatives of Legal and Democratic Services then withdrew to enable the Sub-Committee to consider its decision.

In reaching a decision, the Sub-Committee had regard to the following points in their deliberation:

- The licensing objectives set out on the Licensing Act 2003.
- The Council's Statement of Licensing Policy.
- The guidance issued under section 182 of the Act.
- The Report presented by the Principal Officer, Licensing, Worcestershire Regulatory Services.
- The application and oral representations made at the Hearing by the persons accompanying the Applicant, namely his agent Mr Philip Rawle and the Designated Premises Supervisor (DPS) Ilir Fazilu
- The written representation and oral representations made at the Hearing by the Environmental Health Practitioner, Worcestershire Regulatory Services, and other parties, namely Ms Frances Fosh, Rebecca Gardner and Councillor Lynn Denham.
- A site visit to the premises.

All parties were recalled and the Chair announced the decision of the Sub-Committee.

RESOLVED: The Sub-Committee decided to grant the variation application to the Premises Licence with the following agreed conditions, in addition to the existing conditions, subject to a modification to reduce the times that the licensable activities shall be permitted every day to 00:00 hours, as put forward by the Applicant at the Sub-Committee hearing.

The conditions are as follows:

1. No live amplified or ambient music to be played on the external terrace
2. No access to the external areas including the external WC facilities after 23:00
3. CCTV

The premises licence holder must ensure that:

- CCTV cameras are located within the premises to cover all public areas including all entrances and exits
- The system records clear images permitting the identification of individuals.
- The CCTV system is able to capture a minimum of 4 frames per second and all recorded footage must be securely retained for a minimum of 28 days.
- The CCTV system operates at all times while the premises are open for licensable activities. All equipment must have a constant and accurate time and date generation.
- The premises will inform the Police or local authorities if there is any reason their CCTV is not working at any point, this will be logged in their incident book.
- The CCTV system is fitted with security functions to prevent recordings being tampered with, i.e. password protected.
- There are members of trained staff at the premises during operating hours able to provide viewable copies on request to police or authorised local authority officers as soon as is reasonably practicable but within 24 hours at the latest. The CCTV will be provided in accordance with the Data Protection Act 2018 (or any replacement legislation).

4. Incident Book

The premise must record all incidents that occur on the premise. Incidents that will be included in the incident book every time will be - first aid incidents, removal of persons by staff and anything that results in an injury.

If SIA staff are employed in the premise they will record their name and 16 digit SIA badge number and times they worked in the premise. This can be inspected and reviewed by a relevant authority seeking this request. Full training can be given to all staff on how to use the incident book.

5. Drug Policy

The premises licence holder will ensure that there is a robust written drug policy.

It will detail the following points:

- the timeframe of inspections of the toilets and other key areas in the premise that can be used for drug use.
- the policy will outline to staff what to do if drugs are located.
- It will detail training that will be given to all staff.

6. Authorisation of Sale of Alcohol

Authorisation for the Sale of Alcohol will be defined in a written document. This will detail who is authorised for the sale of alcohol and evidence that the staff member has been trained to spot underage drinkers. This document will be signed by both the staff member and the DPS. This document will be left on site and will be made available to the police, local authority or any other relevant authority seeking inspection or a copy.

7. Public Safety and Prevention of Public Nuisance

- The dispersal of customers from the premises must be managed in accordance with the following:
- Clear and legible notices must be prominently displayed at all exits requesting customers to respect local residents and leave the area quietly.
- The DPS will carry out perimeter checks to monitor noise levels arising from the premises.
- Bins will be emptied during daytime hours.
- Prominent display of the premises licence.
- Any seized or found property (including identification cards/documents) to be recorded and stored securely prior to return to owner or return/submission to relevant official body or disposal (as appropriate.)
- Staff training on Drug Awareness and the Ask Angela scheme and safe spaces for women.
- Have policies in place for: Dealing with drunkenness, glass breakage and glass collecting safe practice.

8. Protection of Children from Harm

- To operate the challenge 25 scheme in the premises
- To display appropriate signage/information for customers informing them you operate challenge 25
- All staff to be trained in the understanding of this scheme
- A refusals record must be kept at the premises which details all refusals to sell alcohol. This record must include the date and time of the incident, a description of the customers, the name of the staff member who refused the sale, and the reason the sale was refused. All entries must be made within 24 hours of the refusal. The record must be made available for inspection and copying within a reasonable time of a request by an officer of a Responsible Authority.
- No children will be allowed at the bar

The reasons for the Sub-Committee's decision are as follows:

- The Sub-Committee noted the history of the premises, namely that the licence was varied in 2017 and several conditions were added which are reflected in the current licence. In addition, the premises were subject to a review in 2019 but no action was taken at that time. The premises have been closed for over 3 years.

- The Sub-Committee noted the existing conditions and the additional conditions proposed by the police, that had been agreed by the Applicant, and the 2 additional conditions set out in the application to control the use of the outside areas.
- The Sub-Committee noted and considered the written and oral representations made by and on behalf of the Applicant and the objectors.
- The Sub-Committee noted that there was a history of noise concerns at the premises when it was managed by the previous operator and recognised the concerns raised by the objectors.
- The Sub-Committee noted the representations made by the Applicant that the refurbishment works had moved the primary entrance and main bar to the side of the premises furthest away from the objector's adjacent property.
- The Sub-Committee noted the representations made, on behalf of the Applicant, by the new operator of the premises with regards to the business model and operation of the business, primarily as a restaurant and that no application was being made for licensable music activities.
- The Sub-Committee was not able to attribute weight to planning matters relating to the premises that fell outside the remit of the Sub-Committee.
- The Sub-Committee noted the Applicant's offer of a reduction in the closure time from 01:00 to 12:00 to address the concerns of the objectors and took this as an indication of a willingness to ensure compliance.
- The Sub-Committee noted that the Environmental Health Practitioner confirmed that the points raised in her objection had been clarified by the Applicant and they related to the previous history of late night noise concerns at the premises. She confirmed that there was no recent history as the premises had not operated since 2019 and that no statutory notice was served previously.
- The representations made by Councillor Lynn Denham were noted although the Sub-Committee was not able to attribute weight to the matters raised which fell outside the Sub-Committee's remit.
- The Sub-Committee was also mindful of the review process that applies to any premises that fails to promote the licensing objectives and the ability of any party to bring the licence before the Sub-Committee should evidence be obtained to prove that the premises is failing to meet its obligations.

The following legal advice was given:

- That the Licensing Objectives must be the paramount consideration.
- That the Sub-Committee may only have regard to the representations which promote the four licensing objectives.

- The Sub-Committee should determine what weight to give to the objections and that simply because representations are received in writing does not mean they should be given less weight.
- The Sub-Committee must consider only those matters directly relevant to the premises under consideration and only those matters that fall under the licensing committee's jurisdiction.
- The Sub-Committee is aware of the conditions agreed by the Police and offered by the applicant. The Sub-Committee must only impose additional conditions if they are considered to be appropriate.

An appeal to the Magistrates' Court against the Sub-Committee's decision must be lodged within 21 days of the date on which written confirmation of the decision is received by the Applicant.

Duration of the meeting: 10:00 to 12:50

Chair at the meeting on
5th April 2023