

## Licensing Sub-Committee

Wednesday, 27th October, 2010  
1.05 - 3.50 pm

Attendees	
<b>Councillors:</b>	Helena McCloskey, Diggory Seacome and Paul Wheeldon
<b>Officers:</b>	Sarah Farooqi (Regulatory Solicitor Manager) and Louis Krog (Senior Licensing Officer)
<b>Also in attendance:</b>	Mr Mark Edward Stephens (Applicant), Ms Laura Nelson (Maitland Walker Solicitors / on behalf of the applicant), Mr Nick Hine, Ms Pamela Harber, Mr David Mason (on behalf of Mr Dey), Ms Michelle Gamble, Mr Jeremy Jeffries and Mr Terry Richards (Interested Parties)

### Minutes

**1. ELECTION OF CHAIRMAN**

Councillor Diggory Seacome was duly elected as Chairman.

**2. APOLOGIES**

None received.

**3. DECLARATIONS OF INTEREST**

None declared.

**4. DETERMINATION OF APPLICATION FOR VARIATION OF PREMISES LICENCE (THE DAFFODIL, 18-20 SUFFOLK PARADE, CHELTENHAM)**

The Chairman took the opportunity to introduce the various parties, members of the committee, applicants and those that had made representations or were attending on behalf of those that had made representations.

Louis Krog, Senior Licensing Officer, introduced the report as circulated with the agenda. He explained that the applicant, Mark Edward Stephens, sought to vary the premises licence as outlined in 1.2 of the report. No representations had been received from the responsible authorities and there had been representations 40 from Interested Parties, 26 supporting the application, with 14 objecting.

Those that had written in support of the application had commented that, were the application granted, they did not feel that it would have an adverse effect on the licensing objectives and felt that it would enhance the already well run premises and provide an additional facility to residents.

Those that had objected to the application had done so on the grounds of crime and disorder, public safety and public nuisance. The specific concerns were set out in 4.3 of the report.

Members were asked to disregard the comments regarding the Zizzi application and future operations as they were not relevant to this particular application. Mr Krog noted that an application to review a licence could be made at any time and the fact that this option had not been used in the past did not imply that it could not be used in the future, were members to consider it necessary.

In response to a question from Mr Mason (attending on behalf of Mr Dey), the Senior Licensing Officer advised that there was no evidence that the applicant had any intention of selling the business and reiterated that any licence could be subject to review in the future if concerns were raised about the licence.

Following a question from a member, the Senior Licensing Officer confirmed that the maximum capacity of the premises was 150 in total.

The Chairman invited the applicant and his legal representative to address the committee.

The applicant's Solicitor, Ms Laura Nelson referred members to the bundle which had been circulated prior to the meeting.

Ms Nelson displayed photographs of the exterior and interior of the premises and stressed that the application related purely to the first floor area, not the entire building.

The building had been lovingly restored at a cost of around £1 million, for which a Civic Award was received. The building also formed part of the Town Heritage Trail.

The applicant was not only the licence holder for the premises, but also the Managing Director of the lease-holding company and freeholder and as such had definitive control over the business.

The premises were primarily famous as a restaurant and were highly profitable as such. 68% of total sales were dry (food), with only 28% wet (drinks), and of this 28% the vast majority of sales were wine, followed by spirits and then bottled beers. No draught beer was offered. The average price of a bottle of wine was £25 and average total spend per person was £38-40.

Future plans included a deli in the building next door (the clock shop) which would be intrinsically linked to the premises and a kitchen refit which would cost in the region of £100,000.

The premises were well run and currently employed 40 members of staff, had 3 personal licence holders, with 2 more in the process of applying for their own personal licence.

The nature of the application had been set out in the report and members were reminded that prior to this application, a minor variation application to remove Condition 2a of Annex 2 of the premises licence, relating to table meals had been submitted. The **minor variation application** had been used, following consultation with Mr Mike Dey, the owner of the Retreat, who prior to submission, had agreed he was happy with the nature of the application.

Unfortunately, despite prior agreement, Mr Dey objected to the application and his solicitor wrote to residents in the local area to gather support for this objection. As a result of this letter, 27 objections were received and the application was refused.

In light of the concerns raised by residents during the consultation period of the initial minor variation application, they were invited to discuss the proposals at a resident's meeting. 25 residents attended and it was possible to allay some of the fears that had been heightened by Christopher Davidson's Solicitors letter. As such, only 14 representations against the subsequent variation application were received.

The application was in response to customer demand, allowing flexibility to cater for canapé events (wedding receptions) and those opting to eat lighter, tapas style meals rather than a sit down three course meal.

This flexibility related to the mezzanine floor only, an area which made up only 28% of the trading area of the premises and as such, the main purpose of the premises would remain a restaurant.

Ms Nelson explained that PC Andy Cook (Licensing Officer for the area) had agreed via email, with the conditions outlined in the application and had commended the restaurant for its extremely low crime and disorder figures over the last three years.

Off-sales would allow for diners to purchase a bottle of wine that they had particularly enjoyed during their meal, to take home with them and having raised this with the Police, the applicant had agreed to Challenge 21.

Her client, the applicant, had been overwhelmed by the level of support this application had received from residents, which had included the comments;

- Indeed, I believe it would offer a welcome additional facility to the local residents from a well run and responsible local business.
- The proposed ability to partake in an alcoholic beverage in the first floor bar, without taking a table meal would offer a welcome addition and refreshing alternative to many local residents and businesses.
- It is excellently run and I have every confidence that the services the variation will facilitate will be a further benefit to local business, ours included.

A letter had also been received from the Chief Executive of Cheltenham Festivals, expressing her support for the application, which she felt would be a helpful additional service.

Ms Nelson asked that the committee consider the ratio of positive and negative representations and the fact that the number of objections was far reduced since the last application, almost 50% less. Some objectors had referred to concerns about other premises in the area (Beehive, Retreat, etc) and some actually stated their support for the Daffodil as a business.

In closing, she assured members that comments made about 'salami slicing tactics' by Mr Dey were certainly not accurate, in fact the application would result in a very small change. She also tried to address confusion about the

operating schedule, which she explained merely demonstrated what measures could be put in place.

The applicant then read a witness statement (Appendix 1), which had been circulated with the bundle.

In addition to this he advised that, whilst the premises traded successfully, certain conditions of the current licence prevented flexible use of the premises during quieter periods, unlike some competitors in Cheltenham (Hotel Du Vin and Monty's). There was increasing customer demand for canapé receptions, etc, which currently had to be refused.

He assured members that there was no intention to sell the building and that it would remain a restaurant.

He was mindful of the late night noise issue in the area, but many representations had referred to the actual premises creating the issues, not the Daffodil. It was envisaged that footfall would increase by 7-10% between the hours of 2.30pm and 6.30pm. There were no plans to extend the licensed hours.

The following responses were given by the applicant and/or his solicitor to questions from Interested Parties who had objected to the application;

- The premises were leased from the Partnership, the lease was renewed every two years and yes there was a risk that the Partnership could be dissolved.
- The applicant would not be happy with a condition that read 'only with food' as many competitors in Cheltenham did not have such conditions.
- The original application had been for the entire premises, but it was only ever intended for the first floor, the original application had not been fully considered.
- There were no plans to change the structure of the building. There was a room on the first floor, above the kitchen, at the back of the building. This was completely separate and whilst there were aspirations to create an additional area, there were no plans to do this at the moment. As there were no structural changes, no plans had been submitted, but a plan was shown, which clearly defined the area which would be covered by the variation.
- The provision of the law empowered the committee to address concerns by way of a review and would have a number of options available to them, including being able to revoke a licence.

The Chairman invited Interested Parties who supported the application to address the committee.

Mr Nick Hine explained that whilst he lived almost 8.5 miles away from the Daffodil, his business premises were in the Suffolk's and had been for the past 6-7 years. He would spend almost 12 hours a day there and his wife often worked late. He frequented the Daffodil once a month in a business capacity and socially and felt it was very well run. He was confident that it would remain predominantly a restaurant and commented that with no draught beer and the price of their bottled beers, people would not be inclined view it as a pub.

Pamela Harber lived at Century Court and had done for 9 years. The Daffodil was her favourite restaurant and she was confident that people would really welcome the option of lighter bites rather than a three course sit down meal. Whilst she wasn't as close as some others to the premises, her opinion was that disturbances in the Suffolk Parade area were not and never would be, caused by the clientele of the Daffodil.

Interested Parties who had opposed the application were invited to address the committee.

Michelle Gamble highlighted that there had been much talk by central government, about the increasing level of social drinking and the consequences of it. She queried why afternoon tea needed to involve alcohol. The premises were large and whilst the application had been reined back to the first floor only, it was still too large to promote drinking without food and as such, she felt the application was irresponsible. Whilst she had a business in the area and could appreciate the application made business sense, her concerns were as a resident. Residents found the current level of nuisance only just tolerable but any increase would be intolerable.

Mr Jeffries had lived in Suffolk Parade since 1974 and the main reason for his objection was that the level of disorder that residents currently suffered from, would only be exacerbated by the addition of another bar. His concern was not disorder within the bar, but the noise caused by those going to and from the premises. 94% of those that had objected lived in Suffolk Parade or adjoining streets, whose front doors opened directly onto the street. Only 1 supporter of the application lived in Suffolk Parade, 46% lived 3-4 miles away, some behind locked gates and as such, did not suffer to the same degree. He suggested that the committee give more weight to the representations of residents directly affected.

Mr Richards had been a resident of Suffolk Parade for almost 6 years and knew the applicant well. Many of his concerns had already been raised but he felt it was important to highlight that of the 26 Interested Parties who had supported the application, 14 lived in Century Court and were from businesses located in the Suffolk's. Of those that had objected, most lived in the Suffolk area and had genuine concerns.

Mr Mason, on behalf of Mr Dey, firstly raised the issue of off-sales, which, if permitted with no conditions, would allow the sale of alcohol to all, up until midnight Monday to Saturday and 11.30pm on Sunday. Three of the nearest off-licenses shut between 8pm and 10pm during the week and 9pm on Sunday. This could attract people to the area to buy alcohol up until 11.30pm on a Sunday and would be most undesirable to residents.

He circulated a draft condition which he felt would not only offer flexibility to the applicant, but an element of comfort to residents, proposing that some form of food needed to be consumed in order to permit the sale of alcohol. The draft condition read;

"Intoxicating liquor shall not be sold or supplied on the premises otherwise to persons taking food, or to persons seated with a person taking food. Save that

nothing in this condition shall prevent the supply of intoxicating liquor to a person prior to being seated.”

He highlighted that those supporting and objecting to the application had applauded the way in which the Daffodil was run, but even some of those supporting the application had openly admitted that they would not want to drink there without taking some form of a meal.

The applicant had not yet used their allowance of Temporary Event Notices for the year, which would allow them to cater for various other events for Cheltenham Festivals, etc.

Another cause for concern was the risk of increased numbers of people smoking outside of the premises given that people were more inclined to smoke when just drinking rather than taking a meal. This would create further nuisance to residents.

Mr Mason asked that the committee consider the future, the applicant could wish to extend the licensed area to 50% - 75%, he could equally include the planned Deli or even sell the property and there could be no guarantees about what the new owner would do with the premises.

He suggested that it would be mutually beneficial to the applicant and residents, for the committee to grant the application, with the inclusion of his proposed condition.

The Chairman suggested that Mr Mason was hypothesising about the future and invited the applicant's solicitor to ask Mr Mason any questions.

The following responses were given by Mr Mason, to questions from the applicant's solicitor;

- No, his research into off-licence closing times had not extended to other restaurants with permission to make off-sales.
- He felt Condition A5 was insufficient as having food available was not the same as having people consume it. He felt it was an unlikely scenario that someone would decide against eating after having ordered a drink.
- Speculation into the future use of the premises was relevant as much as it highlighted what the licence would permit.

Mr Mason advised Interested Parties that establishing a breach having used words such as 'substantial' or 'available' within the condition would be difficult given that a view could be taken on the meaning of those words.

Ms Nelson felt that a premises licence with well drafted conditions, should reassure residents more than the use of Temporary Event Notices which permitted events up to 5am and to which only Police could object. She was unwilling to accept the proposed condition put forward by Mr Mason as she felt it was too vague.

The Chairman invited members to ask the applicant questions.

The following responses were given by the applicant to questions from members of the committee;

- The first floor area had a maximum capacity of 50 and whilst vertical drinking was permitted, this was rare given the number of tables, chairs and the fact that the premises offered table service.
- Diners were given the opportunity to go the bar before or after their meal and the foyer was covered by a receptionist who was able to control the number of people accessing the bar area from the main entrance.
- He was happy that off-sales could apply to diners only, he would not promote it to passers by.
- Draught beer used to be sold but they didn't sell enough to make it cost effective. It was also a 35 foot run from the cellar to the bar on the first floor.
- It was anticipated that the increase in footfall of 7-10% would take place during quieter periods between 2.30pm and 6.30pm and they wouldn't look to promote this in the evening given how busy the restaurant already was in the evenings.
- Yes, pubs in the area would still be open when the Daffodil closed.
- There was a 'respect residents and be quiet' sign in the foyer area.

Councillor McCloskey was concerned about off-sales and wondered whether a Condition could limit off-sales to diners only.

In closing, the applicant's Solicitor made the following points;

- The applicant was genuine and committed to the Daffodil, he had no intention to extend the application to the whole building.
- She reiterated that the premises would be maintained as a restaurant.
- The Licensing Policy stipulated that each application should be assessed on its own merits and people should recognise the differences between premises – the Daffodil was very unique.
- The clock shop which was planned as a deli was a separate building, with its own rateable value and as such, any future applications would be made separately.
- Residents were reminded of their right to apply for a review at any time.
- She could see no evidence to suggest that were the application granted, the licensing objectives wouldn't be met.

Members retired at 15:37 to make their decision.

Members returned at 15:46 with their decision.

The Chairman confirmed that a decision had been reached based on the evidence presented and it was unanimously

**RESOLVED that the committee grant the application as requested;**

- a) Removal of condition 2a) currently endorsed on the licence in so far as it relates to the first floor to the front of the premises.**

**With the addition of the following conditions on the premises licence;**

- b) The premises shall operate primarily as a restaurant.**

- c) The 'Challenge 21' scheme (or equivalent) shall be adopted, so that any customer attempting to purchase alcohol who appears to be under the age of 21 years shall be asked for an accredited photographic proof-of-age (passport, driving licence, or a pass-approved card) and that a sale shall not be made unless this evidence is produced. However, it will not be treated as a breach of this condition if the purchaser subsequently turns out to be below the age of 18.**
- d) Off-sales of alcohol will be restricted to wine only that has been ordered before 22:00.**
- e) The maximum capacity of the first floor will be restricted to 50 people.**
- f) Seating for 40-45 people must be provided on the first floor area.**

The Chairman reminded residents of their right to call for a review of a licence if they found that incidents that could be attributed to the premises and that they should collect evidence, complete with dates and times, though he was confident that the applicant would ensure that the Licensing Objectives were met.

He concluded the meeting by thanking everyone for their attendance.

**Councillor Diggory Seacome  
Chairman**