

Licensing Sub Committee-Alcohol and Gambling

Wednesday, 17th January, 2018
2.05 - 3.20 pm

Attendees	
Councillors:	Paul McCloskey (Chair), Mike Collins and David Willingham (Reserve)
Also in attendance:	Phil Cooper and Vikki Fennell

Minutes

1. APOLOGIES

No apologies were received.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. LICENSING ACT 2003: DETERMINATION OF AN APPLICATION TO VARY A PREMISES LICENCE

The Chair welcomed the group. In attendance was Mr Beano Moran, the applicant, James Goddard, an employee of Moran's and Mr and Mrs Savell who live in the premises next door to Moran's.

The Licensing Officer proceeded to introduce the report. He explained that an application had been made under the Licensing Act 2003 to vary a premises licence in respect of Moran's 123-129 Bath Road, Cheltenham. He explained that a copy of the application was attached at **Appendix A** and a copy of the existing licence at **Appendix B**. He informed Members that the application was to approve revised plans of the premises reflecting changes to the courtyard and conservatory, the revised plans were attached at **Appendix C** of the report. He advised that Moran's were proposing to shorten their opening hours and to add the exhibitions of films as a licensable activity.

The Licensing officer explained that 9 responsible authorities had been consulted as required for applications for premises licences. Those statutory consultees were outlined at paragraph 3.1 of the report and that the Senior Environmental Health Officer's comments were attached at **Appendix D**. He advised that representations had been received from properties in the vicinity of the premises. These representations were highlighted at **Appendix E** of the report.

In light of this, the sub-committee were reminded that they could

- Grant the application subject to such conditions as the sub-committee considers appropriate for the promotion of the licensing objectives; or

- Refuse all or part of the application.

Members were reminded that they were required to determine an application with a view to promoting the 4 licensing objectives:

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

Following questioning, the Licensing Officer informed the sub-committee that from a licensing point of view no objections had been received from the statutory consultees. He explained that if, for example, there had been an incident of public nuisance which could be directly attributed to licensable activities at the premises then the police would have made them aware of this during the consultation period.

The applicant was then invited to give a statement in support of his application. He informed the sub-committee that:

- Moran's had been trading for over 30 years.
- There had been numerous changes to premises on Bath Road in that time. Including that of Moran's which had most recently seen the erection of an extension to the rear.
- He explained that the glass structure to the rear that they had originally had in place did not work for them and so they had opted to build the brick conservatory.
- He felt that Moran's was a family orientated place which attracted the right clientele. They did not like to advertise it as a pub but more a wine bar and restaurant.
- He explained that the courtyard was now much smaller than it had been previously.

Following questioning, the applicant advised Members that:

- They planned on holding a 'film appreciation evening' once a month on a Monday evening. They had however opted to apply for a licence to cover every day of the week as this would cover them if they wished to change the day i.e. if it were a bank holiday and they wanted to move it to the Tuesday or if there was a special event i.e. Halloween and they wanted to show a film for this occasion.
- He advised that they planned to show films in the extension where there were no windows, just a door which they planned to keep shut.
- He anticipated the film appreciation society would mainly be a winter thing and so the door would remain closed in any case due to the weather.
- Regarding the courtyard, he explained that this would be closed at 10pm every evening. He advised that no smoking was allowed out in the courtyard, only drinking.

- He explained that courtyard did not get much service in the latter months of the year.
- He informed the sub-committee that they currently had a flapping door to the courtyard and due to an error when installing it had no handles on the outside which deterred people from going out there.
- There were no patio heaters out there and the courtyard was quite secluded.
- With regards to the sound system to be used to project the films, the applicant explained that they would use 4 speakers on a small bracket, about 6 inches long. This was wired through a PlayStation to the TV. The TV was a 55-inch flat screen which was mounted into the brickwork.
- He advised that the door to the main dining area would be closed when films were being shown.

Mr and Mrs Savell were then invited to give a statement in support of their objection. They explained the following:

- The issue they had was not with the restaurant which was over the other side of the premises to their property. Their issue was with the wine bar which was directly attached to their premises and the courtyard which was adjacent to their rear garden.
- They had bought their property in 2007.
- Mrs Savell advised that they had no objection to the extension of the licence to include showing films. She did, however, note that on the map at Appendix C the red line did not extend around the area where they were proposing to show films.
- She declared that the issue was with the use of the rear courtyard which had been in use since September 2016. It was the noise disturbance from this which was the problem.
- Mr and Mrs Savell advised that the courtyard was predominantly used in the afternoon/early evening when the weather was nice and this was precisely the time that they too wished to sit in their garden. They also noted that on hot days when they had their rear windows and doors open they could hear the noise from indoors.
- They did not have an issue with the front garden being used which had always been the case when they bought the property.
- They explained that there had been no disturbance prior to the extension at the rear. The previous planning application in 1994 had prohibited the opening of the rear doors, something they felt had been overlooked when determining the more recent planning application when the extension was built.

- They felt that the retrospective planning permission which had been granted in 2016 was what had led to the current situation and subsequent noise disturbance.
- Mr and Mrs Savell explained that they felt surprised when they had read the licensing officers report which noted no comments from the planning department given that they had made a formal complaint to the planning department about the lifting of the previous restrictions to the use of the courtyard and opening of the extension doors.
- Mr and Mrs Savell explained that this had been investigated by Mike Redman who had acknowledged a 'process failure'. Mr Savell proceeded to pass around copies of the response from Mike Redman.
- Mr and Mrs Savell also noted that the licensing report had implied that there had only been one complaint made against the premises yet they had made several complaints of noise disturbance to Louise Boyle last summer and these complaints were ongoing.
- Mr and Mrs Savell requested that the sub-committee apply conditions to the licence to only allow the opening of the rear doors in the case of an emergency.

One Member questioned the level of materiality which could be given to the statutory consultees.

The Legal Officer explained that licensing and planning were two entirely separate entities and as such each case must be determined on its own merits. She explained that it was important to fulfil the 4 key licensing objectives. The Licensing officer reiterated the point that licensing and planning were two separate entities and that planning conditions applied may not be reflected in the premises licence. He explained that the rear courtyard does not require a licence as no licensable activities take place out there. He noted that the licensing objectives could be breached if the licensable activities taking place inside i.e. the sale of alcohol cause a public nuisance outside. Despite the fact they are separate entities the Licensing Officer explained that the licensing act identifies 9 responsible authorities as statutory consultees and the local planning authority is one of these. The Licensing Officer explained that when the planning department were consulted from their perspective no licensing objectives would have been breached. He explained it would be the job of the environmental health officer to report if they feel the licensing objective is breached in terms of public nuisance.

One member questioned what conditions the objectors would like to be applied to the licence.

The objectors, Mr and Mrs Savell explained that they wished to see the rear doors to the extension only used in an emergency. They explained that the issue was largely later on in the week on a Thursday/Friday with people having drinks after work. They spoke of one instance when the noise disturbance continued on until 22:20 one Friday evening. They explained that the main issue was that they could not enjoy their garden. When asked

by a member they stated that there was no leeway for them, they did not want the doors to be opened at all save for in an emergency.

The applicant was invited to have his final say. He explained that:

- They had had very few issues with the surrounding area. 90-95% of those in the immediate vicinity don't actually have a garden.
- Of all the bars/pubs on Bath Road, they have the smallest courtyard.
- The courtyard was previously much larger than it now is. They have just 6 tables in total.
- He explained that they were taking steps to limit the noise disturbance through the installation of signs advising customers to be conscious of neighbours, no smoking to the rear, parasols which are permanently erected and foliage to try and soften the noise disturbance.
- He explained that they were actually proposing to reduce the hours that they were trading.

The sub-committee then adjourned at 14:45 to deliberate.

The sub-committee reconvened at 15:15 and the Chair proceeded to read the decision reached. The statement read as follows:

In respect of the application by Lyn Moran on behalf of Moran's 123-129 Bath Road, Cheltenham presented by Beano Moran, the Sub Committee has had regard to the statutory guidance issued by the Secretary of State, the Council's adopted policy statement, the representations made and the evidence it has heard. In particular, the Sub Committee has sought to promote the 4 licensing objectives when determining the application. Those being the prevention of crime & disorder, public safety, prevention of public nuisance and the protection of children from harm.

The application before the sub committee today relates to the inside of the building where the licensable activity takes place.

The decision of the Sub Committee is as follows: -

To grant the licence as applied for

The sub committee has sympathy for the neighbours and their objections.

However, in light of what has been applied for the sub committee feel that there is not a condition it can impose to deal with the objectors' concerns over the courtyard. Any condition imposed would be disproportionate and unreasonable given the application before the committee today.

The licensable activity is the sale of alcohol, not its consumption. As stated the current premises licence has always allowed the use of the courtyard. Planning issues are immaterial to this licensing application.

The Sub Committee has found that the licensing objectives are satisfied and that the conditions offered by the applicant will ensure the licence meets these objectives.

The Interested Parties are reminded that should the Applicant fail to meet the licensing objectives that they can report matters to the Licensing Authority and the Applicant and that the licence can be the subject of a review.

Further any noise complaints should be communicated to the environmental health department for them to investigate.

There is a right of appeal to the local magistrate's court within 21 days of this decision.

Resolved that

The sub-committee grant the application as applied for.

Paul McCloskey
Chairman