

Cheltenham Borough Council Licensing Sub Committee-Alcohol and Gambling Minutes

Meeting date: 2 October 2024

Meeting time: 4.30 pm - 6.20 pm

In attendance:

Councillors:

Angie Boyes, Simon Wheeler and Dr David Willingham

Also in attendance:

Vikki Fennell (Senior Lawyer), Louis Krog (Director of Public Protection)

1 Election of Chair

Councillor Boyes was elected to chair the meeting.

2 Apologies

There were none.

3 Declarations of interest

There were none.

4 Determination of Application for a Premises Licence

The Head of Public Protection introduced the report.

In response to Members' questions, he confirmed that:

- neither the police nor any local residents have objected to the application. The only relevant objection comes from the council's environmental health team;

- if the committee is minded to grant the licence, the licensing objectives set out on Page 21 of the report will be reviewed and rephrased to ensure that they are all enforceable.

The applicant's solicitor said his primary question was what aspects of the building did environmental health officers consider to be inappropriate for the granting of a licence; the Head of Public Protection said this would be explained in their representation.

Comments from Environmental Health Officer

The Chair invited environmental health officers to present their objections to the application. The following concerns were highlighted:

- officers propose that licensable activities should cease at midnight, in pursuance of the licensing objective to prevent public nuisance;
- the premises are situated in a mixed-use, town centre area, with two residential blocks to the rear and further flats adjacent on Imperial Square. Residents will have direct sight lines into the premises, specifically the proposed conservatory. With single-glazed windows and minimal insulation, any late-night noise in the area is likely to cause disturbance;
- the existing licence of Pizza Express, transferred to the new owners, permits alcohol sales until midnight Monday-Saturday, and until 23.30 on Sunday; Settebello is seeking longer and later hours for supply of alcohol and live and recorded music, including in the conservatory which will provide very little noise attenuation;
- environmental health officers consider permitting licensable activities until 2.00am and closing at 2.30am is likely to cause a public nuisance and potential disruption to nearby noise-sensitive residential homes. Background noise in the area drops well before 2.30am, and most people are likely to be asleep at that time. Protection of local residents from noise at this time is supported by guidance in the 2003 Licensing Act, and will be best achieved by limiting the hours of licensable activities;
- officers have proposed timings for licensable activities that they consider suitable for this type of business - which is advertised as a cocktail bar and restaurant, with the emphasis on dining, not on late-night drinking and music. This view is supported by the business model for Settebello in Gloucester Quays, which is licensed until 23.00 Monday to Saturday and until 22.00 on Sundays;
- the police licensing officer has put forward a condition to ensure there will be no dancing within the premises when licensable activities are taking place, which supports environmental health officers' view that the premises is primarily a restaurant;
- in addition, the hours proposed by officers are based on those granted to Sef Steakhouse opposite in June 2022, although the opening hours of this very similar business demonstrates that it does not use all its permitted hours for licensable activities;
- although other premises in close proximity, such as Imperial Haus cocktail bar, hold premises licences for later activities, these predate the new Licensing Act and were therefore transferred without consultation; they do not set a precedent as premises licence applications are considered on a case-by-case basis;

- the majority of events at Cheltenham Town Hall end by 22.00, occasionally extended to 23.00, but even allowing 30 minutes for customers to leave the premises, the full permitted licensing hours are not utilised, and there are very few noise complaints in the area;
- there is scope under the Licensing Act for Settebello to apply for an occasional extension to the hours proposed by officers, by utilising the 'non-standard timings' on their licence, or applying for a temporary event notice (TEN). This simple option offers the opportunity to operate for longer hours at agreed times of year, such as Christmas, New Year's Eve, and Race Week.

In conclusion, the professional view of officers is that the hours they propose are more suitable for the noise-sensitive receptors in the area and the advertised business type, and comply with legislative guidance which states that the approach of licensing and responsible authorities should be one of prevention.

Questions

In response to Members' questions, environmental health officers confirmed that:

- a temporary event notice can last up to seven days, and can be applied for at key times in the year;
- the environmental health officers both have BSc degrees, one has a Masters, and both are registered with the Chartered Institute of Environmental Health;
- the main impact of any noise would be on the residences in the same row;
- although conditions can be useful as a means of control, the terminal hour is the best way to control noise and public nuisance;
- officers are concerned about the combined impact of late-night music and intoxicated people – statutory nuisance is measured by officers, not by decibels, and neither is current legislation governed by decibels.

The applicant's legal representative thanked Members for raising some of his concerns in their questions, and asked officers for information about any recent incidents in the area, saying the police licensing officer had not been able to provide any data. He said that the applicant has offered for live music to end at midnight rather than 2.00am during mediation – an offer which still stands – but the bar only holds 34 people, the restaurant is over three floors, and there is no proposal to have live music in the conservatory. The business is a trattoria with background music, not a live-music, late-night dance venue.

In response to Members' questions, he confirmed that:

- the music will be background only, similar to that found in continental venues;
- the applicant would be prepared to terminate live music at midnight.

The Head of Public Protection confirmed that recorded music would not be licensable if it is incidental background music.

The applicant's legal representative reiterated that the intention is not to create a live music venue, but to have the option for an occasional live singer or guitar player, as in the Gloucester restaurant; this would be unamplified if required.

The applicant's legal representative was invited to make their submission. He said the applicant has had a personal licence for the last 15 years, and his high-quality restaurant will have a relaxed ambience which will not encourage loud music. Belgrave House is a solid stone building with curtains at all windows; the applicant has spent a huge amount of money refurbishing it and wants the restaurant to fit in and be a success. There will be door supervisors during raceweek and for other events, and no room for large groups. The business opposite is licensed to 02:00, and he is asking the committee to accept that the nature of the business will not encourage loud music. The hours requested will give flexibility as unfortunately it can be difficult to get the timing right when applying for a the TEN process and book live music.

Debate

In debate, Members made the following points:

- these are high-class premises, and the intention is clearly to use music to create an ambience which will enhance the dining experience. A condition restricting amplified music after midnight could be added, which seems reasonable, particularly as background music can be played without any licence;
- there are noise-sensitive premises in the area, and council policy suggests 01:00 as the terminal hour with later hours as an option during raceweek, for example, when the town is particularly busy; going beyond this as a general rule seems excessive for a restaurant;
- 131 The Promenade has issues with noise and there are other night-time venues close by;
- there needs to be good reason to deviate from the policy; the environmental health officers are experts in their field, and weight should be given to their opinions. Prevention of public nuisance is paramount, and although this appears to be a well-run business, and there are currently no police or resident objections, it may be best to stick with 01:00 as the terminal hour, with live music ceasing at midnight;
- there could be objections to a TEN, from the police or environmental health officers, in which case it would be referred to committee;
- the issue isn't the sale of alcohol, although a condition requiring drinking-up time by 02:00 could be included; the issue is whether live entertainment should cease at midnight or 01.00pm;
- providing neighbours with contact details for the designated premises supervisor is a good idea;
- it is important to include the standard condition for recycling, as the noise from this is invasive and disturbing;
- a condition for closed windows and doors also seems appropriate here;
- if live music won't be amplified, will end at midnight, and will not take place in the conservatory, the question is how to deal with recorded music: environmental health officers suggest a midnight limit, policy seems to suggest 01:00 and the applicant has asked for 02:00.

The Director of Public Protection said the committee has discretion to have this discussion, and non-standard timings can be added to the premises licence; if not, the applicant will need to apply for a licence variation at a later date.

The Chair gave the applicant the final right of reply; he confirmed the following points:

- if music is confirmed, there will be no live music in the conservatory;
- there will be no live amplified music after midnight;
- there will be no recorded music after 01:00;
- ambience is the primary concern;
- regarding alcohol sales, this is a new business, the applicant needs to compete and is looking for a level playing field. Unlike 131 The Promenade, the building is entirely enclosed with no outside activities and the cocktail bar is limited to 34 people;
- the applicant is looking for flexibility. Cheltenham is multi-cultural, and it is normal for people to dine later than they used to. A terminal hour of 02:00 is a reasonable compromise, but the applicant will be happy to consider 01:30, and would prefer to agree non-standard timings than need to apply for TENs;
- there might be an occasional disturbance, but the applicants will manage their business professionally

Decision

Members adjourned to consider the application, and took the following issues when making their decision:

- the licensing act, statutory guidance and the council's licensing policy;
- environmental health officers have objected to the application because it is their professional and expert opinion that it will cause a nuisance to noise sensitive premises and in close proximity to residences;
- the committee understands that the prevention of noise nuisance is better than the matter coming for a licence review before a sub-committee;
- the business is a high-class restaurant, not a nightclub, and music will be commensurate to the food and ambience it is providing;
- the applicant has offered to have no live music in the conservatory and no amplified music after midnight – this is to be conditioned;
- in view of potential noise disturbance, a condition for recycling is also requested, to be limited to 07:00 – 21:00;
- the building is enclosed and there are no external activities; the committee would request a condition requiring all windows and doors to be kept shut after 23:00 when any regulated entertainment is taking place;
- neighbours should be provided with contact details for the designated premises supervisor so that they can be contacted directly in the event of any noise issues;
- a sign requesting that patrons leave quietly is requested.

Members understood the objection from environmental health officers, but felt it would be unreasonable not to grant a licence to 02:00 given that this was granted by the committee to very similar premises directly opposite just under a year ago.

They therefore voted unanimously to grant the permission as requested, with conditions offered and their additional suggested conditions included. The Director of Public Protection advised the parties that there was a right of appeal to the local magistrate's court within 21 days of the decision.

5 Briefing Notes

There were none.

6 Any other items the Chairman determines to be urgent and which requires a decision

There were none.