

Dr Neil Casey, Victoria Retreat, Cheltenham

I would like to express my concern regarding the referenced application. It mentions that it seeks to extend the use of the premises to include the extension and courtyard. It specifically mentions the screening of films in the extension once a month and the fact that the courtyard will close at 2200 every night.

The contention is that this development could cause significant noise in the vicinity. This has already been evidenced by a noticeable increase in noise originating from the rear of the property since the original Moran's conservatory was replaced with an extension in 2016, indicating that it is already being used in the proposed manner. The noise and disturbance caused by the use of the rear courtyard goes against the licensing objective 'To Prevent Public Nuisance', particularly as it is situated in a residential area.

I would like to register this communication as an objection to the proposed license and I await to hear further in connection with this application.

Rob Pattinson, Knights 1759, on behalf of Mr and Mrs Savell, Bath Road, Cheltenham

We have received instructions from Mr and Mrs Savell of 121 Bath Road, Cheltenham in connection with an application which has been made to the Council by Ms. Lyn Moran of Moran's Eating House ("the Premises") to vary a premises licence.

Our clients' property is located next door to the Premises and its courtyard. Indeed their rear garden is separated from the courtyard only by a garden wall.

We note that the application form which has been completed is for a variation to a premises licence.

If one considers the completed application form and the box headed, *"Please describe briefly the nature of the proposed variation"* the variation application seems to be related to what is described as a *"newly rebuilt conservatory and court yard"* and is then described in the following terms:-

- Approve revised plans of the premises
- Add the exhibition of films as a licensable activity; and
- To amend (reduce) opening hours as shown at Section J.

In terms of the operating schedule, the only aspect which appears to have been ticked is "films" and the related Box B has been completed with reference made to "indoors" and a *"film appreciation evening once per month between the 1900 hours and 2200 hours"* Monday through to Sunday.

Box L which relates to the standard opening hours, indicates a finish of 2300 hours but the comment is made that *"The outdoor courtyard (Rear) will close one hour earlier every night, this will be 2200. We do not open on Sundays."*

In relation to conditions to remove as a consequence of the variation application, the applicant states that, *"There are no conditions as such imposed on the licence. We are asking for the licence to be extended to cover the new extension."*

The application form therefore makes it clear that the variation is to extend the premises to include the conservatory and court yard. In particular the application seems to relate to the exhibition of films in the areas in question and our clients have confirmed that it is their understanding that film shows do in fact take place in the conservatory area at the moment. Our clients would also add that the conservatory and court yard area are also used at the moment in exactly the same way as the rest of the premises, with customers allowed free access when the premises are open including for the purposes of consuming alcohol.

It is noted that the plan which accompanies the application does not extend to either the conservatory or court yard area. We are not quite sure why the plan should specifically exclude such areas when the application would seem to relate to the same.

It is the case that, "sale by retail" of alcohol is a licensable activity. This phrase is specifically defined in the act and means a sale of alcohol other than for consumption off the premises. The consumption of alcohol on the premises therefore falls within this definition and is a licensable activity. The *"Revised Guidance issued under Section 182 of the Licensing Act 2003"* by the Home Office states under the heading *"Changes to Structure"* that, *"changes to layout should be referred to the full variation process if they could potentially have an adverse impact on the promotion of the licensing objectives, for example by increasing the capacity for drinking on the premises..."* There is no doubt that the use of the conservatory and court yard, if permitted will increase the capacity for drinking on the premises as a whole.

A Council can only control by condition those premises which are subject to the licence and it would be a nonsense to have an area where customers could freely go and sit down to drink etc. if that same area was not also covered by the licence.

Even leaving aside the issue around the sale by retail of alcohol, if other licensing activities are involved including the provision of late night refreshment (ie hot food/drink after 11pm) and regulated entertainment (ie entertainment provided with a view to a profit) and these activities take place within or can be viewed from the conservatory area and possibly the court yard, then there will be a need to be a licence.

The Act states that, *"A licensing Authority must carry out its functions under this Act (licensing functions) with a view to promoting the licensing objectives."* The licensing objectives are the prevention of crime and disorder, public safety, the protection of children from harm and the prevention of a public nuisance.

If the public are to be allowed free access to the conservatory and outside areas with alcohol, or hot food or in circumstances where they can enjoy regulated entertainment, then we have advised our clients that such areas should be covered by the licence. Otherwise whatever activities occurred in such areas could not be conditioned or controlled by the Licensing Authority.

Before setting out our clients concerns in relation to the application which has been made, we have been asked to point out that our clients have lived next to the Premises since 2007. They were aware that the Premises were in use as a wine bar and restaurant at the time of purchase but were happy to proceed primarily because of certain restrictions which had been placed on a planning permission (Reference CB18774/02) granted on 17th February 1994 for amongst other things a conservatory extension in the rear garden.

A condition attached to this planning permission stated that, *"The rear conservatory element and rear garden shall not be used in connection with the restaurant/bar. Reason: To safeguard the amenities of residents in the area."*

Our clients were also aware at the time that a further planning application was approved in 1994 (Reference CB18774/02) which replaced the proposed conservatory with a brick built extension instead and that a revised condition was imposed which stated that, *"The rear garden shall not be used in connection with the existing restaurant/bar. Reason: To safeguard the amenities of residents in the area."*

Our clients have confirmed to us that when they moved into their property this brick built extension had been constructed.

The existing premises licence was granted on 8th March 2007 to Ms. Moran and our clients have advised that the said licence did not extend to the use of the rear court yard by customers.

You will be aware of course that a premises licence and its related conditions set the parameters within which premises can lawfully operate. Conditions attached to a licence should be tailored to the individual type, location and characteristic of the premises in question.

It is highly relevant for the Licensing Authority to note that since the premises licence was granted in 2007, three further planning applications have been submitted to and approved by the Council which have in essence extended the area which is used by customers.

On 24th June 2009, the Council granted planning permission (Reference 09/00362/FUL) for the construction of a *"conservatory at the rear as extension to bar area."*

The permission contained a condition (number 4) which stated that, *"The external windows of the extension hereby approved shall be non-opening and shall be maintained as such thereafter. The external doors of the extension hereby approved shall not be opened at any time except in the event of*

an emergency. Reason: To prevent noise emission from the building in the interests of the occupiers of neighbouring properties"

Our clients have informed us that the conservatory was duly constructed and it should be noted that no application was made to vary the premises licence to include the new conservatory area. It was therefore used (one assumes) for licensable activities but in circumstances where no licence authorising such a use was in place. In other words it was being used unlawfully. The application which is now before the Licensing Authority presumably seeks to regularise this situation.

In 2015, an application was submitted and approved (Reference 15/01592/FUL) to demolish the conservatory and to replace it with a single storey rear extension. Unfortunately the planning officer failed to make any reference to the 2009 permission or the restrictive conditions and the permission was granted without similar controls attached. This has resulted in our clients making a formal and ongoing complaint to the Council which was dealt with by Mr M Redman who we understand to be the Director of Environment.

We are informed by our clients that the owner of the Premises did construct the extension albeit not in accordance with the approved plans in September 2016.

Again it should be noted that the existence and use of the new extension (which replaced the conservatory proposal) was not drawn to the attention of the licensing authority and no application was made to vary the premises licence.

Our clients were regular patrons of the establishment until they complained to the owner about the use of the rear garden by customers and drew those concerns to the attention of the Council. They have since been informed that they are not welcome to visit. This is regrettable for a number of reasons not least being that our clients have never objected to the use of the outside seating area to the front of the Premises (which is immediately adjacent to the front of their property) and have never had any cause to complain about the restaurant/wine bar use within the main building. Prior to the issues which have arisen, our clients would have described the establishment as a very smart and desirable food and drink destination with an owner who had an eye for detail and who provided customers with a first class service.

However the business is located close to a number of residential properties including our clients who are disappointed with the way in which, since 2016, the owner appears to be content to ignore concerns and issues regarding noise and nuisance which are very real and which are for the first time having a detrimental impact.

Our client is concerned that neither the conservatory (constructed following the grant of planning permission in 2009) nor its brick built replacement have to date been authorised under the licensing regime as well as the fact that the use has been extended into the rear court yard area without express permission and with the provision of outside tables and chairs for customers. Our clients obviously do

not know why the owner decided not to comply with the law and make an application to vary the licence before now but would comment that had such an application been made at the appropriate time then they would have raised concerns with the Licensing Authority about the potential for noise and disturbance.

It is the case that since 2016 and the completion of the new rear extension, our clients have become acutely aware of increased noise and disturbance as a result of the doors being opened and customers allowed to use the rear court yard area. Our clients have made a number of complaints to the Council about this activity and have in particular drawn to our attention one particular instance which took place on 16th June 2017 when they returned home from the cinema at 10.20pm and were completely shocked by the level of noise emanating from the court yard area which they could hear from their garden and which they have described to a Council officer at the time in the following terms, *"The rowdiness of Friday night drinkers in the courtyard was as great as those out the front and it was completely unacceptable."*

It is the case that the use of the Premises have changed in that an area to the rear (conservatory/building and court yard) has been used as part of the property in circumstances where such a use has not been licensed. The application which is before the Licensing Authority is a substantial variation (within the terms of the Licensing Act 2003) which will (retrospectively) increase the capacity for drinking on the premises as well as increase public nuisance (as already evidenced by our clients).

It should be noted that the use of the court yard as an area where customers are allowed access and drinking takes place has resulted in an increase in noise and disturbance at a level and frequency which is detrimental to our clients amenity and wellbeing and must in our view mean that this activity has to be regarded as having an adverse effect on the promotion of the licensing objective to prevent public nuisance and the application in relation to the court yard extension should be refused on this basis alone. It is also noted that the applicant is suggesting a condition which would prevent the court yard being used after 10pm. This is simply not sufficient to protect our clients amenity. They make extensive use of their garden and the only way to properly protect their amenity such that they are not unacceptably disturbed by noise would be to prevent use of the court yard at all times.

You will be aware that in considering the promotion of this particular licensing objective, licensing authorities should *"focus on the effect of the licensable activities at the specific premises on persons living....in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litterIt (Public Nuisance) may include in appropriate circumstances the reduction of the living ...amenity and environment on other persons living....in the area of the licensed premises.... (and that).....the approach of licensing authorities....should be one of prevention..."* Home Office Guidance April 2017.

Our clients do object to the extension of the licence to include the outside court yard area on the grounds of noise and disturbance in direct contravention of the licensing objective to prevent public nuisance.

This objection is based upon how the court yard has been used in the last year and the impact that this has had on the living conditions of our clients and their ability to enjoy their rear garden space. Our clients are retired and until the external court yard began to be used they were able to enjoy their garden unhindered by excessive noise or nuisance.

Although they do not object to the use of the new conservatory/brick built extension as part of the premises, this is on the basis that the doors and windows to the rear court yard remain closed during opening hours except in the case of emergency use.

We would perhaps mention that we have also advised our clients that in our view the condition attached to the extant 1994 planning permission (Reference CB18774/02) ie that, *"The rear garden shall not be used in connection with the existing restaurant/bar. Reason: To safeguard the amenities of residents in the area"* remains applicable and is enforceable by the Council notwithstanding the later planning approvals.

To sum up, our clients are concerned that the owner of the premises failed to notify the licensing authority of the provision of a conservatory in 2009, or of its more permanent replacement and have allowed their customers to use the outside court yard area creating noise, nuisance and disturbance in breach of the planning regime and the licensing regime.

The variation to include the court yard area should be refused on noise nuisance and residential amenity grounds and in relation to the conservatory/brick built extension, approved subject to a condition that, *"The external windows of the extension shall be non-opening and shall be maintained as such thereafter. The external doors of the extension shall not be opened at any time except in the event of an emergency. Reason: To prevent noise emission from the building in the interests of the occupiers of neighbouring properties"*

Rob Pattinson on behalf of Mr and Mrs Savell (additional comments)

We refer to our letter of objection dated 23rd November 2017, which was sent to you on behalf of Mr and Mrs Savell of 121 Bath Road, Cheltenham in connection with the application which has been made to the Council by Ms. Lyn Moran of Moran's Eating House ("the Premises") to vary a premises licence.

In our initial letter, we mentioned that it was highly relevant for the Licensing Authority to note that since the premises licence was granted in 2007, three further planning applications have been submitted to and approved by the Council which have in essence extended the area which is used by customers and that this extended area has been used as part of the Premises but not subject to any application or approval to vary the premises licence.

Reference was then made firstly to the fact that on 24th June 2009, the Council granted planning permission (Reference 09/00362/FUL) for the construction of a "conservatory *at the rear as extension to bar area*" which was duly constructed and secondly to the fact that in 2015, an application was submitted and approved (Reference 15/01592/FUL) to demolish the conservatory and to replace it with a single storey rear extension.

The licensing authority should be aware that the owner of the Premises did replace the conservatory and construct the extension albeit not in accordance with the approved plans in September 2016. In other words, the works were carried out otherwise than in complete accordance with the planning permission.

This then resulted in a further (retrospective) planning application (Reference 16/01933/FUL) which approved the works undertaken and which included a condition which stated that, "*The doors on the rear elevation of the single storey rear extension shall be closed between the hours of 22:00 and 08:00 daily and shall not be opened between these hours except in the event of an emergency. Reason: In the interests of the amenities of the occupiers of neighbouring properties.*"

It is highly material for the Licensing Authority to note that not only did the owner have to submit a retrospective planning application but perhaps more importantly that neither the existence and use of the new extension, nor the conservatory which preceded it, to increase the capacity for drinking on the premises, were drawn to the attention of the licensing authority at the relevant times and no applications were made to vary the premises licence.

Obviously that application is now before the licensing authority but our clients would ask that the circumstances surrounding the new extension as well as the conservatory which it replaced are taken particular account of when this application is determined.

We would reiterate that our clients objection relates to any use of the outside court yard as part of the licensed premises for all of the reasons set out in the initial letter of objection as well as the use of the new extension in circumstances where the doors and windows are open during licensing hours (except in the case of an emergency) allowing noise to emanate from the premises and to adversely impact our clients quiet use of their garden area.

Lisa Belfield, Commercial Street, Cheltenham

I am concerned about noise from the outside courtyard which has now been opened up to be used by customers. This area was never available to be used other than in an emergency. Bearing in mind the proximity of this outside area to a large number of residential properties it should not be licensed or available for use by customers other than as a means of escape in an emergency.

Phillip Reynolds, Commercial Street, Cheltenham

I am writing to legally objection the current application to grant major variations to the license for Morans eating house. I would like to make it clear that my only objection is to the USE OF COURTYARD at the back of the premises and allowing the conservatory doors at the back to be left open. This area has never had license before permission before.

We are now all aware that the extension at the back of Morans differed greatly from the planning permission approved by the council. I have no problem with the deviation except for the COURT YARD that should not have been built. Previously I believe the proposed extension was supposed to be a closed conservatory, I think that was changed to extend the building and part of the new construction is this open courtyard at the back. My direct objection is to extending the license to this open court yard garden at the back of the building. My Objections could fall under both the prevention of crime and disorder objective and public nuisances.

This courtyard garden is situated within less than 10 feet of my own garden and 25 feet from my bedroom window. If this application were to be approved it would result in a constant statutory noise nuisance to myself, partner and the surrounding houses. Under environmental law a noise nuisance can be defined as "an unlawful interference with a person's use or enjoyment of land or of some right over, or in connection, with it."

It would essentially mean that 6 days a week we would directly be subject to excess noise, potentially up to 11 hours a day and past 21:00 in the evening. This will directly affect our wellbeing comfort and cause distress, not to mention the impact of sleep which can lead to a number of health issues. This type of noise would fall under statutory nuisances as it's prejudicial to health. As our local authority the council has a duty to deal with statutory nuisances under the Environmental Protection Act 1990. I am also concerned that it may subject us anti-social behaviour such as disorderly or violent conduct.

This is not a just a possible scenario we have already been subjected to the above noise issues this summer. Although there is no current license to cover this courtyard it was used across June July August and into September.

On top of the health and noise implications we only purchased this property in Feb 2017 and one of the main factors that swayed us to buy was due to being located in a secluded and quiet area. If this application were to be approved it would change that and could directly affect our house value.

I have nothing personal against Morans and I am more than happy for them to extend any license to the building extension. I will happily support the application were it changed to exclude the rear courtyard from use. Along with keeping the back doors closed.

What you need to consider is the impact. The impact to Moran's were they not able to use this courtyard would be minimal. They already have a large bar and restaurant not to mention a garden with tables and chairs at the front of the building. This will hardly change their business model or affect the number of customers and trade.

The impact to us on the other hand is majorly significant, I have highlighted some of problems above, and we will never be able to enjoy the quiet and comfort of our own garden. Having windows open would also be an issue. We will essentially be constantly restricted using our own land. We would constantly be battling with having to listen to large numbers of people drinking a few feet from us not to mention what could come with that. We are looking to start a family and have children to consider. I appreciate your time. I think we can all come to a mutually beneficial agreement as I am only asking for a small change to the license application to exclude this small area.

I would happily withdraw the application if use of the court yard at the back of the premises were removed from the application and we have guarantees that it will not be used by the pub for use with the public. As well as making sure the conservatory doors remained shut.