

# Cheltenham Borough Council

## Licensing Sub Committee – 29 September 2011

### Licensing Act 2003: Determination of Application for a Premises Licence

**Bath Road Market,  
252 Bath Road, Cheltenham, Gloucestershire, GL53 7NB**

#### Report of the Licensing Officer

#### 1. Introduction

1.1 The Licensing Act 2003 (the Act) allows applicants to apply for a premises licence at any time. In this case, an application was received on 11 August 2011 from Bath Road Market Ltd. in respect of Bath Road Market, 252 Bath Road, Cheltenham, GL53 7NB. A copy of the application is included at **Appendix A**. Location and site plans are attached at **Appendix B** and **C**.

1.2 The applicant has applied for a premises licence to permit:-

Sale/Supply of Alcohol	Sunday	11:00 - 18:00
Sale/Supply of Alcohol	Monday to Wednesday	10:00 - 18:00
Sale/Supply of Alcohol	Thursday to Saturday	10:00 - 20:00
Performance of Live Music	Sunday	11:00 - 18:00
Performance of Live Music	Monday to Wednesday	10:00 - 18:00
Performance of Live Music	Thursday to Saturday	10:00 - 20:00
Performance of Recorded Music	Sunday	11:00 - 18:00
Performance of Recorded Music	Monday to Wednesday	10:00 - 18:00
Performance of Recorded Music	Thursday to Saturday	10:00 - 20:00
Performance of a Play	Sunday	11:00 - 18:00
Performance of a Play	Monday to Wednesday	10:00 - 18:00
Performance of a Play	Thursday to Saturday	10:00 - 20:00

Entertainment will be both indoors and outdoors

Alcohol sales will be for consumption both on and off the premises

1.3 If this application is approved a premises licence will be issued.

#### 1.4 Implications

1.4.1 Financial

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1.4.2 Legal

A sub committee is required to discharge its duty and determine an application with a view to promoting the licensing objectives. These objectives, which are set out in section 4(2) of the Licensing Act 2003, are: (a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm.

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## 2. Application (Ref. 11/01563/PRMA)

2.1 Applicant: Bath Road Market Ltd.

2.2 Agent: N/A

2.3 Premises: Bath Road Market, 252 Bath Road, Cheltenham, GL53 7NB

2.4 Steps to promote the four licensing objectives that are identified in this application:

From the application form:

- Stringent ID checking prior to sale of alcohol 'Check 23' to be in place throughout
- A clear and legible notice outside the premises indicating the normal hours under the terms of the premises licence that licensable activities are permitted.
- Numbers of visitors attending the Market venue will be monitored and regulated accordingly.
- Promotions by vendors at the market for the sale of alcohol will be monitored and discouraged at all times.
- All fire exits will be clearly labelled and kept clear from restriction
- Adequate access for emergency personnel will be provided
- Music will be limited in loudness to represent no more than ambience / background.
- Music outside will only be appropriate when external market stalls are in operation. Music is not the attraction of the Market but only present to enhance the shopping experience.
- All traffic directly associated with the market is to be directed to the car park at the Norwood Arms pub. Stringent systems for loading and unloading have been put in place, all stall holders are given notice of these systems in the enrolment package and must agree to conditions laid out.

## 3. Responsible Authorities

**Gloucestershire Constabulary** – The Constabulary have agreed with the applicant that the following additional conditions will be applied to the licence:

- A CCTV system shall be maintained in good working order, shall record at all times the premises are open, and recordings shall be kept for a minimum of 14 days and be provided on DVD to Officers of the Council, Trading Standards or Police on request.
- The Challenge 25 (or equivalent scheme) shall be adopted, so that any customer attempting to purchase alcoholic liquor who appears to be under the age of 25 shall be asked for an accredited photographic proof of their age (e.g. passport, photo driving licence or a Pass approved card) and that a sale shall not be made unless this evidence is produced. This will only be treated as a breach where the customer subsequently turns out to be under 18 years of age.
- Signage shall be displayed on all exits in regular use by customers informing them that they are now entering a no drinking zone.
- Alcohol shall not be displayed within 4 metres of any entrance/exit door in regular use by customers

**Responsible Authorities** - No representations were received from the other responsible authorities

## 4. Interested Parties

Representations have been received from seven people residing in the vicinity of the premises, as interested parties under the Act. Those representations are attached at **Appendix D**

## 5. Local Policy Considerations

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- 5.1 The 2003 Act introduces a unified system of regulation through two new types of licenses: the premises licence and the personal licence (club premises certificates for qualifying clubs). The Borough Council, as the licensing authority, is responsible for licensing all outlets in the borough that sell or supply alcohol or carry out any other 'licensable activities'; public entertainment, theatre, cinema, or late night refreshment.
- 5.2 The new system is underpinned by four objectives: i) the prevention of crime and disorder; ii) public safety; iii) the prevention of public nuisance; and, iv) the protection of children from harm. The licensing authority must promote these objectives in carrying out its functions.
- 5.3 The Councils adopted licensing policy statement (Council 30/03/09) includes the following:
- i) **Each objective is of equal importance** and the licensing authority has developed policies relating to each objective. The objectives are the only matters to be taken into account in determining applications and applying conditions. **(Paragraph 1.2)**
  - ii) The licensing authority will only apply terms and conditions to licences which promote one or more of the licensing objectives and are relevant to the individual circumstances of the application. Conditions may be drawn from those set out in Appendix B and / or tailored to particular circumstances and they will be focused on matters within the control of the individual licensees and others granted relevant permissions. **(Paragraph 2.4)**
  - iii) The licensing authority will expect all individual applicants to address the licensing objectives in their operating schedule having regard to the premises, the licensable activities to be provided, the operational procedures, the nature of the location and the interests of the local community. The licensing authority expects that any conditions that are necessary will, in the first instance, be identifiable from prospective licensees or certificate holders' risk assessments.
  - iv) Applicants will have to translate their assessments into measures which promote one or more of the licensing objectives and record them in their operating schedule. **(Paragraph 2.5)**
  - v) The licensing authority will not impose any conditions unless, following the receipt of relevant representations, it has used its discretion at a hearing and been satisfied of the validity of those concerns. **(Paragraph 2.5)**
  - vi) The licensing authority will consider every application on its individual merits with regard to this policy statement and to the Licensing Committee's Probity Code (available at [www.cheltenham.gov.uk](http://www.cheltenham.gov.uk) under 'L' in the A-Z of services). The licensing authority will seek to balance the needs of the wider community, local community and commercial premises and activities, against those who may be concerned about adverse impacts from licensed premises. The views of vocal individuals or groups will not necessarily prevail over the general interests of the community. In every case the licensing authority will focus on disproportionate or unreasonable impacts of the licensable activities on people living, working and sleeping in the vicinity. **(Paragraph 2.7)**
  - vii) Cheltenham Borough Council, in its role as a licensing authority, wishes to do all in its power to protect the amenity of residents and businesses in the vicinity of licensed premises, and for these purposes 'vicinity' is taken to mean the immediate area around licensed premises. As the council is fully aware of the importance of the licensed trade in terms of the local economy and its culture and leisure aspiration, it will seek to work in partnership with all interested parties to ensure a mutual and productive co-existence. **(Paragraph 7.2)**

viii) When considering licence applications, the licensing authority will take into account the location of the premises and the type and construction of the building as well as the adequacy of measures proposed to deal with the potential for nuisance and / or antisocial behaviour having regard to all the circumstances of the application. **(Paragraph 7.4)**

ix) The licensing authority will consistently seek to ensure that its judgements about what constitutes public nuisance are balanced, as are decisions about any conditions that are considered necessary to prevent it. **(Paragraph 7.5)**

x) In reaching a judgement on the individual merits of applications, the licensing authority will have regard to the implications for nuisance generation and the impacts on residents that are posed by operating hours and types of regulated entertainment. The licensing authority will take into account requests for terminal hours in the light of the:-

- environmental quality,
- residential amenity,
- character or function of a particular area,
- nature of the proposed activities to be provided at the premises.

Consideration may, however, be given to imposing stricter controls on noise and disturbance from particular licensed premises, such as those in mainly residential areas. **(Paragraph 10.6)**

xi) Consideration may, however, be given to impose stricter controls on noise and disturbance from the particular premises, such as those in mainly residential area. **(Paragraph 10.6)**

## **6. National Guidance**

6.1 Guidance has been issued under Section 182 of The Licensing Act 2003.

6.2 Para 2.32 of the Guidance states “The 2003 Act requires licensing authorities (following receipt of relevant representations) and responsible authorities, through representations, to make judgements about what constitutes public nuisance and what is necessary to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable, The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.”

6.3 Para 2.33 of the Guidance states “Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.”

- 6.4 Para 2.35 of the Guidance states “As with all conditions, it will be clear that conditions relating to noise nuisance may not be necessary in certain circumstances where the provisions of the Environmental Protection Act 1990, the Noise Act 1996, or the Clean Neighbourhoods and Environment Act 2005 adequately protect those living in the vicinity of the premises. But as stated earlier in this Guidance, the approach of Licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be necessary.”
- 6.5 Para 2.36 of the Guidance states “Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping in certain circumstances, conditions maybe necessary.”
- 6.6 Para 2.37 of the Guidance states “Measures to control light pollution will also require careful thought. Bright lighting outside premises considered necessary to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, Licensing authorities and responsible authorities will need to balance these issues.”
- 6.7 Para 2.38 of the Guidance states “In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives.”
- 6.8 Para 9.8 of the Guidance states “A representation will only be relevant if it is likely to effect the grant of the licence on the promotion of at least one of the licensing objectives.”
- 6.9 Para 10.9 of the Guidance states “The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required by the Act itself.”
- 6.10 Para 10.11 of the Guidance states “The licensing authority may not impose conditions unless its discretion has been engaged following relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It may only then impose conditions that are necessary to promote one or more of the licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute.”
- 6.11 Para 10.13 of the Guidance on proportionality states “The Act requires that Licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. This rules out standardised conditions which ignore these individual aspects. It is important that conditions are proportionate and properly recognise significant differences between venues.”

- 6.12 Para 10.15 of the Guidance states with regard to duplication with other statutory provisions that "Licensing Authorities should only impose conditions which are necessary and proportionate for the promotion for the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties."
- 6.13 Paragraph 10.20 of the Guidance states there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount considerations at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/or different hours from those requested.

## **7. Licensing Comments**

- 7.1 Taking into consideration the merits of the application and representations made the committee must, in determining this application, take such steps as it considers necessary to promote the four licensing objectives. These being;
- (a) the prevention of crime and disorder,
  - (b) public safety,
  - (c) the prevention of public nuisance, and
  - (d) the protection of children from harm.
- 7.2 Furthermore, Members must have regard to the guidance issued by the Secretary of State and the Council's adopted policy statement.
- 7.3 In light of the above, Members can only give consideration to representations that relates to the likely effect the grant of this licence will have on the promotion of the licensing objectives.
- 7.4 As previously mentioned, seven representations from interested parties were received during the 28 day consultation period.
- 7.5 For the reason above, Members are to note that representations relating to parking should not be considered relevant unless it can be shown to pose a public safety risk or could compromise the protection of children from harm.
- 7.6 With regards to representation relating to crime and disorder, Members are to note that this is an application for a new licence where previously no such licence existed. Members must therefore decide what weight to add to crime and disorder representations bearing in mind that no evidence relating specifically to the premises would exist given that it is a new licensed premises, the fact the no objection from Gloucestershire Constabulary was made and the conditions agreed between the applicant and the constabulary.
- 7.7 Members are also to note comments relating to the existence or other licensed premises in the vicinity of the premises must not be considered relevant by virtue of the fact that each application must be determined on individual merits.
- 7.8 Noise emanating from deliveries and litter should be dealt with under the Environmental Protection Act to avoid statutory duplication.
- 7.9 In relation to the representation by Mr Siddall, Members are to note that Health and Safety is not a licensing objective and should not for that reason be considered relevant.

7.10 The steps identified in the operating schedule submitted with the application listed on 2.4 of this report will, where appropriate, become conditions attached to the licence if granted.

7.11 The Committee must have regard to all of the representations made and the evidence it hears. The Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives which can include:

- Granting the application as requested;
- Modifying the conditions and or times of operation attached to the licence; or
- Rejecting all or part of the application.

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**Background Papers**

Service Records

**Report Author**

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