

Cheltenham Borough Council

Licensing Sub Committee – 13 June 2012

Licensing Act 2003: Determination of Application for a Premises Licence

Bistrot Coco And Coco Beach 30 Cambray Place Cheltenham Gloucestershire GL50 1JP

Report of the Licensing Officer

1. Introduction

- 1.1 The Licensing Act 2003 (the Act) allows applicants to apply for a premises licence or a variation of an existing premises licence at any time. In this case, an application was received on 24th April 2012 from Mr Marcel Frichot in respect of Bistrot Coco And Coco Beach, 30 Cambray Place, Cheltenham, Gloucestershire, GL50 1JP. A copy of the application is included at **Appendix A**.
- 1.2 The applicant has requested a variation of an existing licence as follows:
1. Approve alterations by way of additional licensable facilities at first floor level.
 2. Extend all licensable activities 7 days a week until 02:30 save for provision of late night refreshment and opening hours until 03:00 7 days a week.
 3. Add dancing and facilities for dancing.

Licensable Activities (Every Day)

Existing:

Sale / supply of alcohol	10:00 – 01:00
Performance of live music	10:00 – 01:00 Indoors
Performance of recorded music	10:00 – 01:00 Indoors
Provision of facilities for making music	10:00 – 01:00 Indoors
Provision of late night refreshment	23:00 – 01:30 Indoors and Outdoors

Proposed:

Sale / supply of alcohol	10:00 – 02:30
Performance of dance	10:00 – 02:30 Indoors
Performance of live music	10:00 – 02:30 Indoors
Performance of recorded music	10:00 – 02:30 Indoors
Provision of facilities for dancing	10:00 – 02:30 Indoors
Provision of facilities for making music	10:00 – 02:30 Indoors
Provision of late night refreshment	23:00 – 03:00 Indoors and Outdoors

- 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. 12/00801/PRMV)

- 2.1 Applicant: Mr Marcel Frichot
- 2.2 Agent: Mr Michael Parrott, Maitland Walker Solicitors
- 2.3 Premises: Bistrot Coco and Coco Beach 30 Cambray Place Cheltenham GL50 1JP
- 2.4 Steps to promote the four licensing objectives that are identified in this application:

New conditions proposed by the applicant:

1. The rear terrace/garden shall be cleared of customers by 12.00 midnight

Existing conditions applicable to the licence which the applicant does not propose to change:

2. The 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.
3. The Challenge 21 (or equivalent scheme) shall be adopted, so that any customer attempting to purchase alcoholic liquor who appears to be under the age of 21 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.
4. A 30 minute "drinking up" time shall be provided to allow appropriate dispersal and use of lavatories.
5. The Bar(s) shall incorporate a display headed 'Driver's Drinks' that includes Alcohol-free Beer(s) and/or Alcohol-free Cider(s) and/or Alcohol-free Wine(s) and/or soft drinks.
6. In the areas outlined in blue on plan ref 1178-30, the sale and supply of alcohol shall be ancillary to the main use of that part of the premises being a bistrot/restaurant.
7. Live music will be acoustic only.
8. Notices shall be displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
9. The designated premises supervisor shall ensure the overall effective management of live or recorded entertainment, such as by monitoring noise levels outside the premises to ensure that noise from such activities is effectively inaudible inside neighbouring noise sensitive premises after 23:00 hours.
10. Entry doors shall be kept closed, other than for normal or emergency access/egress and not propped open during regulated entertainment events after 23:00 hours.
11. Doors providing access to the yard area shall remain closed, other than for normal or emergency access/egress during regulated entertainment events after 23:00 hours, as should windows on the outside of the premises.

2.5 A copy of the existing premises licence is attached at **Appendix B**

3. Responsible Authorities

3.1 **Gloucestershire Constabulary - No Representations Received**
Responsible Authorities - No Representations Received

4. Interested Parties

4.1 Representations have been received from:-
Mrs S Melville

4.2 A copy of Mrs Melville's representation is attached at **Appendix C**

4.3 Mrs Melville's representation relates to potential public nuisance caused by noise disturbance and potential crime and disorder caused by increased alcohol consumption

5. Local Policy Considerations

5.1 The 2003 Act introduces a unified system of regulation through two new types of licences: 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 Council's adopted licensing policy statement (Council 10th Feb 2012) includes the following:

5.4 The Council will carry out its licensing functions under the Act with a view to promoting the four licensing objectives, which 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. (Paragraph 4.1)

5.5 The aim of the licensing process is to regulate licensable activities so as to promote the licensing objectives. (Paragraph 4.2)

5.6 In determining a licensing application, the overriding principle adopted by the Council will be that each application is determined on its merits. Licence conditions will be tailored to the individual application and only those necessary to promote the licensing objectives will be imposed. (Paragraph 4.3)

5.7 Each of the four objectives is of equal importance and will be considered in relation to matters centred on the premises or within the control of the licensee and the effect which the operation of that business has on the vicinity. (Paragraph 4.5)

- 5.8 Through their operating schedule, applicants will be expected, where necessary, to demonstrate the positive steps taken to promote the licensing objectives. (Paragraph 5.3)
- 5.9 The operating schedule is a key document and, if prepared comprehensively, will form the basis on which premises can be licensed without the need for additional extensive conditions. The Council expects an operating schedule to indicate the steps that the applicant proposes to take to promote the licensing objectives. (Paragraph 5.4)
- 5.10 Applicants will be expected to propose practical measures to prevent disturbance to local residents and to indicate what action will be taken to prevent or reduce noise emanating from the premises.
- 5.11 The complexity and detail required in the operating schedule will depend upon the nature and use of the premises. For premises such as a public house where public entertainment is not provided, only a relatively simple document will be required. For a major public entertainment venue it will be expected that issues such as public safety and crime and disorder will be addressed in detail. (Paragraph 5.7)
- 5.12 The Council has discretion on whether to grant applications for licences and to impose conditions on granting and reviewing licences, only when relevant representations are made by “interested parties” or by “responsible authorities“(Paragraph 6.1)
- 5.13 The main purpose of this policy is to provide clarity to applicants, interested parties and responsible authorities on how the Council will determine applications for the sale/supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment and also to provide a basis for all licensing decisions taken by the Council over the next three years. It will also inform elected Members of the parameters within which licensing decisions can be made. (Paragraph1.3)
- 5.14 Through this policy the Council hopes that residents of and visitors to Cheltenham will be able to enjoy their leisure time safely and without fear of violence, intimidation or disorder while at licensed premises. (Paragraph1.4)
- 5.15 An effective licensing policy, alongside other initiatives, will work towards promoting the positive aspects of deregulation under the Act, such as promoting tourism, increasing leisure provision and encouraging the regeneration of the town centre as well as controlling the negative impacts such as increase in noise, nuisance, anti-social behaviour and crime and disorder. (Paragraph1.5)
- 5.16 It should be understood that this policy and the section 182 Guidance cannot anticipate every scenario or set of circumstances that may arise and as such there may be circumstances where the policy or guidance may be departed from in the interests of the promotion of the licensing objectives and where it is deemed appropriate to do so. In such cases the Council will give full reasons for departing from this policy. (Paragraph1.6)
- 5.17 The promotion of the licensing objective, to prevent crime and disorder, places a responsibility on licence holders to become key partners in promoting this objective. (Paragraph 5.11)
- 5.18 Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events. (Paragraph 5.12)

- 5.19 Capacity limits are commonly made a condition of a licence on public safety grounds but should also be considered for licensed pubs and clubs where overcrowding may lead to disorder and violence. If such a condition is necessary, door supervisors may be needed to ensure the numbers are appropriately controlled. (Paragraph 5.17)
- 5.20 Where relevant representations are received, the Council may attach appropriate conditions to licences, necessary to support the prevention of undue noise disturbance from licensed premises. Where premises remain open after midnight the licence holder, will be expected to provide facilities which are relevant to controlling noise and the patrons of those premises late at night. The Council also expects that premises which produce noise generating licensable activities are acoustically controlled and engineered to a degree where the noise from the premises when compared to the ambient noise level will not cause undue disturbance. (Paragraph 5.26)
- 5.21 Where the Council receives relevant representations, or where a responsible authority or an interested party seeks a review, the Council may consider imposing conditions to improve the management of the outside area or prohibiting or restricting the use of these areas in order to promote the public nuisance objective. (Paragraph 5.30)
- 5.22 Conditions may include maximum noise levels over particular time periods, the installation of acoustic lobbies; provision of signs, publicity and dispersal policies. (Paragraph 5.31)

6 National Guidance

- 6.1 Guidance has been issued under Section 182 of the Licensing Act 2003.
- 6.2 Para 2.33 of the Guidance states: “The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate 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 the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.”
- 6.3 Para 2.34 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 other persons living and working in the area of the licensed premises.”
- 6.4 Para 2.35 of the Guidance states: “Conditions relating to noise nuisance will normally concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the

community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.”

- 6.5 Para 2.36 of the Guidance states: “As with all conditions, those relating to noise nuisance may not be appropriate 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 area 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 appropriate.”
- 6.6 Para 2.37 of the Guidance states: “Where applications have given rise to representations, any 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 relating to noise immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave.”
- 6.7 Para 2.39 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. However, premises should have adequate dispersal policies (where appropriate) in place to ensure that customers leave the premises promptly and with minimal disruption to those in the surrounding area.”
- 6.8 Para 10.10 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 or any other person, 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 under the 2003 Act.”
- 6.9 Para 10.12 of the Guidance states: “The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.”
- 6.10 Proportionality: para 10.14 of the Guidance states: “The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided.”

- 6.11 Duplication with other statutory provisions: para 10.16 of the Guidance states: “If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be appropriate to impose the same or similar duties as conditions.”
- 6.12 Para 10.21 of the Guidance states: “Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.”

7. Licensing Comments

- 7.1 Members are to note that on 25 April 2012, the following amendments to the Licensing Act 2003 came into force:
- 7.2 The Licensing Authority became a Responsible Authority for premises and club premises applications and will have the power to refuse, remove or review a licence without representation from the Police or other Responsible Authority.
- 7.3 Primary Care Trusts and Local Health Boards also joined the list of Responsible Authorities and are able to make representations regarding licensing applications and apply for reviews, even though the licensing objectives have not been revised to include health.
- 7.4 The term 'interested parties' has been replaced by 'any other person' meaning that anyone can voice objections regardless of geographic vicinity, however any such objection must relate to one or more of the licensing objectives.
- 7.5 The Secretary of State has been required to make changes to the Licensing Act Regulations 2005 requiring the Licensing Authority to advertise applications 'in a manner which is prescribed and is likely to bring the application to the attention of the persons who are likely to be affected by it'.
- 7.6 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 attached to the licence; or
 - Rejecting all or part of the application.
- 7.7 In determining this application, Members must have regard to the guidance issued by the Secretary of State and the Council's adopted policy statement.
- 7.8 The Council has a statutory duty to promote the licensing objectives and therefore Members can only give consideration to representations that relates to the likely effect the grant of this licence will have on the promotion of those 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.

- 7.9 The application must be determined on its individual merits and consideration must only be given to this application and the individual premises to which it relates. For this reason, Members are to note that comments relating to other premises in the vicinity should not be considered relevant.
- 7.10 A plan of the internal layout of the premises is attached at **Appendix D**. This shows the unchanged plans for the basement and the ground floor as well as the proposed plans for the first floor.
- 7.11 A plan of the location of the premises is attached **Appendix E**.

Background Papers

Service Records

Report Author

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