

Cheltenham Borough Council Licensing Sub Committee-Alcohol and Gambling Minutes

Meeting date: 5 July 2023

Meeting time: 6.00 pm - 9.00 pm

In attendance:

Councillors:

Ed Chidley, Tim Harman and David Willingham

Also in attendance:

Vikki Fennell (Senior Lawyer) and Jason Kirkwood (Licensing Team Leader)

1 Election of Chair

Councillor Willingham was elected as the Chair of the committee.

2 Declarations of interest

Councillor Willingham declared that he had been on site visits to both the sites.

3 23/00788/PRMA 8 Imperial Square

The Chair explained how the hearing would proceed, then asked the Licensing Team Leader to introduce the item.

The Licensing Team Leader ran through his report, highlighting the main points which Members must take into account. He added the following :

- the officer report states that there were no representations from responsible authorities, but comments were received from Environmental Protection, following conversations with the applicant in relation to their planning application. As a result, one additional condition has been added;

- regarding the display of the public notice, and whether one should have been placed at the back as well as the front of the building, regulations refer to the premises in its entirety, and more than one notice is only required if the site boundary is more than 50 metres;
- a number of objectors' comments refer to planning issues, but these are quite separate from licensing considerations and cannot be taken into account.

There were no questions from the objectors or from the applicant.

Public Speaking

The first neighbour, who lives three doors down from the premises, made the following points:

- it is frustrating that the applicant's acoustics report has been submitted late, giving the objectors no time to evaluate it or seek advice;
- it wasn't initially clear what 'outside space' was being referred to in the acoustics report, but now clear it relates to the platform in the front carpark, built without planning permission;
- the applicant is therefore seeking a licence to serve food and alcohol in an active car park, from 10am until 2am in the morning. There is a large standing area, and patrons and staff will need to cross the car park which is used constantly by residents and businesses. There does not seem to have been any evaluation of this real safety issue;
- the report is wrong in stating there will be no discernible noise from the activity here – the current dull, background noise in Imperial Square and the Town Hall is unobtrusive, transitory, and doesn't interrupt sleep, compared with the noise of people talking, laughing and having fun until 2am. Voices carry and this will disturb residents' enjoyment of their properties;
- it appears that the criteria and standards set out in Cheltenham's licensing policy have not been complied with, including nuisance, outdoor tables and chairs, use of external areas, and obstruction of the highway;
- there are many questions arising from the acoustics report, including why there has been no assessment on Imperial Lane, the different impacts of live and recorded music, the omission of some rooms from the assessment, the omission of any assessment of the outdoor seating area after 11pm, and the assumption that insulation measures can be achieved in this GII* listed building;
- there is no mention of what exactly a private members' club is, and how this will be audited. It is important that enforceable limitations are in place to ensure full transparency;
- if Members are inclined to grant the licence, a number of suggested additional conditions are included in her representation.

The second neighbour, who lives to the rear of the premises, commented as follows:

- the main concern is noise and disruption from recorded and live music and from customers. The rear of the property is directly opposite residential property, and the music will be highly audible and disruptive; music from two nightclubs at some distance can already be heard;

- a proposed mitigating measure is to close the windows at 9pm but this will have little effect, as neighbours will have to suffer the noise until then and the windows are single-glazed;
- the acoustics report, submitted late in the process and allowing little time for consideration, refers to music being kept at levels to allow conversation but this is subjective. In addition, it tests the impact on 11 Imperial Square, with the impact of live music, cinema and customers on the rear of the premises not addressed;
- in particular, the Sophie Room, highlighted as being potentially noisy, overlooks Imperial lane, and it is not clear how effective mitigation measures will be.
- he asked Members to imagine this club opposite their own homes and the noise and disruption it would bring.

Applicant

The barrister, on behalf of the applicant, introduced the team, and made the following points:

- 8 Imperial Square is located on a busy thoroughfare in the town centre, and the proposed opening hours are well within the hours set out for this area in the Licensing Policy;
- the applicant has invested £2m in the premises and has a long-standing commitment and high profile; he is unlikely to allow behaviour which may lead to bad reviews or removal of his licence. The club has developed fluidly since the start of the pandemic, from a small private hotel to the current proposal, creating a unique Cheltenham venue and luxurious home from home, set over four floors. The red lines on the plans indicate the parts of the premises to be used for licensable activity;
- the front area, where the external seating space is situated, is within the curtilage of the premises, and can accommodate 22-30 persons at most. There will be no ingress or egress for patrons at the rear of the premises, other than in an emergency. Patron noise has therefore only been assessed on the front of the premises;
- the maximum proposed number of patrons – 225 – shows that this is not a nightclub, and as a private members' club, there will be a high level of control over the members and guests attending; the application has been crafted and built through operational structures and conditions, which draw heavily on model conditions, with Environmental Health's final condition incorporated. The operational management plan and dispersal document are both living documents which can be adapted should the need arise;
- expert advice has been sought throughout the pre-app process, as a result of which the application has been shaped and crafted with confidence, with no concerns raised by any responsible authorities;
- the acoustics report was presented within the required timeframe, and was carried out to assess objectively and independently the impact music and patrons noise levels at the premises, and to propose control measures to address any issues. It concluded that, with these controls, there would be no adverse noise impact from patrons, and music levels would be set through a

noise limiter setting exercise, to guarantee no noise break-out. If louder music was required, the applicant would need to consider secondary glazing.

She put neighbours' concerns to the author of the noise assessment, who confirmed that:

- his assessment didn't include live music specifically, but the levels set would apply to all music, whether live or recorded;
- the issue of patron noise was only assessed for the seating area on Imperial Square. Music outbreak only was assessed for the rear of the building;
- the Sophie room has a powerful sound system, but is very high spec and capable of producing high-quality sound at low volume;
- the noise limiter operates via an electronic system which controls the devices, and is relatively common;
- there are minimal concerns about noise outbreak from the cinema.

Member questions

In response to Members' questions, the following responses were provided:

- although the acoustic report was carried out on behalf of the applicant, the company produces reports for residents and businesses alike, and always takes the same approach; it needs to be honest to avoid a poor reputation;
- the assessment was submitted late, but has been scrutinised by Environmental Health officers who would have flagged up any inconsistencies;
- noise mitigating recommendations to the client are often harsher than the client would like, but are suggested to protect the client from future actions;
- the premises has a limited capacity, and operating as a private members' club commits users through a two-way contract to shape the dynamic and atmosphere; the system operates an effective business model which vets and decides who it wants to admit;
- membership is obtained via a carefully curated committee of successful, often art-centric individuals, who may propose members to help shape the club. The purpose of membership is to build an arts and culture community which ties in with Cheltenham's festivals;
- during festivals, members of the public will be able to become temporary members, but pre-booking will always be required through an existing member or a committee member, and people will not be able to book online or walk in off the street;
- a condition requiring the standard two days between application for membership and it being granted can be included if it gives some reassurance to neighbours;
- the applicant is happy to accept the condition that the rear of the premises is not to be used for customer access or egress;
- the proposed conditions concerning the sound-limiting device to be installed, in full working order at all times, and accessed only by staff, and the maximum number of patrons to be outside after 10pm from Monday to Sunday to be limited to eight have been suggested to alleviate neighbours' concerns;
- times for deliveries and handling refuse and recycling to the rear of the property is included in the operational management plan as best practice, but can also be considered as a condition;

- for busy times such as race week, two security staff for premises this size and with just one access would be considered normal, but more can be employed if needed;
- where the applicant refers to race week, they are primarily concerned with the Gold Cup Festival in March. For the other, smaller events, specific security measures won't necessarily be put in place, but it will be up to the committee to decide on the level of security required;
- the front of house team will monitor the noise and number of people outside at all times, to ensure it stays within the limits set out;
- the noise assessment is based on customers being directed to the Promenade to pick up a taxi if required; they will be accompanied if necessary or, if a private hire car is booked, will be kept inside until the car arrives.

The Chair gave the objectors the opportunity to make any further comments and ask more questions they may have. They asked for clarification of the noise levels outside the venue and what may be considered to constitute a public nuisance, and whether the provision of noise limiters means that no music at all will be audible outside. The applicant confirmed that the noise limiter setting is tested in all scenarios to ensure protection, with open and closed windows to neighbouring properties.

Member debate

In debate, Members made the following points:

- although there may be no requirement under the Licensing Act for members to sign in, some sort of ID, including a picture, may help maintain exclusivity and ensure the manager knows who is in at any given time;
- the papers state that the names and addresses of members will be kept on the premises at all times, and guests will also be included. These lists will be available on demand for inspection by the police;
- in race week, it may be advisable to have a card for ordering drinks – to avoid people who aren't signed in just standing outside and drinking without being signed in;
- it is assumed that there will be a rule for excluding or expelling anyone who is not behaving appropriately and damaging the club's reputation;
- it was helpful to visit the premises, which are very well fitted out, but the rear is very close to residents of Imperial Lane – hopefully the condition about access and egress will mitigate neighbours' concerns;
- some of the objections fall under planning policy, and cannot be considered under this licensing application;
- conditions to cover waste and recycling – particularly of glass bottles – at the rear of the premises are essential;
- Environmental Health can help with conditions on noise level setting to prevent any nuisance – taking into account the town centre location;
- every application must be considered on its own merits, and this club is very different from a standard nightclub. The applicant has every intention of operating in such a way as to not cause any public nuisance or upset the

neighbours, and adding to the conditions already mentioned should give reassurance without impinging on the applicant's business;

- if the licence is granted with extra conditions, and issues directly attributable to the premises arise, Environmental Health and the police can be contacted. There is no evidence yet as to how the premises will operate under the models; it is unfortunate that the acoustics report was produced so late, but the professional reputation of the sound engineer is at stake.

Before Members retired to consider the application, the Licensing Team Leader reminded them that any decision must make clear reference to the statutory guidance, and the Chair reiterated that any issues around planning or civil matters were not material to a licensing application. The applicant's barrister hoped that Members understood that the applicant aspired to providing a good venue and being a good neighbour.

The Committee adjourned for 25 minutes.

On their return, the Chair made the following observations:

- Imperial Lane is narrow and close to the premises, but is in the core town centre area, so there must be some expectation of noise in the vicinity. Other licensed premises in the area cannot be taken into account, and this application complies with licensing policy, proposing shorter opening hours than it could. Members have some sympathy with the neighbours, but there is no evidence to substantiate the objections;
- the applicant has introduced measures to mitigate concerns about noise, and objectors will need to take independent advice, or contact planning enforcement, local councillors and environmental health officers if any issues arise.
- the outside area to the front is private and not highly-trafficked; any issues here would be a civil or planning enforcement matter and cannot therefore be conditioned.

He said Members voted unanimously to grant the licence with mandatory conditions, plus the following additional conditions:

- no customers to enter or leave via Imperial Lane, except in an emergency;
- no more than eight customers to be permitted on the outside terrace after 22:00;
- for non-members, there will be no less than 24 hours between their application and admission being granted;
- deliveries and collection of waste/recycling should be between 08:00 and 19:30 only;
- no glass recycling between 23:00 and 07:00.

Finally, he suggested that as an advisory the applicant provide neighbours with a phone number, available 24 hours when the premises are open, and offer them a guided tour, as this could be helpful.

He advised that the applicant would receive the decision in writing within five working days, and that all parties had the right to appeal to the Magistrate's Court within 21 days.

4 23/00745/PRMA 33 Prestbury Road

The Licensing Team Leader introduced the report as published.

He explained at the Chairs request that planning and licensing issues are two different issues. A planning issue cannot be decided at the licensing committee.

The applicant was then asked if they had questions for the officer, which they did not.

The Chair explained to the applicant that this was their opportunity to address the objections that had been received.

The applicant then spoke and made the following points:

- If there is any anti social behaviour customers will be asked to leave the premises.
- They have good CCTV installed that records both sound and pictures.
- Acoustic panelling has been fitted.
- There will be clear signage asking people to leave quietly and with respect for the neighbours.
- They may hold quiz and board game nights but there will be no party nights.
- Bottles will be put in the recycling during office hours only as this can be noisy and disturb the neighbours.
- Drinks will not be allowed to be taken outside to the smoking area.
- For times when the establishment will be particularly busy there will be door staff employed.
- They are considering a parking scheme – ie a small discount when certain car parks are used, this will hopefully prevent a problem with local parking.
- The applicant made it clear that the premises will be a cocktail bar and will not be an all-night drinking establishment.
- The applicant has owned a business on the Prestbury Road for over ten years and is sensitive to the concerns of the objectors.
- The staff that will be employed have all got experience of working in busy town centre pubs and are confident in dealing with any issues.
- If there is any live music at the venue it will be played in the basement which is soundproofed.
- One of the objections addressed the amount of noise coming from the property during the renovations, the applicant stated that there is nothing that he could have done about that as it was due to the builders being noisy.
- The applicant is happy for their telephone number to be openly available so that they can be contacted if people want to.
- The aim of the establishment is to have a professional controlled bar where people can enjoy rums from around the world.

The responses to Member questions to the applicant are as follows:

- The race meetings that the applicant will be extending opening hours are January, March, October and November.
- The closing time of the establishment will be 01.00 during those times with drink up time being 00.30.

The matter then went to Member debate where the following points were raised:

- The applicant is clearly known to the residents so is not a stranger.
- There was a thought that perhaps the objectors had misunderstood what type of premises the application is for.
- Parking is not a material matter that the committee can give due regard to.
- The downstairs of the premises is far more insulated against noise.
- The objection in the bundle 1c has quoted the planning documents and these cannot be taken into account.
- Conditioning the recycling of the glass bottles seems to be the correct way to go.
- The suggested hours are well within the policy and the hours of race week are unlikely to cause a problem. The hours had been clarified so there is no issue there.
- The application has attracted both concern and support – the objectors will need to speak to their Ward Councillors and/or planning enforcement about the matters that they have mentioned in their representations.
- There have not been any representations from any responsible authorities.

The applicant was then given the final right of reply where he stated that there will be no football shown at the bar.

The Members then adjourned to consider the application.

On return the Chair announced that the licence was granted unanimously with the following additional conditions to be added:

- Door staff during race weeks.
- No drinks outside.
- Glass recycling between the hours of 08.30 and 17.30.

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

There were none and the meeting ended at 9pm.