

# Cheltenham Borough Council

## Licensing Sub Committee – 2 October 2023

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

#### The Quad and Nook, Quadrangle, Imperial Square, Cheltenham

#### Report of the Licensing Team Leader

#### 1. Introduction

1.1 The Licensing Act 2003 (the Act) allows applicants to apply to vary their premises licence at any time. In this case, an application was received on 14 August 2023 for a full variation of a premises licence from SH Retail Investments Ltd in respect of The Quad And Nook on Imperial Square. A copy of the application is included at **Appendix A**. A plan of the premises is included at **Appendix B**.

1.2 The variation sought is summarised as follows:

- 1.1.1 To vary the premises licence to extend the sale of alcohol and Late-Night Refreshment from 00:00 (midnight) until 02:00 every day.
- 1.1.2 To extend the opening times from 08:00 until 02:30.
- 1.1.3 To add the provision of regulated entertainment from 10:00 until 02:00 every day.
- 1.1.4 To add an additional hour to the standard times on the day when British Summertime commences.
- 1.1.5 Extension of hours is to apply solely to the Nook fifth floor.
- 1.1.6 To update the premises licence conditions following consultation with the Police Licensing team.
- 1.3 A copy of the premises' existing premises licence is attached at **Appendix C** for reference.

#### 1.4 Implications

- 1.4.1 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. 23/01279/PRMV)

- 1.4 Applicant: SH Retail Investments Ltd.
- 1.5 Agent: Elisha Collins from Poppleston Allen Solicitors.
- 1.6 Premises: The Quad and Nook, Quadrangle, Imperial Square, Cheltenham

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### **3. Responsible Authorities**

1.7 No representations were received from any of the Responsible Authorities

### **4. Interested Parties**

4.1 Eleven representations were received from interest parties included at Appendix D. Members should also refer to officer comments under paragraph 7 below.

### **5. Local Policy Considerations (Adopted in Dec 2020)**

5.1 The paragraphs below outline the relevant extracts from the authority's adopted Statement of Licensing Policy (Dec 2020). Member should refer to the full statement available on the authority's website for a full understanding of the local policy considerations.

5.2 Policy Vision Statement - We want Cheltenham to be a safe and clean town that offers a greater diversity in the night time economy that is less focused on alcohol and protects the quality of life for residents.

5.3 The main purpose of this policy is to provide clarity to applicants, responsible authorities, elected Members and other persons on how the authority 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 authority.

5.4 The objective of this policy is to:

- a) promote the four licensing objectives;
- b) ensure that the premises are appropriate for their proposed use;
- c) ensure the premises layout and condition is acceptable for the proposed use;
- d) ensure that the premises are being managed responsibly; and
- e) promote the policy vision statement.

5.5 This policy also seeks to promote the authority's wider priorities, in particular that:

- Cheltenham has a clean and well-maintained environment;
- Cheltenham has a strong and sustainable economy;
- Communities feel safe and are safe;
- People are able to lead healthy lifestyles; and
- Our residents enjoy a strong sense of community and are involved in resolving local issues.

#### **Licensing Objectives**

5.6 The authority 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

5.7 In determining a licensing application, the overriding principle adopted by the authority 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.

5.8 The authority will also have regard to wider considerations affecting the residential population and the amenity of the area. These include littering, noise, street crime and the capacity of the infrastructure.

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5.9 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.

**Core Hours for Licensable Activities**

5.10 The authority believes that licensable activities carried on within the core hours set out below will generally not have a harmful impact on the licensing objectives, address the concerns raised by local residents and businesses and are less likely to attract representations.

<b>Type of premises</b>	<b>Commencement Hour No earlier than</b>	<b>Terminal hour No later than</b>
Restaurants	10:00	01:00

5.11 Where relevant representations have been made, it will take the following matters into consideration when making a decision. These are not a definitive list and other matters may be considered:

- a) Operating schedules - demonstration of compliance with management standards to support each of the licensing objectives.
- b) Proximity to residential accommodation - the likelihood of the operation to have an adverse impact on the peace and quiet of local residents.
- c) Potential noise and nuisance from people leaving and entering the premises.
- d) Ability to demonstrate that systems in place to ensure timely dispersal of customers away from residential areas.
- e) Use of external areas for carrying out the licensable activities and potential noise impact on local residents.
- f) Proposed hours of the licensing activities and general opening times for the public – The use of winding down periods to enable more efficient dispersal.
- g) Type of use – alcohol led premises such as pubs, bars and nightclubs, off licenses and hot food take away premises are more likely to be associated with crime and disorder and public nuisance than other premises such as seated restaurants, theatres, cinemas and other cultural activities.
- h) Availability of public transport to assist in the timely dispersal of customers from the vicinity and to ensure safe travel home.
- i) The potential for contamination of the street environment through increased litter and other pollution of the streets by customers.

**6. National Guidance (August 2023)**

6.1 Statutory guidance has been issued under Section 182 of The Licensing Act 2003. Below is a summary of key extracts. Members should refer to the full document for further reference.

6.2 The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.

6.3 The licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

6.4 Each objective is of equal importance. There are no other statutory licensing objectives,

so that the promotion of the four objectives is a paramount consideration at all times.

### **Licence conditions – general principles**

6.5 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met;
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

### **Each application on its own merits**

6.6 Each application must be considered on its own merits and in accordance with the licensing authority’s statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

### **Determining actions that are appropriate for the promotion of the licensing objectives**

6.7 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

6.8 The authority’s determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

6.9 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that any condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

## 7. Licensing Comments

7.1 The Committee must determine this application on its individual merits with a view to promoting the licensing objectives.

7.2 The Committee must have regard to all of the representations made and the evidence it hears and 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; or
- Rejecting all or part of the application.

7.3 The overarching consideration for the Committee is the promotion of the licensing objectives. As such, the Committee must limit its consideration of the representations to those that are relevant to one or more of the licensing objections. The statutory guidance makes clear that “A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.”

7.4 Furthermore, this is an application to vary an existing premises licence, the remit of the Committee’s considerations is restricted to the merits of the variation. In other words, this is not an opportunity to review the existing, issued premises licence.

7.5 The Committee must determine this application with a view of promoting its own licensing policy. The Committee must not arbitrarily deviate from its own policy. When it decides to do so, clear recorded reasons must be provided in justification and explanation.

7.6 The Committee is to note that the proposed 02:00 terminal hour for the sale of alcohol contravenes the authority’s “Core Hours for Licensable Activities” policy that stipulates a terminal hour of 01:00 for restaurants (see 5.10). The policy goes on to provide guidance for further consideration by the Committee. The list of considerations is outlined at 5.11 above.

7.7 In relation to the representations, officers make the following comments:

7.7.1 A number of representations make reference to existing issues experienced by objectors from other licensed venues in the vicinity and the fact that this variation will exacerbate these issues. This application must be determined on its individual merits. The authority does not operate a cumulative impact policy and therefore the Committee is limited in what “cumulative effect” considerations it could consider relevant. On its individual merits, the committee should consider all the evidence in considering whether the grant of this variation is likely to lead to an adverse impact on any, or all, of the licensing objectives.

- 7.7.2 The impact granting the application will have on local property values is an irrelevant consideration for the Committee because this is not relevant to any of the licensing objectives.
- 7.7.3 A number of objectors question how noise from the premises will be managed and/or contained. It is significant that the Environmental Health Officer, recognised as the statutory expert on the prevention of public nuisance objective, has not submitted a representation. Similarly, in relation to representations referring to increased crime and disorder, Members are to note the police have not submitted any objections. A number of additional conditions are being proposed in consultation with the police. To what extent this is significant, is for the committee to determine in light of all the other information and evidence.
- 7.7.4 A number of representations referred to the fact that this application would turn the premises into a “nightclub”. Members are to note that the Licensing Act does not define premises by their use. There is a single licence type – premises licence – for all licensed venues.
- 7.7.5 A number of representations refer to a licence being granted. Members are reminded that this is a variation of an existing licence and consideration is limited to the merits of the variation not a review of the existing issued licence.
- 7.7.6 Parking becoming an issue as a result of this application should not be considered relevant because this does not relate to any of the licensing objectives.

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**Background Papers**

Service Records

**Report Author**

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