

Cheltenham Borough Council

Licensing Sub Committee – 2 October 2024

Licensing Act 2003: Determination of Application for a Premises Licence

Settebello Belgrave House Imperial Square Cheltenham

Report of the Head of Public Protection

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 13.08.2024 from FGLT LTD in respect of Settebello, Belgrave House, Imperial Square, Cheltenham, GL50 1QB. A copy of the application is included at **Appendix 1**.

1.2 The applicant has requested for a premises licence to permit:

Supply of Alcohol	Every Day 10:00 - 02:00
Performance of Live Music	Every Day 23:00 - 02:00
Performance of Recorded Music	Every Day 23:00 - 02:00
Late Night Refreshment	Every Day 23:00 - 02:00

1.3 A representation was received from the Environmental Health's Environmental Protection Team and the application must therefore be referred to a Licensing Sub-committee for determination.

1.4 Implications

1.4.1 Legal	<p>The legal background is contained within the body of the report.</p> <p>The decision of the sub committee can be subject to an appeal to the Magistrates' Court within 21 days of its decision.</p> <p>One Legal E-mail: legalservices@onelegal.org.uk</p>
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2. Application (Ref. 24/01380/PRMA)

2.1 Applicant: FGLT LTD

2.2 Agent: Berkeley Consultancy

2.3 Premises: Settebello, Belgrave House, Imperial Square, Cheltenham.

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

- Adoption of a Challenge 25 policy for alcohol sales.
- Membership of the town wide radio scheme for licensed premises.
- Adoption of a drugs policy.
- A risk based approach for arrangements relating to live music.

- Sound levels will be at ambient level.
- Notices asking customers to be respectful to neighbours in terms of minimising noise when leaving the premises.

2.5 In addition, the applicant has agreed a number of conditions with the police attached at **Appendix 2** of this report.

3. Consultation – Responsible Authorities

3.1 A representation was received from the Environmental Health’s Environmental Protection Team:

In relation to 24/01380/PRMA, Settebello, Belgrave House, Imperial Square, please find the below from Environmental Health.

The application includes the below:

- *Live and recorded music: 23:00-02:00*
- *Late night refreshments: 23:00-02:00*
- *Sale of alcohol: 10:00-02:00*
- *Opening hours: 09:30-02:30*

However, given the nature of the premises, I would propose that the below times are better suited, and would be in line with nearby businesses too.

- *Live and recorded music: 23:00-00:00*
- *Opening hours: 09:30-00:00*

Additionally, TENs could be utilised for times where extension of the licensable activities may be required.

3.2 An attempt at mediation was unsuccessful in finding a compromise between the Environmental Health Officer and the applicant’s agent. The Environmental Health Officer supplemented the above with the following, following the unsuccessful mediation:

Thank you for sending this over, we have now reviewed the applicants response for the premises licence application reference 24/01380/PRMA. Environmental Health will continue to be in the positioning of putting forward the following hours: Live and recorded music: 23:00-00:00 Opening hours: 09:30-00:00 As detailed by my colleague in previous correspondence, given the nature of the premises the times proposed are in our view better suited as well as being in line with nearby businesses too. Should the premises require additional opening/trading times, these could be covered by set regular non-standard timings e.g. new years eve. Additionally, TENs could be utilised for times where extension of the licensable activities may be required.

4. Local Policy (December 2020)

4.1 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

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e) promote the policy vision statement.

4.2 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.

4.3 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.

4.4 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.

Public Nuisance - Measures to limit nuisance

4.5 The authority will expect applicants to set out in their operating schedules the steps taken, or proposed to be taken, to deal with the potential for public nuisance arising from the operation of the premises.

4.6 Applicants should identify and describe through a risk assessment how these risks will be managed. Public nuisance could include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community.

4.7 Applicants will be expected to have included measures in their operating schedules that make adequate provision to:

- a) restrict the generation of noise within the premises and from activities associated with the premises in the vicinity, or from an open air site;
- b) limit the escape of noise from the premises or open air site;
- c) restrict noise emissions to below levels that could affect people in the vicinity going about their business, at work and when at home both while relaxing and while sleeping;
- d) minimise and control noise from customers arriving at the premises, or open air site outside it and departing from it;
- e) minimise and control noise from staff, contractors and suppliers and their activities;
- f) minimise and control noise from vehicles associated with and providing services to the premises or open air site and their customers;
- g) determine whether people standing or sitting outside premises are likely to cause obstruction or other nuisance;
- h) whether the premises are under or near to residential accommodation;
- i) the hours of the sale of alcohol in open containers or food for consumption outside the premises;
- j) measures to make sure that customers move away from outside premises when such sales cease;
- k) measures to collect drinking vessels and crockery, cutlery and litter;
- l) the extent and location of areas proposed to be set aside for the consumption of food and alcoholic drink and for smoking;
- m) whether there is a need for door supervisors to prevent or to control customers congregating in outdoor areas to smoke, consume food or drink (whether supplied from the premises or not).
- n) adequate measures to prevent the following arising from the proposed licensable activity that may cause disturbance to people in the vicinity:
 - litter, smells, fumes, dust, smoke, or other emissions;
 - street fouling;
 - light pollution.

- 4.8 The role of the authority is to maintain an appropriate balance between the legitimate aspirations of the entertainment industry and the needs of residents and other users of the town including businesses, workers, shoppers and visitors.
- 4.9 Playing of music can cause nuisance both through noise breakout and by its effect on patrons, who become accustomed to high sound levels and to shouting to make themselves heard, which can lead to them being noisier when leaving premises. Other major sources of noise nuisance are vehicles collecting customers, the slamming of car doors and the sounding of horns. These noises can be particularly intrusive at night when ambient noise levels are lower.
- 4.10 Where relevant representations are received, the authority may attach appropriate conditions to licences, necessary to support the prevention of undue noise disturbance from licensed premises. Where premises remain open after 23:00, 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 authority 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.
- 4.11 The provision of tables and chairs outside the premises, either on the highway or on private land, and the provision of beer gardens, can enhance the attractiveness of the venue. It can have the benefit of encouraging a continental style café culture and family friendly venues. However, late at night, tables and chairs and beer gardens can cause significant public nuisance to residents whose homes overlook these areas.
- 4.12 The ‘smoke free public places’ legislation in July 2007 has led to an increase in the number of people outside licensed venues. Where outside facilities are provided the authority expects applicants to provide details in their application of:
- the location of open air areas; and
 - how the outside areas will be managed to prevent noise, smell, or obstruction and nuisance to neighbours and the public.
- 4.13 Licensees and their staff are expected to have sufficient measures in place to prevent such problems arising including a suitable litter and waste management program to ensure that the area outside the premises is kept free of litter at all times.
- 4.14 Where the authority receives relevant representations, or where a responsible authority or an interested party seeks a review, the authority 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.
- 4.15 Conditions may include maximum noise levels over particular time periods, the installation of acoustic lobbies, provision of signs, publicity and dispersal policies.
- 4.16 A pool of model conditions has been prepared and individuals preparing operating schedules are at liberty to use these conditions, or volunteer any other measures(s) to promote the licensing objectives.

Policy Section 6 - Integrating Strategies & Specific Policies

Core Hours for Licensable Activities

- 4.17 The authority will avoid arbitrary restrictions on licensing hours that undermine the principles of flexibility and consideration of each application is on its own merit.
- 4.18 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.

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4.19 Furthermore, earlier closing will result in less alcohol consumption and drunkenness and would also be consistent with the ability to get crowds dispersed from the town centre.

Table 1: Core Hours for Licensable Activities

Type of premises	Commencement Hour No earlier than	Terminal hour No later than
Off licence	09:00	23:00
Restaurants	10:00	01:00
Theatres, cinemas and other performance venues	10:00	00:00
Pubs/Bars/Nightclubs	<u>Town centre</u> ¹ 10:00	03:00
	<u>Local Neighbourhood Areas</u> 10:00	00:00
Takeaways	n/a	04:00

4.20 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.

4.21 The hours of existing licensed premises will remain unchanged unless there are good reasons, based on the licensing objectives, for restricting these hours, and then they can be changed by a licensing sub-committee following a review of the premises licence.

¹ As defined in Appendix D.

5. National Guidance

- 5.1 Guidance has been issued under Section 182 of The Licensing Act 2003.
- 5.2 Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. This Guidance is therefore binding on all licensing authorities to that extent. However, this Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.
- 5.3 The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.
- 5.4 The licensing objectives 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.
- 5.5 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.

The role of responsible authorities

- 5.6 Responsible authorities under the 2003 Act are automatically notified of all new applications. While all responsible authorities may make representations regarding applications for licences and club premises certificates and full variation applications, it is the responsibility of each responsible authority to determine when they have appropriate grounds to do so.
- 5.7 Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area⁵. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

Hearings

- 5.8 Applicants should be encouraged to contact responsible authorities and others, such as local residents, who may be affected by the application before formulating their applications so that the mediation process may begin before the statutory time limits come into effect after submission of an application. The hearing process must meet the requirements of regulations made under the 2003 Act. Where matters arise which are not covered by the regulations, licensing authorities may make arrangements as they see fit as long as they are lawful.

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- 5.9 There is no requirement in the 2003 Act for responsible authorities that have made representations to attend, but it is generally good practice and assists committees in reaching more informed decisions. Where several responsible authorities within a local authority have made representations on an application, a single local authority officer may represent them at the hearing if the responsible authorities and the licensing authority agree. This local authority officer representing other responsible authorities may be a licensing officer, but only if this licensing officer is acting as a responsible authority on behalf of the licensing authority and has had no role in the licensing determination process. This is to ensure that the responsible authorities are represented by an independent officer separate from the licensing determination process.
- 5.10 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.
- 5.11 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are appropriate to promote the licensing objectives;
 - the representations (including supporting information) presented by all the parties;
 - this Guidance;
 - its own statement of licensing policy.

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

- 5.12 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.
- 5.13 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.
- 5.14 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.

Public nuisance

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- 5.15 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.
- 5.16 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 may 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. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.
- 5.17 Conditions relating to noise nuisance will usually 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 persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 5.18 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation 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.
- 5.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.
- 5.20 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate 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.
- 5.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in antisocial behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

6. Licensing Comments

- 6.1 The committee must determine this application with the view of promoting the licensing objectives. Members can do whatever they consider appropriate for the promotion of the licensing objectives, noting that each objective is of equal importance.
- 6.2 The committee is also required to have due regard to the statutory guidance issued under s.182 of the Licensing Act 2003 and the authority's Licensing Policy Statement – relevant extracts of both referred to above.
- 6.3 With this in mind, and taking into account this report and the evidence it hears, the committee can resolve to:
- 6.3.1 Grant the application as applied for; or
- 6.3.2 Grant the application with amendments the committee considers appropriate for the promotion of the licensing objections; or
- 6.3.3 Refuse the application.
- 6.4 In considering this case, officers make the following comments:
- a. Whilst all four licensing objectives are of equal importance, the principle objective relevant to this application is the prevention of public nuisance.
 - b. The authority's statement of licensing policy provides guidance to applicants on measures it should take to mitigate the impact their applications and operation on public nuisance. These are outlined at paragraph 4.7 of this report. Members should refer to these steps when considering the impact and mitigation of this application on the promotion of the licensing objections.
 - c. The committee should also be mindful of the core hours as outlined in the policy statement. For restaurants, the policy's terminal hour is no later than 01:00. At 4.20 of this report, the policy includes guidance for the committee on decision making where this part of the policy is not adhered to and drawn relevant representations.
 - d. The statutory guidance makes clear that responsible authorities are considered experts in their respective field. As such, the committee should attach appropriate weight to the objection from the Environmental Health Officer who is a responsible authority under the 2003 Act.
 - e. Members are reminded that, as a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas.
 - f. The statutory guidance provides the committee with broad discretion to consider what constitutes public nuisance and what is appropriate to prevent it based in the individual merits of the application.
 - g. The statutory does however provide general guidance stating:
 - h. "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 may 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. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health."
 - i. Upon considering all the evidence before it, the committee can decide to:

- Grant the application as applied for; or
- Grant the application with amendments the committee considers appropriate for the promotion of the licensing objections; or
- Refuse the application.

Background Papers

Service Records

Report Author

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