

Cheltenham Borough Council

Licensing Sub Committee – 3 October 2013

Licensing Act 2003: Determination of Application for a Premises Licence

The Ball Room, Bayshill Lodge, Cheltenham, GL50 1SY

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 12 August 2013 from Mr Rajah Miah in respect of The Ball Room, Bayshill Lodge, Cheltenham, GL50 1SY. A copy of the application form is included at **Appendix A**.

1.2 The applicant has applied for a premises licence for the following licensable activities at the dates and times shown:

| | | |
|-------------------------------------|-----------|---------------|
| Sale / supply of alcohol | Every Day | 08:00 – 01:00 |
| Provision of late night refreshment | Every Day | 23:00 – 01:00 |

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. 13/01442/PRMA)

2.1 Applicant: Mr Raja Miah

2.2 Premises: The Ball Room, Bayshill Lodge, Cheltenham, GL50 1SY

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

The applicant has stated that he intends to take the following steps:

- The Designated Premises Supervisor (DPS) shall maintain an active membership of the Nightsafe / Cheltenham Innkeepers' Association (or successor 'pubwatch' body).
- Six colour CCTV cameras will be installed covering the internal and external areas of the premises.

- The CCTV system shall be maintained in good working order, shall record at all times that the premises are open, and recordings shall be kept for 14 days and be provided to authorised officers of the council and police on request.
- On the first and second floors, alcohol will not be sold other than to persons taking table meals there and for consumption by such a person as ancillary to their meal.

3 Responsible Authorities

3.1 No representations have been received from responsible authorities

4. Other people

4.1 Representations have been received from 3 residents:

4.2 **Carmen Atkinson** has objected to the application on the grounds of potential noise disturbance and disorder.

4.3 **Mr Charles T. Lyons** has objected to the application on the grounds of potential noise disturbance.

4.4 **Mrs E.M.V. Willmett and Mr P. J. Willmett** have objected to the application on the grounds of potential noise disturbance.

4.5 Copies of all 3 representations are attached at **Appendix B**.

4.6 The locations of the residents' properties, and that of the premises, are shown on the location plan at **Appendix C**.

4.7 An internal layout plan of the premises is attached at **Appendix D**.

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 appropriate to promote the licensing objectives will be imposed. (Paragraph 4.3)
- 5.7 The Council 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. (Paragraph 4.4)
- 5.8 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)
- 5.9 Through their operating schedule, applicants will be expected, where necessary, to demonstrate the positive steps taken to promote the licensing objectives. (Paragraph 5.3)
- 5.10 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)
- 5.11 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. (Paragraph 5.6)
- 5.12 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)
- 5.13 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)
- 5.14 When addressing the issue of crime and disorder, the applicant should demonstrate that those factors that impact on crime and disorder have been considered. These factors may include:-
- (a) Underage drinking;
 - (b) Drunkenness on premises;
 - (c) Public drunkenness;
 - (d) Drugs;
 - (e) Violent behaviour; and
 - (f) Anti-social behaviour. (Paragraph 5.13)
- 5.15 In making their decision, regard should be given to the levels of crime and disorder in and around the venue; the level of compliance with conditions on existing licences; and any available evidence on crime and disorder issues. (Paragraph 5.14)
- 5.16 Annex D part 1 of the Secretary of State's revised Guidance sets out matters that may be relevant to the imposition of conditions relating to crime and disorder on licensed premises. Where relevant representations are received the Council may impose appropriate conditions on premises licences and club premises certificates in accordance with this guidance. (Paragraph 5.15)

- 5.17 Appropriate conditions include:-
- (a) adoption of a 'Challenge 21 or Challenge 25' policy;
 - (b) adoption of best practice guidance including our voluntary code of practice for Reducing Alcohol Related Violence (RARV);
 - (c) agreeing a prescribed capacity for the premises;
 - (d) requirements for an appropriate ratio of tables and chairs to customers, based on capacity, and for areas to be allocated permanently for seated customers in order to prevent overcrowding, which can lead to disorder and violence;
 - (e) a requirement for Security Industry Authority registered door supervisors to control numbers of persons entering the premises and to deny entry to individuals who appear drunk, disorderly or intent on crime;
 - (f) requirements that drinking vessels be made of toughened glass or plastic or other materials that do not form a sharp edge when broken, and that glass bottles are not passed to customers. This may be a particular concern if drinks are to be consumed outside premises;
 - (g) restrictions on drinking in areas within and outside the premises;
 - (h) limitations on the types of promotions of alcoholic drinks, so as not to encourage excessive drinking, or drunkenness;
 - (i) the maintenance of good order by the management, particularly where alcohol is supplied for consumption and where large numbers of people are admitted;
 - (j) dedicated communications networks between management teams, local police and other licensed premises to provide early warning of disorder;
 - (k) warning signs about crime prevention measures;
 - (l) clear policies and measures to prevent weapons or illegal drugs being brought onto the premises and measures to discourage the use of illegal drugs; and/or
 - (m) the installation and maintenance of appropriately sited closed circuit television cameras (CCTV) to be operational during the period of the licence, and other appropriate times both inside and immediately outside the premises which can provide images of a suitable quality for use as evidence. (Paragraph 5.16)
- 5.13 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)
- 5.14 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. (Paragraph 1.3)
- 5.15 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. (Paragraph 1.4)
- 5.16 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. (Paragraph 1.5)
- 5.17 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. (Paragraph 1.6)

Crime and disorder

- 5.18 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)
- 5.19 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)
- 5.20 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 appropriate, door supervisors may be needed to ensure the numbers are appropriately controlled. (Paragraph 5.17)

Public Safety

- 5.21 The Council in its role as Licensing Authority must try to ensure the safety of people visiting and working in licensed premises. The Council will need to be satisfied that measures to promote public safety including risk assessments, setting safe capacities and adequate means of escape are put in place and maintained, if not adequately provided for by other regulatory regimes. (Paragraph 5.17)
- 5.22 Consideration should be given to whether:
- (a) appropriate and satisfactory general and technical risk assessments, management procedures and certificates have been made available to the relevant responsible authority and to the Licensing Authority, that demonstrate that the public will be safe within and in the vicinity of the premises;
 - (b) the premises already has a licence or a fire certificate that specifies the maximum number of people that can attend it or be present and, if not, whether a risk assessment has been undertaken to assess the maximum number of people in terms of capacity in various parts of the premises, so that they can be operated safely and can be evacuated safely in the event of an emergency;
 - (c) there are procedures proposed to record and limit the number of people on the premises with opportunities for going outside and readmission;
 - (d) patrons can arrive at and depart from the premises safely;
 - (e) music, dance and performance venues will use equipment or special effects that may affect public safety (i.e. moving equipment, pyrotechnics, strobe lights, smoke machines);
 - (f) there are defined responsibilities and procedures for medical and other emergencies and for calling the emergency services, and/or
 - (g) the levels of compliance with conditions on existing licences relating to public safety.
- (Paragraph 5.18)
- 5.23 The Council seeks to encourage the use of toughened glassware and polycarbonate where appropriate in licensed premises. Where a relevant representation is received the Council will consider imposing a condition prohibiting the sale of alcohol in annealed glass containers and require the use of polycarbonate or other safer alternatives in order to promote public safety in licensed venues. (Paragraph 5.19)
- 5.24 The Borough-wide Nightsafe network encourages its members to work together to promote the licensing objectives in their premises by providing a forum for sharing information, disseminating best practice and meeting with representatives of the Council, the police and other responsible authorities. The Council actively supports the scheme and is keen to support the development of more schemes where there is a demand. (Paragraph 5.20)
- 5.25 Best Bar None (BBN) is a national award scheme supported by the Home Office and aimed at promoting responsible management and operation of alcohol licensed premises. It was

piloted in Manchester in 2003 and found to improve standards in the night time economy, with premises now competing to participate. The aim of BBN is to reduce alcohol related crime and disorder in a town centre by building a positive relationship between the licensed trade, police and local authorities. The Council will actively encourage licensed premises to sign up to the BBN scheme. (Paragraph 5.21)

Public Nuisance

- 5.26 The Council 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. (Paragraph 5.22)
- 5.27 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. (Paragraph 5.23)
- 5.28 The role of the Council 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. (Paragraph 5.24)
- 5.29 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. (Paragraph 5.25)
- 5.30 Where relevant representations are received, the Council may attach appropriate conditions to licences, appropriate 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)
- 5.31 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. (Paragraph 5.27)
- 5.32 More recently the introduction of the new ‘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 licensing authority expects applicants to provide details in their application of:-
 - (a) the location of open air areas;
 - (b) how the outside areas will be managed to prevent noise, smell, or obstruction and nuisance to neighbours and the public. (Paragraph 5.28)
- 5.33 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. (Paragraph 5.29)

- 5.34 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)
- 5.35 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 2.18 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 2.19 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 2.20 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 2.21 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 2.22 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 2.24 of the Guidance states: “An individual who engages in anti-social 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 and to respect the rights of people living nearby to a peaceful night.”
- 6.8 Para 10.6 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 10.8 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 10.10 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.”

7. Licensing Comments

- 7.1 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 appropriate 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.
- 7.2 In determining this application, Members must have regard to the guidance issued by the Secretary of State and the Council’s adopted policy statement.
- 7.3 The Council has a statutory duty to promote the licensing objectives and therefore Members can only give consideration to representations that relate 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.
- 7.4 Each application must be determined on its individual merits and consideration must only be given to this application and the specific premises to which it relates. For this reason, Members are to disregard comments relating to other nearby premises.

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