

Decision of Licensing Sub Committee Hearing 7 August 2023

Application for a variation to a premises licence for Glass House, Royal Parade, Eastbourne, BN22 7QA.

The hearing concerned a variation to a premises licence application for the Glass House, Royal Parade, Eastbourne, BN22 7QA, made by Shoe Simes.

The variation application was for an increase in the extent of the premises, the addition of licensable activities, the amendment of conditions (both removal and addition), and the extension of hours for licensable activities.

The application included the licensable hours for plays and films to be everyday indoors and outdoors between 10.00hrs - 23.00hrs. The licensable hours for late night refreshment indoors and outdoors to be Sunday to Thursday 23.00hrs - 00.30hrs and Friday/Saturday 23.00hrs - 01.30hrs. The variation for licensable hours for live music from existing 15.00hrs - 21.00hrs everyday indoors and outdoors, to Sunday to Thursday 10.00hrs - 23.00hrs and Friday/Saturday 10.00hrs - 00.00hrs indoors and outdoors. The variation for licensing hours for anything of a similar description from existing 15.00hrs-22.00hrs everyday indoors and outdoors to be everyday indoors and outdoors between 10.00hrs - 23.00hrs. The variation for licensable hours for sale by retail of alcohol from existing 11.00hrs - 22.00hrs on and off the premises, to Sunday to Thursday 07.00hrs-00.30hrs and Friday/Saturday 07.00hrs – 01.30hrs on and off the premises.

In discharging its functions, the Sub Committee considered the promotion of the relevant licensing objectives, the Council's own Licensing Policy, the Home Office Guidance, and the rules of natural justice.

It also took into account the information contained within the Specialist Advisor's report, presented by Dean Love. He explained that the Applicant had withdrawn the licensable activity of recorded music from the variation application as the intention was only to play incidental music (low level). He noted that no Responsible Authority had made a representation.

The Sub Committee considered the application and the written submissions provided prior to the hearing. It also considered the oral representations made at the hearing by the Applicant and her representative Niall McCann. Those were that the Applicant had organised two mediation meeting with local residents and local businesses and that the Applicant had carefully considered the objections raised. It was accepted that the application had extended the licensable activities to films, plays and late-night refreshments. The Applicant described her long background and experience in the hospitality sector and being a DPS. She explained that she was committed to the good running of the premises which would be primarily a family orientated food led business. It was explained that the application for the variation of the premises licence included the garden as well as the restaurant as it would be an indoor/outdoor experience. The Applicant stated that she considered that it was important that everyone felt confident that the premises would be well run. She stated that she was community minded and would use local suppliers, to support local businesses, and there would be focus on environmental issues. She explained that the building needed a considerable amount of investment.

The Applicant's representative contended that it was in no one's interests to have an unused building in the area and that the lack of the development had led to anti-social behaviour in the area. He explained that the Applicant considered the licensable hours of 22.00hrs to be untenable from a commercial perspective. He noted that no Responsible Authority had made a representation and contended that if the Police had had any concerns about crime and disorder they would have done so and if Environmental Protection had concerns about noise they would have done so. He stated that live music events would rarely happen. He pointed to the offered conditions in the written submissions which included the production of a Noise Management Plan. He pointed out the Applicant had offered to have no off sales of alcohol after 23.00hrs. He stated that anyone could review the premises licence if there were problems in the future or the Council could serve a noise abatement notice. He stated that the patio area would be shielded which would assist with any noise nuisance. He contended that the premises would not be a high-risk venue like a nightclub but that in any case the Applicant had produced a Dispersal Policy. He contended that there was no evidence that the variation to the premises licence would have an adverse effect on the wider area. He reiterated that the Applicant had listened to local residents and that those concerns were reflected in the offered conditions.

The Applicant was supported by a local resident, Ashley Deller-Merricks, who considered that the use of the premises would benefit the area which had been in decline with various issues of anti-social behaviour, as there would be someone present to sort out the problems.

A supporting representation was also made by Mina O'Brien.

In response to a question regarding what measures would be taken to soundproof the building it was stated that there would be the noise management plan and advice would be sought during the refurbishments. However, it was accepted that it was an old building and there would be practical problems with ensuring adequate soundproofing.

In response to a question about the Best Bar None scheme the applicant stated that she was committed to working closely with the Police and the Licensing Authority.

In response to a question about plays, the Applicant stated that there would be focus on community/charity events rather than this being seen as a commercial issue.

In response to a question about live music outside, the Applicant's representative clarified that there would be outside live music but offered to restrict the number of occurrences to no more than 15 times per year. The Applicant explained that live music was not the primary focus, and it was not planned that the premises would be a live music venue.

In response to a question about whether the Applicant's representative contended that the noise from the premises would be masked by the noise of the road, it was stated that the point was that there was some distance between the premises and the nearest properties, so not right next door.

There was a query as to why the Applicant thought there was a distinction between indoors and outdoors when the building would have large glass doors which it was contended would often be open.

In response to a question about the outside speakers, it was stated that the outside speakers would only be playing incidental music, at volumes no louder than speaking voices.

In response to a question about whether the Police had undertaken any research into the effect of the premises licence, the Applicant's representative explained that he could not comment on behalf of the Police.

The Sub Committee also noted the written representations made by those in support of the application.

Due regard by the Licensing Sub Committee was given to the written representations of those members of the public who objected to the application. Those included objections to the late-night opening related to the prevention of public nuisance in relation to noise. In addition, the objections related to the removal of the condition that alcohol should be served only with food. It was further contended that the granting of the application would lead to an increase in anti-social behaviour in the area.

Regard was also given to the oral representations made at the hearing by those who objected to the application.

Andrew Murdoch explained that he welcomed the premises but that his issue was with noise after 22.00hrs. He stated that the building was flimsy and he was concerned that it would not be sound proofed. He contested that there should be no outdoor speakers. He considered that the screens on the patio to shield the noise would be ineffective. He explained that he lived less than 50 metres away from the premises. He contended that comparisons with other premises was irrelevant as those mentioned had little or no outdoor space and that in any case those other premises closed earlier.

Dawn Bamforth explained that she was speaking about her own views and those of others who had made a representation. She stated that she welcomed the restaurant and the investment in the area but had serious concerns about the inappropriate late hours and about the supply of alcohol off the premises. She contended that the premises was in a quiet area and that the application was an attempt to have a music venue by stealth.

Neil Kirby stated that he had made a major investment in his hotel and was concerned about the effect on his business of the late hours and the noise. He explained that in his experience there would be very little business in relation to the sale of alcohol after 23.30hrs, and he objected to live music being allowed outside 15 times a year, since that was still too excessive.

Mark Holland stated that he was speaking on behalf of his own business, a local Bed and Breakfast, and others who had made representations. He expressed concern about the live music inside the premises as well as outdoors as the doors would be likely to be open and the noise would carry. He was not confident that it would not emanate from the premises. He also noted there would be noise after closing time as people left the premises. He was also concerned about the off premises sale of alcohol and contended it would mean that customers would remain in the area and be noisy. Reference was made to the Council's policy at part 13 in relation to noise being inaudible from the premises which he suggested would not be possible as the gardens were part of the premises, and he was concerned it might become a large beer garden. He raised concerns that the Applicant appeared to be pressuring the Licensing Sub Committee by suggesting that

unless she was granted the variation applied for that she would not sign the lease on the premises. He did not accept that the business would not be viable unless the premises licence was varied. He asked the Members to take account of the wishes of the existing businesses in the areas and not just the Applicant's wishes. He suggested that the Members should not compare these premises with other premises in Eastbourne but take each case on its own merits and that in any case there was no reasonable comparator.

Howard Simpson stated that he objected to variation of the licensable hours and suggested that the premises would not be a food led business but would be a bar. He stated that this was not a town centre location and that the premises would be inappropriately located. He was concerned about the likely detrimental effect on his business and was worried about poor guest reviews if the premises were noisy. He requested that the Members refuse the variation application.

The Applicant's representative, in closing remarks, stated that the Applicant was keen to work with local residents going forward regardless of the decision of the Licensing Sub Committee. He offered the opening hours to be Thursday to Sunday 07:00hrs – 00.00hrs and Friday/Saturday 07.00hrs to 01.00hrs. In relation to licensable activity for alcohol on premises sales to be Thursday to Sunday 07:00hrs to 23.30hrs and Friday/Saturday 07:00hrs to 00.30hrs. For off premises sale of alcohol to be 07:00hrs – 23.00hrs everyday. For live music the licensable hours would be 10.00hrs - 23.00hrs indoors and 10.00hrs - 22.00hrs outdoors with live music outside occurring no more than 15 times per year. He reiterated that no Responsible Authority had made a representation. He stated that it was important that the licence was varied so that the business could be viable and that it would primarily be a café/restaurant.

For the objectors, Andrew Murdoch, in closing remarks, reiterated that the premises was in a quiet residential area and that the main concerns were the noise from the premises and therefore the late-night licensable hours should be reduced to 23.00hrs.

In its deliberations the Sub Committee considered which decision would be appropriate and proportionate, from the options outlined in para. 8.1 of the Report.

Decision

The Sub Committee resolved to grant the variation of the premises licence but with the removal of recorded music from the premises licence and the following;

All conditions of the current licence will remain the same, apart from the following conditions shall be removed;

- Alcohol shall only be sold for consumption off the premises in conjunction with the sale of food for takeaway.
- A minimum spend of £8 of food for takeaway must be made before alcohol can be purchased.
- No beer, lager or cider with an ABV of 6.5% or above, will be stocked, displayed or sold.

For the sake of complete clarity, in relation to off premises sales, the following condition will be retained;

- All sales of alcohol, for consumption off the premises, to be made in a sealed container.

In addition, the following conditions shall be added to the premises licence;

- If any person buying more than one alcoholic drink looks under 25 ID will be required for everyone for whom a drink is being purchased.
- Anyone attempting to purchase alcohol for a minor will be removed and barred from the premises.
- Staff will be trained on how to deal with anti-social behaviour by the DPS.
- Customers shall not be permitted to bring into or consume alcohol on the Premises which has been purchased elsewhere.
- The premises licence holder shall look to participate in the local Bar None Scheme when operating.
- No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises, which gives rise to a nuisance.
- No off sales shall be provided in glass containers at any time.
- Members of staff shall have first aid and safeguarding training.
- Notwithstanding the mandatory condition imposed by Section 20 of the Licensing Act 2003 the exhibition of films pursuant to this licence will be restricted to films that have been classified as Universal (U) or Parental Guidance (PG) by the film classification body designated under Section 4 of the Video Recordings Act 1984.
- Live music shall not be played outdoors more than 15 times per year.
- Noise from the outside speakers to be monitored during all hours of operation. The premises licence holder to seek the advice of an acoustic expert on the setting of noise levels in order to ensure limits that comply with legislation.
- The premises licence holder shall ensure that crowd control measures are in place and implemented to minimise noise impacts especially during outdoor events at the premises.
- The premises licence holder shall have a dispersal policy and a copy of the premises dispersal policy shall be made readily available at the premises for inspection by police officer and/or an authorised officer of Eastbourne Borough Council.

- Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
- A direct telephone number for the manager of the premises shall be publicly available at all times the premises is open. The telephone number is to be made available to residents and businesses in the vicinity.
- Before any regulated live music is permitted to be played, the Premises Licence Holder shall have a Noise Management Plan in place regulating how live music is played and the Noise Management Plan shall be made available upon request, to any Responsible Authority.
- Consumption of alcohol shall not be permitted outside after 23.00hrs save for on the patio area hatched green on the approved plans.
- Alcohol consumed on the patio area hatched green on the approved plans shall only be consumed by patrons seated at tables.
- Substantial food and non-intoxicating beverages, including drinking water, shall be available at the Premises.
- During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the gardens of the premises, and that this area shall be regularly swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.

The opening hours for the premises shall be 07.00hrs – 00.00hrs Sunday to Thursday, and Friday/Saturday shall be 07.00hrs -01.00hrs.

The licensable hours are varied to,

For plays and films to be everyday indoors and outdoors between 10.00hrs - 23.00hrs.

For late night refreshment indoors and outdoors to be Sunday to Thursday 23.00hrs - 00.00hrs and Friday/Saturday 23.00hrs - 01.00hrs.

For live music to be 10.00hrs - 23.00hrs indoors and 10.00hrs - 22.00hrs outdoors, everyday.

For anything of a similar description to be everyday indoors and outdoors between 10.00hrs - 23.00hrs.

For sale by retail of alcohol on the premises to be Sunday to Thursday 07.00hrs- 23.30hrs and Friday/Saturday 07.00hrs – 00.30hrs.

For sale by retail of alcohol off the premises to be 07.00hrs -23.00hrs, every day.

Reasons for decision

The Licensing Sub Committee in making its decision on the application, by modifying the conditions and licensable hours, assessed the evidence of both the risks and benefits of the variations to the premises licence.

Careful consideration was given to all the representations made, both in support of and in objection to the application.

The Members understood that those objections related to the licensing objectives of the prevention of public nuisance and the prevention of crime and disorder.

Whilst appreciating the concerns of the objectors, the Licensing Sub Committee took into account in making its decision the concessions made by the Applicant, both in the written submissions and during the course of the hearing, in offering to reduce the late-night times of the licensable activity and the additional offer of appropriate conditions.

The Licensing Sub Committee considered that the Applicant had shown a willingness to listen to the concerns of the objectors and the Members were content, on balance, that should any issues with, for example noise arise in future, she would be amenable to addressing those forthwith with the local residents and businesses.

It was noted that no Responsible Authority had made a representation.

The Licensing Act 2003 provides a right of appeal to the Magistrates' Court in respect of a variation application. An appeal must be commenced by notice of appeal being given by the appellant to the Magistrates' Court within a period of 21 days beginning on the date the appellant is notified in writing of the decision of the Licensing Sub Committee.

The decision shall be provided in writing to all parties within five working days of the hearing.

The variation of the premises licence will take effect from 18 August 2023.

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