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DACORUM BOROUGH COUNCIL

LICENSING OF ALCOHOL AND GAMBLING SUB-COMMITTEE

7 DECEMBER 2021

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Present –

MEMBERS:

Councillors: Hearn (Chairman), Bhinder and Link

OFFICERS:

Alex Kowalski	Trainee Solicitor
Nargis Sultan	Legal Governance Team Leader (Observation)
Phil Wortley	Licensing Officer
Janet Hewitt	Corporate and Democratic Support Officer (Minutes)

OTHER PERSONS PRESENT:

Simon Voyse (Premises Licence Holder)
Rob Edge (Licence Holder's Representative)
Michael Pearce (Objector)
Alexander Pearce (Objector)

The meeting began at 2.00 pm.

1. MINUTES

The minutes of the last meeting held on 9 November 2021 were agreed by the members present.

2. APOLOGIES FOR ABSENCE

There were no apologies for absence.

3. DECLARATIONS OF INTERESTS

There were no declarations of interests.

4. PREMISES LICENCE APPLICATION UNDER THE LICENSING ACT 2003

The Sub-Committee were required to consider an application to a premises licence for the following premises:

Musette Café Limited
Church Farm, Station Road
Aldbury
Hertfordshire

HP23 5RS

The Chairman introduced everyone.

The Chairman asked if all legal requirements had been complied with. P. Wortley confirmed they had. The Chairman asked P. Wortley to introduce the application.

The application was for a grant of a premises licence in respect of the sale of alcohol. The application has been submitted in the correct format, advertised as required (28 days) and all fees have been paid.

The application is for sale of alcohol by retail from 11.00 am to 23.00 hrs Monday to Sunday. The premises opening hours are 8:30 am to 23:00 hrs Monday to Sunday. There is one objection against the application and five in support.

The Chairman asked if there were any questions and there were none.

The Chairman then asked the Applicant to introduce themselves and who representing the café. Simon Voyse is the Applicant and Rob Edge is the Applicant's Representative.

The Chairman then asked the Objectors to introduce themselves. Micheal Pearce and his wife Alexander Pearce and who own Church Farm House which is immediately next door to the café.

The Chairman then asked the Applicant to introduce the application. Rob Edge introduced the application as set out in the Licensing Act 2003. The Council's statement of Licensing Policy and the Home Office Guidance issued under Section 182 of the Act. R. Edge stated that in accordance with 9.5 of the Council's statement of Licensing Policy, R. Edge has attempted to mediate with M. Pearce on 16 November and again on 24 November. The applicant has invested in excess of £35,000 in the refurbishment of the café and kitchen ensuring it is state of the art and has a fully compliant extraction system in place to remove odours and reduce noise. The premises have been inspected twice by Environmental Health and have received a five star award for their hygiene practices.

The refurbishment has transformed a once dull building into a beautiful focal point that people will talk about for all of the right reasons. The premises has also created job opportunities for local people. Mr Voyse has always tried to make the business something special for his patrons, whether they are cyclists or local families and the farm and neighbours. This can be seen by the letters of support from local residents for the granting of this application. The intention is for the café to set a benchmark for a contemporary "Shabby Chic" place in the area and beyond offering fine wines and a selection sparling drinks. The Licensing of this premises is something that has been taken very seriously by the owners. The owners employed a Licensing consultant to complete the process and offer their guidance on compliance with the Licensing Act 2003.

It is intended to be a go to place for families as a hub for the community. It should be noted that of the eight responsible authorities, none considered it necessary to object or amend any of the conditions submitted within the application. The applicant will always demonstrate due diligence in all it does to uphold the Licensing objectives and this has been demonstrated by a number of TENS that have been held since the opening of the premises and there have not been any concerns raised by the Police or Environmental Health. There were no noise complaints received by the owners.

The following documents and Policies are in place at the premises in order to uphold the Licensing objectives and ensure that it is a well-run, safe and compliant premises.

- A Noise Monitoring Plan
- Challenge 25 Policy and Signage
- A Refusals Log
- A DPS Authorisation Form
- Staff Training and Operations Manual
- A Letter from the Noise Consultant who is providing advice to the applicant

There is a strong management team within the premises who have always consultant with responsible authorities and have been fully accepting of any advice given by these bodies. It should be noted that regulated entertainment is de-regulated between the hours of 0800 and 2300 which is when this premises will operate. It is note a vertical drinking establishment and that it does not operate within the night time economy. It is a small café offering high quality food and beverage for a select clientele.

The Chairman asked what the capacity of the café is. R. Edge replied that the number of seats within the café are 49.

The Chairman asked if the Members had any questions.

The Chairman then asked Mr Pearce to make his statement.

M. Pearce started by saying that he had not received any communication from R. Edge apart from the original submission by Mr Wortley saying that they would like to speak with them to see if they could come to an agreement.

M. Pearce said that his family owned the property which is immediately adjacent to Musette Café and it is the property which is most affected by the café's activities. The noise and disturbance from the café already impact on their lives and the enjoyment of their home. M. Pearce would like the Sub-Committee to understand that when you stand outside of their back door and take 13 paces you would receive the large doors of the café. There are two further stable doors, which are frequently used by customers. In warm weather, these large doors are open for ventilation allowing noise from within the café to be clearly audible in their garden. The café building is situated in a converted stable with no sound insulation. There are smells of cooking from the commercial kitchen which is one of the public nuisance points that has been made.

Although the applicants claim that the operation of the café can be managed to comply with any regulations, their experience is that this is not the case. In the past, the events that have occurred have continued outside of the hours permitted. The tables and chairs that have been set up outside of the café are in breach of the conditions. On 15 November the Licensing Officer forwarded a letter from the applicants agent saying that the agent for the applicant of the Musette Café has requested the opportunity to mediate to establish if there is any way to resolve their concerns. The attached letter did not contain any mention of the particular concerns that they had raised in their letter and asked them to withdraw their objection.

M. Pearce responded by a letter dated 17 November which said they would be very willing to discuss the matter upon receipt of any proposals which the applicant might have to address their objections. There has been no response to the letter.

M. Pearce is therefore very concerned that the applicant has no intention of making any steps to mitigate the further impact which the granting of permanent Alcohol Licence will have on their enjoyment of their house and garden. The café is already causing a nuisance to them because of the noise within and outside of the building and believe that if a

permanent Licence is granted then the café will become a regular drinking venue and completely different to the one-off birthday parties which have been subject to temporary Licenses up to date. M. Pearce therefore asks that the Sub-Committee does not subject them to further nuisance by granting an Alcohol Licence to the café.

The Chairman asked the Members if there are any questions.

Councillor Bhinder asked or clarification of which is M.Pearce's property on the plan on page 33 of the report which was provided. Councillor Bhinder asked R. Edge why there was no correspondence with Mr Pearce.

R. Edge responded to say there were two letters of correspondence and the agreement with S. MacDonald from the Licensing Authority was that rather than R. Edge sending anything direct to the owners that it was all sent to the Licensing Authority. One letter dated16 November was sent asking for mediation and explaining the situation and further letter was sent 24 November and R. Edge read the first paragraph to the Committee.

Councillor Bhinder asked a question regarding page 47 and potential issues are mentioned such as noise, odour, litter waste, street fouling and light pollution. The noise controlled is mentioned further on in the report but nothing of the other matters. Councillor Bhinder asked the applicant to be more specific on noise control and asked what was meant by the carrying out regular monitoring checks, is there any science with this or is it just subjective.

R. Edge responded saying that the documents lodged pack the document at Annex A was the noise management plan. It is a general noise management plan which is used for most premises and in the table on page 3, generally a premises will pick certain premises and locations referred to as receptor points so that when music is being played or a children's party then the distance from the premises from the receptor points is recorded. As can be seen from the TENS the majority of the events are people coming to talk/speak about cycling, birthday parties etc and this is when the noise management plan would kick in. Another element is if there is a condition on the Licence which says doors and windows will remain closed except for access and regress to reduce noise from the premises but now we have current Covid guidelines which are to try and keep doors open as much as possible to circulate air then again the noise management will apply as it accommodates this.

The Chairman asked P. Wortley regarding the Covid restrictions. P. Wortley confirmed that we have to follow the Government guidelines and it does state that doors and windows are kept open where possible, however, this will only be as long as the Covid rules are in force.

The Chairman asked about the outside seating and the additional noise that is created.

R. Edge replied that during the period of Covid the premises were encouraged to use outside seating space but there is a small decked area at the front of the building and people do sit there and drink their coffee etc. and sometimes dog walkers will sit outside.

The Chairman asked if the outside seating would be included for evening events.

S. Voyse stated that they had invited the Planning Enforcement team over to look at everything that was being done and the seating the Mr Pearce was referring to is just immediately on the car park next to the deck but the Planning Enforcement team confirmed that this was allowed 56 days of the year as part of permitted development. The decked area is on the other side of the building and are in no way visible to Mr Pearce's house and also a 2m solid brick wall has been erected between the café and Mr Pearce's house.

Councillor Bhinder said that noise is split into two basic categories – Amplified noise (music, speakers) and People. What is being done to mitigate both types of noise? Also what is being done to address the other issues such as odour, light pollution etc.?

R. Edge replied that they have been addressed just not within that document. Within the Operating Schedule on different waste such as bottles etc., there is a condition being offered in that saying that refuse will not be taken out between certain hours so as not to cause a nuisance. The light pollution and odour would have been inspected by Environmental Health when they did the food registration and they did not raise any concerns.

Mr Voyse also advised that regarding the food odour and the extraction, and which is shown in the plan on page 33, the extraction in the kitchen is at the southern-most end of the building which is a fair distance from Mr Pearce's house.

The Chairman asked if Mr Pearce had any questions.

Mr Pearce advised that he had submitted noise recordings from the cafe taken in 2019 and the main objection he has is that to date there have been 10 events in a year and the granting of the Licence will be of a very different nature. This Licence will beyond when the Covid restrictions have been lifted. Mr Pearce did not receive anything from the applicant and the noise recordings were submitted but they were told that were not relevant.

The Chairman then asked the Members if there were any further questions for the applicant or objector.

Councillor Bhinder asked about the timing of 11.00 pm.

R. Edge replied that this is partly to do with the cost to make a variation to a Licence, if you wish to add hours at a later date it is the same as applying for a new Licence, for example if Mr Voyse had applied for 9.30 pm but then found some time later that people wanted to attend a party but found that 9.30 pm was too early to finish he would then have to go through the whole process just to add an hour and a half. When a premises Licence is granted from 11 am to 11 pm it doesn't mean that it will sell alcohol the whole time it just means they have the ability. The café at present closes on one day a week but it is still Licensed for that day. Apart from cyclists there are other people from the farm and village who visit the café who may enjoy a glass of wine with their lunch, so it's about future proofing the business.

Councillor Bhinder just wanted to note that there is a difference between Planning and Licensing as some items that have been mentioned are planning issues.

R. Edge then summarised that the first key point was that there was no engagement on any planning elements as Mr Voyse is liaising directly with the Planning Officers and the decision was made that he would apply for the premises Licence and then go through the Planning application for the conditions on planning. R. Edge believes that he did everything to mediate with the objector and apart from the noise management plan, the other documents that were produced and a noise consultancy firm were instructed to act on behalf of the premises to offer advice and are still working with the premises. Comprehensive policies and procedures are in place to uphold the Licensing objectives. Five local people wrote in support of this venture showing that they have faith in the applicant to do the right thing. There is a strong demonstration by the applicant for due diligence and upholding the Licensing objectives. Mr Voyse is very mindful of the fact of consideration.

Mr Pearce asked how he would future proof himself if the Licence was granted as he would have no further say and asked that the application is not granted.

The Chairman asked everyone to leave whilst the Committee considered their decision.

The meeting ended at 2.50pm

Decision:

In the present case, the Sub-Committee is required to consider whether they should grant the new premises licence. When determining an application for the grant of a premises licence (under section 18 of the Licensing Act 2003), the Sub-Committee must, having regard to relevant representations made in respect of that application, take such of the following steps as it considers appropriate for the promotion of the licensing objectives:

Options Considered:

(a) grant the licence subject to any applicable mandatory conditions, and conditions consistent with the operating schedule modified to such extent as the authority considers appropriate for the promotion of the licensing objectives;

(b) exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) refuse to specify a person in the licence as the premises supervisor;

(d) reject the application.

The Sub-Committee has reserved to grant the application for a premises licence.

The Sub-Committee has given particular consideration to the objector's concerns regarding public nuisance, consisting of mainly noise disturbance at the Premises, from the licensable activity on residents in the area around the Premises.

The Sub-Committee is satisfied that the applicant shall promote the licensing objective of the prevention of public nuisance and does not believe that the effect of the licensable activity on residents shall be disproportionate and unreasonable.

The Sub-Committee notes that after considering the objector's concerns, the applicant has sought the advice of a noise management consultant to develop a noise management plan to continue to look for improvements and control noise emissions from the Premises.

The Sub-Committee further notes that there were no representations from responsible authorities and there were five representations in support of the application from other interested parties.

Moreover, the Sub-Committee also notes from Annex 2 of the Licence that the Licence contains conditions and obligations upon the Licence Holder to prevent public nuisance from occurring and this is deemed sufficient to meet the concerns of the local residents, as such, no additional conditions shall be attached. The Licence Holder is reminded to maintain these obligations.

The Sub-Committee confirms that the Licensing Authority has statutory responsibilities under the Licensing Act 2003 to review the granted premises licence, at the request of a

responsible authority or any other person, should there be relevant grounds concerning one or more of the licensing objectives in the future.

Appeal:

A right of appeal is conferred by the Licensing Act 2003. The time within which any such appeal may be brought to a magistrates' court shall be 21 days from the date on which you were notified by the Licensing Authority of this decision.

Costs:

If an appeal is lodged and the appellant is successful in their appeal, it is the intention of the Licensing Authority to resist any application for costs.

If an appeal is lodged and the appellant is unsuccessful in their appeal, it is the intention of the Licensing Authority to apply for full costs to be awarded to the Licensing Authority in respect of the appeal.