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LICENSING & APPEALS SUB-COMMITTEE

Minutes of a Meeting held on Wednesday 6 December 2017 in the Council Chamber, Town Hall, Matlock at 2.30pm

PRESENT

Councillor Jean Monks - In the Chair

Councillors Joyce Pawley and Graham Elliott

Katie Hamill (Senior Solicitor), Eileen Tierney (Licensing Manager) and Annette Reading (Democratic & Electoral Services Assistant)

Michelle Hazlewood, John Gaunt & Partners
Gareth Jonathan Clark, Applicant
Luke Taylor, Business Partner Rubigo

Steven Hampson, Objector
Roman Jivkov, Objector
Mark Greatorex, Objector

Councillor Sue Bull and Stacy Lindfield (Senior Licensing Assistant) attended as observers

1 Member of the public

243/17 – ELECTION OF CHAIRMAN

It was moved by Councillor Joyce Pawley, seconded by Councillor Graham Elliott and

RESOLVED
(Unanimously)

That Councillor Jean Monks be elected as Chairman of the Sub-Committee

244/17 – LICENSING ACT 2003: APPLICATION FOR PREMISES LICENCE AT RUBIGO, 68 DALE ROAD, MATLOCK DE4 3LT

The Sub-Committee considered an Application for a Premises Licence made by John Gaunt & Partners on behalf of Gareth Jonathan Clark, in respect of premises at 68 Dale Road, Matlock DE4 3LT

The Chairman invited the participants to introduce themselves, asked whether any party wished the Committee to consider the application in private and confirmed that the Committee was quorate.

The Licensing Manager gave an outline of the application.

The Committee and the other parties were afforded an opportunity to request clarification of the Licensing Manager's report.

The Objectors were invited to make their representations to the Committee.

The Committee had an opportunity to question the objectors. The representative of Rubigo, Michelle Hazlewood of John Gaunt Solicitors, was also afforded the opportunity to request clarification of any points.

Ms Hazlewood then presented her case on behalf of Rubigo calling Mr Gareth Clark and Luke Taylor, his Business Partner, as witnesses.

The Committee had an opportunity to question the Rubigo representatives.

All parties were afforded an opportunity to request clarification of any points.

The Committee members confirmed that they had sufficient information to make a decision and withdrew into private session to discuss their findings.

245/17 – DECISION

The Sub-Committee resumed in public session.

It was moved by Councillor Jean Monks, seconded by Councillor Joyce Pawley and

RESOLVED

(Unanimously)

That having considered all the evidence put before it the Sub-Committee has determined that:

1. Delegation of authority be given to the Licensing Manager to Grant the application with conditions.
2. To ensure the promotion of the licensing objectives the imposition of the following conditions on the licence is necessary:
 - (i) The Sale of Alcohol for consumption on and off the premises shall be permitted Mondays - Sundays between 10 a.m. and midnight.
 - (ii) The Provision of live music and recorded music (indoors) shall be permitted Mondays - Sundays between 10 a.m. and midnight.
 - (iii) The non-standard timings for the sale of alcohol and the provision of regulated entertainment shall be permitted each year from 10 a.m. on 31st December until 1 a.m. on 1st January.
 - (iv) The provision of Late Night Refreshment shall be permitted Mondays-Sundays between 11p.m. and Midnight.
 - (v) The non-standard timings for Late Night Refreshment shall be permitted each year from 11p.m. on 31st December until 1 a.m. on 1st January.
 - (vi) The Premises shall be open to the public every day of the

week from 8 a.m. to allow for the sale of breakfasts, morning coffee, pastries etc; and shall only be open for the purpose of allowing licensable activities to take place from 10 a.m. until 30 minutes after the sale of alcohol terminal hour. In the case of non-standard timings the premises will be closed to the public 30 minutes after the sale of alcohol terminal hour.

- (vii) The Mandatory Conditions will be imposed in respect of:
 - a. The supply of alcohol
 - b. Irresponsible promotions
 - c. Free tap water
 - d. Proof of age scheme
 - e. Requirement to make small alcohol measures available
 - f. Sale of alcohol – duty + VAT
 - g. Door Supervisors (will only apply if door supervisors are used)

Prevention of Crime and Disorder:

- (viii) Alcoholic drinks may not be removed from the premises in open containers.
- (ix) No customers carrying open bottles of alcoholic drink upon entry shall be admitted to the premises at any time the premises are open to the public.
- (x) It is considered that for the nature of the operation door supervisors will not be required, however, the Designated Premises Supervisor will undertake a risk assessment when the premises operates live amplified music or, in respect of any event that takes place which the Designated Premises Supervisor deems necessary to undertake such risk assessment, as to whether a door supervisor will be required and if they consider it appropriate will employ the same. Such risk assessments will be made available for inspection by the Police or Responsible Authority on request for a period of 12 months.
- (xi) CCTV cameras shall be installed and maintained and operating inside the premises in accordance with police recommendations. The images will be of evidential quality and be retained for a period of not less than 31 days. Images will be made available to officers or a Responsible Authority upon request.
- (xii) Sufficient members of staff will be fully trained to operate the system including copying of footage and

searching the system for relevant footage.

- (xiii) An incident book will be kept to record all incidents and refusals. The book shall be made available for inspection by the Police and other Responsible Authorities immediately upon request and be retained for a period of 12 months.

Prevention of public nuisance:

- (xiv) Windows and doors will remain closed after 22.00 hours while regulated entertainment takes place save for access and egress.
- (xv) No emptying of bottles will take place outside 21:00 hours and 07:00 hours on any day.
- (xvi) Prominent and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and area quietly.
- (xvii) While regulated entertainment takes place after 9 p.m., the Designated Premises Supervisor or nominated person by the Designated Premises Supervisor will conduct hourly perimeter checks outside of the whole of building to test noise levels and take appropriate action when required to minimise noise nuisance.

In addition to these specified conditions, the Sub-Committee delegate authority to the Licensing Manager to attach conditions consistent with all of the measures proposed by the Police and agreed by the applicant as set out in the Application and Appendix 2 of the Agenda save for any inconsistencies with the conditions specified by the Sub-Committee in this decision which shall take precedence.

A full decision notice will issued and sent out within 5 working days.

Full Decision Notice is attached below.

Meeting Closed 5.15pm

LICENSING & APPEALS COMMITTEE DECISION

(Licensing Act 2003)

245/17 - Record of proceedings of Derbyshire Dales District Council's Licensing & Appeals Sub-Committee held on Wednesday 6 December 2017 at 2.30pm

Full name of Applicant: Gareth John Clark

Premises Address: Rubigo, 68 Dale Road, Matlock, Derbyshire DE4 3LT

Reason for attendance at the Sub Committee: To determine an application for a Premises Licence

CONSTITUTION OF COMMITTEE

Councillor Jean Monks (Chair)

Councillor Joyce Pawley

Councillor Graham Elliott

REPRESENTATIONS MADE BY

Steven Hampson

Roman Jivkov

Mark Greatorex

NAMES OF OTHERS PRESENT (WRITE "NONE" WHERE APPROPRIATE)

Katie Hamill, Senior Solicitor

Eileen Tierney – Licensing Manager

Annette Reading – Democratic & Electoral Services Assistant

Councillor Sue Bull – as Observer

Stacey Lindfield, Senior Licensing Assistant – as Observer

PREMISES REPRESENTATIVES

In person

Michelle Hazlewood of John Gaunt & Partners Solicitors

Gareth Jonathan Clark

Luke Taylor, Business Partner

1. The meeting was conducted in public, with the agreement of all parties.

The Sub-Committee withdrew into private session to consider its decision and were advised by the Sub-Committee legal representative that only evidence that was relevant to the four licensing objectives could be taken into consideration and that it was important

that any conditions attached to a licence should be to promote the licensing objectives.

2. Chairpersons note of evidence (i.e. concise details of all oral and written details put before the Committee)

The Sub-Committee considered the report and the comments made by the Licensing Manager.

The Sub-Committee carefully listened to the representations from Mr Hampson and his concerns that in his view the intended use of the premises would be primarily as a bar and that that a café/furniture store would be secondary.

Mr Hampson gave evidence to the Sub-Committee that his main concern related to the prevention of public nuisance given the proximity of the premises to his residence and that residents already experience an unacceptable level of noise from customers using licensed premises already on Dale Road.

He made representations to the Sub-Committee that the conditions proposed would not overcome the concerns of noise nuisance as amplified music can be heard elsewhere even in circumstances where doors are shut. He also raised concerns about the potential for noise from smokers outside of the premises and smells of food emanating from the premises late into the evening. Mr Hampson explained that he had made complaints to the Council and Police in the past relating to other licensed premises but had not reported any issues recently as he perceived that this made little difference.

The Sub-Committee heard from Mr Jivkov who raised further concerns about existing crime and disorder within the area. Mr Jivkov explained that he had been resident in the area for approx. 4 years and in his view, the amount of licensed premises are beyond acceptable limits. Mr Jivkov gave evidence that his children are regularly woken up due to shouting and that there had been an occasion when a couple had trespassed into his garden for a sexual encounter. Mr Jivkov made representations to the Committee that another resident had left the area due to drug paraphernalia being left outside of their house.

The Sub-Committee then heard evidence from Mr Greatorex who had also experienced noise from customers of existing licensed premises on Dale Road. Mr Greatorex stated that he was concerned about behaviour of customers, issues of vomiting, recent criminal damage and was concerned that additional licensed premises would add to these issues.

Mr Greatorex made representations that staff would cause further noise disturbance and disruption by parking their vehicles behind the premises and raised concerns about the noise which would be caused by bottles and waste collection and where these may be stored.

Mrs Hazlewood spoke on behalf of the applicant and outlined the background to the application that her clients were seeking to offer something different. Mrs Hazelwood stated that the previous antique store had left as it was not viable and her client had to consider new income streams. She stated that Mr Taylor travelled to Indonesia and met a group of individuals who made furniture from metal barrels and that the intention was to

sell this furniture at the store and have a café to encourage customers through the door and sit on the furniture before purchasing. Mrs Hazelwood gave evidence that the business case required more depth and that to make the business viable it was recognised that a further income stream of a bar would be required for the evenings in order to host events and the tourist trade.

Mrs Hazelwood explained that her client was previously a paratrooper and is a registered S.I.A doorman who understands rules, regulations and is disciplined. She explained that her clients have a bank of abilities and skills to be drawn upon.

In respect of the application Mrs Hazlewood explained that they have sought to harmonise the opening hours with the planning application and in conjunction with measures suggested by the Police. She explained that the regulated entertainment proposed would be in the form of an Indonesian singer or sitar type instrumental music and that the premises is too small to hold a rock band or disco and that there would not be a dance floor.

Mrs Hazelwood referred to the Licensing Manager's comments that this was not perceived to be the next bar and nightclub in Matlock and that the Police had suggested measures which would prevent the primary use of the building becoming as such. Mrs Hazelwood explained that the back of the premises recessed into the earth to mitigate noise and volunteered conditions to conduct checks around the building, keep doors closed after 10 p.m. save for access and egress and no emptying of bottles after 9 p.m.

It was estimated that the premises would have occupancy of approximately 40 customers but noted that capacity is not normally set by the Licensing Authority but by the Fire Officer.

In terms of the evidence of crime and disorder and nuisance alleged to be occurring currently, Mrs Hazelwood explained that there was no cumulative impact policy in place for Derbyshire Dales and issues from other premises were not relevant to this application. She anticipated that there would be limited public nuisance from this site and confirmed that there was no intention to use the parking space to the rear of the premises and that full training regarding CCTV and challenge 25 will be in force.

Members of the Sub-Committee questioned the applicants on the following issues:

- Intention to employ door staff
- The business case and necessity to sell alcohol
- Intended type of Regulated Entertainment and noise measures
- Provision for smokers
- Zero tolerance policy on drugs
- Management of customers leaving the premises

The applicant explained that a condition had been tendered that risk assessments would be undertaken for events to determine whether door staff would be necessary and that he would employ the same if appropriate. Evidence was given that he is currently S.I.A registered and employed as a doorman and would work with the police to act responsibly in this regard. The Licensing Manager confirmed that it would not be unusual for premises to conduct risk assessments themselves in respect of hiring doorstaff but that they must be S.I.A registered.

The applicant further confirmed that he would be agreeable to conducting earlier perimeter checks to monitor noise and that there was no intention to permit smokers using the front or rear of the premises.

3. Findings of the Sub-Committee on questions of fact material to the decision (i.e. the relevant facts accepted from the evidence available)

The Sub-Committee found that:

The Applicant had volunteered conditions and measures within the operating schedule part of the application and that these had been modified in agreement with the Police which could be translated into conditions of the Licence.

There were no further representations from any of the Responsible Authorities.

The Sub-Committee considered the area of the Premises to be a mix of commercial and residential properties and noted the representations from residents that they had experienced crime & disorder and noise nuisance existing within Dale Road. The Sub-Committee did not have evidence of levels of crime and disorder from the Police or other Responsible Authorities but understood the residents' concerns and found that there was a degree of disorder and nuisance associated with the activities on Dale Road.

The Sub-Committee noted the agreement reached with the Police and to ensure the promotion of the licensing objectives, and in particular to minimise nuisance and disturbance to local residents, the Committee were of the opinion that conditions should be imposed on the Licence.

The Sub-Committee determined that there would be an expectation of a certain degree of noise associated from a mixed use area and from licensed premises serving alcohol in a town centre location. The Sub-Committee noted that the District Council had not adopted a Special Policy about cumulative impact and that any current issues relating to other premises were outside of this application. However, the Sub-Committee did consider whether the grant of a licence at this location would give rise to a negative cumulative impact on the licensing objectives and determined that suitable conditions could be attached to the licence to address these concerns.

Members of the Sub-Committee determined that the noise complained of primarily related to customers leaving existing licensed premises and considered the extent to which this can be managed within the licence holder's control. Members determined that conditions relating to signage and perimeter checks would be appropriate to minimise disruption to residents. Members also noted that the rear of the premises would not be used by customers and smoking would not be permitted.

The Sub-Committee were reassured by the experience of the proposed Designated Premises Supervisor and noted the comments of the Licensing Manager in respect of door staff. Members determined that it was appropriate to request door staff to be engaged for events where live music is to be played as larger crowds may be drawn to the premises and for the DPS to assess the risk for any other events which may be appropriate.

4. Full text of unanimous decision

Reasons for Decision

1. Having considered all the evidence put before it the Sub-Committee has determined that:
2. Delegation of authority be given to the Licensing Manager to Grant the application with conditions.

To ensure the promotion of the licensing objectives the imposition of the following conditions on the licence is necessary:

- (i) The Sale of Alcohol for consumption on and off the premises shall be permitted Mondays - Sundays between 10 a.m. and midnight.
- (ii) The Provision of live music and recorded music (indoors) shall be permitted Mondays - Sundays between 10 a.m. and midnight.
- (iii) The non-standard timings for the sale of alcohol and the provision of regulated entertainment shall be permitted each year from 10 a.m. on 31st December until 1 a.m. on 1st January.
- (iv) The provision of Late Night Refreshment shall be permitted Mondays-Sundays between 11p.m. and Midnight.
- (v) The non-standard timings for Late Night Refreshment shall be permitted each year from 11 p.m. on 31st December until 1 a.m. on 1st January.
- (vi) The Premises shall be open to the public every day of the week from 8 a.m. to allow for the sale of breakfasts, morning coffee, pastries etc; and shall only be open for the purpose of allowing licensable activities to take place from 10 a.m. until 30 minutes after the sale of alcohol terminal hour. In the case of non-standard timings the premises will be closed to the public 30 minutes after the sale of alcohol terminal hour.
- (vii) The Mandatory Conditions will be imposed in respect of:
 - a. The supply of alcohol
 - b. Irresponsible promotions
 - c. Free tap water
 - d. Proof of age scheme
 - e. Requirement to make small alcohol measures available
 - f. Sale of alcohol – duty + VAT
 - g. Door Supervisors (will only apply if door supervisors are used)

Prevention of Crime and Disorder:

- (viii) Alcoholic drinks may not be removed from the premises in open containers.
- (ix) No customers carrying open bottles of alcoholic drink upon entry shall be admitted to the premises at any time the premises are open to the public.

- (x) It is considered that for the nature of the operation door supervisors will not be required, however, the Designated Premises Supervisor will undertake a risk assessment when the premises operates live amplified music or, in respect of any event that takes place which the Designated Premises Supervisor deems necessary to undertake such risk assessment, as to whether a door supervisor will be required and if they consider it appropriate will employ the same. Such risk assessments will be made available for inspection by the Police or Responsible Authority on request for a period of 12 months.
- (xi) CCTV cameras shall be installed and maintained and operating inside the premises in accordance with police recommendations. The images will be of evidential quality and be retained for a period of not less than 31 days. Images will be made available to officers or a Responsible Authority upon request.
- (xii) Sufficient members of staff will be fully trained to operate the system including copying of footage and searching the system for relevant footage.
- (xiii) An incident book will be kept to record all incidents and refusals. The book shall be made available for inspection by the Police and other Responsible Authorities immediately upon request and be retained for a period of 12 months.

Prevention of public nuisance:

- (xiv) Windows and doors will remain closed after 22.00 hours while regulated entertainment takes place save for access and egress.
- (xv) No emptying of bottles will take place outside 21:00 hours and 07:00 hours on any day.
- (xvi) Prominent and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and area quietly.
- (xvii) While regulated entertainment takes place after 9 p.m., the Designated Premises Supervisor or nominated person by the Designated Premises Supervisor will conduct hourly perimeter checks outside of the whole of building to test noise levels and take appropriate action when required to minimise noise nuisance.

In addition to these specified conditions, the Sub-Committee delegate authority to the Licensing Manager to attach conditions consistent with all of the measures proposed by the Police and agreed by the applicant as set out in the Application and Appendix 2 of the Agenda save for any inconsistencies with the conditions specified by the Sub-Committee in this decision which shall take precedence.

Reasons for Decision

The Sub-Committee gave weight to the representations made by objectors but were satisfied following the consideration of oral and written submissions on behalf of the Applicant, that the application should be granted. To ensure the promotion of the licensing objectives and in particular to minimise nuisance and disturbance to local residents, the Sub-Committee were of the opinion that conditions should be imposed on the Licence.

The Sub-Committee considered the agreement reached with the Police, together with the conditions included within the application and determined that such conditions would overcome their concerns and promote the licensing objectives.

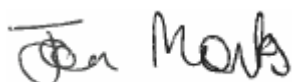
The Sub-Committee noted that the Licence Holder had sought to overcome any concerns of the police and residents that should the primary business use fail there were sufficient safeguards in place to prevent the premises being used solely as a bar. Such conditions included that the premises would operate a full food menu until 9 p.m. and that the premises would have seating for approximately 50% of customers when operating at a maximum capacity. As a small venue, this would limit occupancy numbers and it was noted that planning consent would need to be obtained if the venue were to change from A3 use to A4.

The Sub-Committee carefully considered the issue of door staff and agreed that it was appropriate to condition that a risk assessment would be undertaken by the premises for live music events and other events which the DPS deems necessary and where appropriate that the DPS will employ the same. The Sub-Committee considered that this was a proportionate approach given the size of the venue and also noted that CCTV would be operational to promote the prevention of crime and disorder.

Furthermore the Sub-Committee determined that the form of regulated entertainment was intended to be relatively low level music and that requiring perimeter checks and closure of doors/windows would be adequate in promoting the licensing objective to prevent public nuisance. The Sub-Committee also noted that there were concerns about noise from waste but agreed that this could be adequately addressed by restricting hours of emptying bottles.

The issue of parking at the rear of the premises was considered and Members noted that it was not intended to park at the rear of the premises by the applicant. Members resolved that it was not considered proportionate to impose a prohibitive condition as the level of noise expected would be no greater than an individual using their vehicle during an evening in this location.

The Sub-Committee considered the grant of Late Night Refreshment and felt that the service of food during the hours sought was appropriate and did not undermine the licensing objectives.



Signature

Date: 14 December 2017

APPEALS TO THE MAGISTRATES' COURTS

Many of the enforcement actions and decisions made by Derbyshire Dales District Council carry the right of appeal to the Magistrates' Court. This means that if you do not agree with the decision that the District Council has made you may contact the Magistrates' Court and ask them to formally review it. For example, anyone served with a formal enforcement notice has the right to appeal against that notice within 21 days of its service.

How do I make an appeal?

The right to appeal is normally set out on the reverse of the notice or in a letter that accompanies it.

If you want to appeal against the decision of the Sub-Committee you should contact:-

- Northern Derbyshire Magistrates' Court, Tapton Lane, Chesterfield, Derbyshire S41 7TW, Tel: 01246 224040

Where can I get help?

If you think you need help we would recommend that you speak to a solicitor who would be able to assist you with the Court processes.

The District Council is not able to recommend any particular firm of solicitors but would suggest you check in Yellow Pages or a local services directory.