

BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL
LICENSING SUB-COMMITTEE

Minutes of the Meeting held on 19 August 2020 at 10.00 am

Present:-

Cllr G Farquhar – Chairman

Present: Cllr R Burton, Cllr B Dion

15. Election of Chairman

RESOLVED that Councillor George Farquhar be elected Chairman of the Sub-Committee for the duration of the meeting.

Voting: Unanimous

16. Apologies

There were no apologies. Councillor Norman Decent was present at the beginning of the meeting as the reserve but was not required to remain.

17. Declarations of Interests

There were no declarations of interest

18. Full Variation of Premises Licence - The Tipsy Cow, 37 Charminster Road, Bournemouth BH8 8UE - Adjourned item

Attendance:

From BCP Council:
Michelle Fletcher, Licensing Officer
Stephen Cox, Environmental Health Officer
Linda Cole, Legal Advisor to the Sub Committee
Jill Holyoake, Clerk to the Sub Committee

Mr Alex Marshall – Applicant
Mr Matt Theodore – Other Person (objecting)
Mr Mark Allen – Other Person (objecting)

The Chairman made introductions and explained the procedure for the hearing which was agreed by all parties.

The Licensing Officer presented a report, a copy of which had been circulated and a copy of which appears as Appendix A to these minutes in the Minute Book. The Sub Committee was asked to consider an application

to vary the premises licence for The Topsy Cow, 37 Charminster Road, Bournemouth, to increase the existing licensed area to include a seating area to the rear of the premises. The application had resulted in four representations being received from 'Other Persons' under the prevention of public nuisance licensing objective. At the hearing the Licensing Officer confirmed that seven letters of support had been received and passed to the applicant.

Following mediation, the Environmental Health Officer had agreed a number of additional conditions with the applicant and was not objecting to the application. The Environmental Health Officer was in attendance to respond to any questions as required.

The following persons attended the hearing and addressed the Sub Committee to expand on the points made in their written submissions:

Mr Alex Marshall – Applicant

Mr Matt Theodore – Other Person (objecting)

Mr Mark Allen – Other Person (objecting)

The Sub Committee asked various questions of all parties present. All parties were given the opportunity to ask questions of each other. All parties were given the opportunity to sum up before the Sub Committee retired to make its decision. Before concluding the Legal Advisor advised all parties of the right of appeal.

RESOLVED – That the application to vary the premises licence for The Topsy Cow, 37 Charminster Road, Bournemouth, to increase the existing licensed area to include a seating area to the rear of the premises, be granted subject to the following conditions:

Conditions agreed with Environmental Health:

- **The rear outside area shall only be used between the hours of 10:00 and 22:00 (with the last seating up until 21:00)**
- **The premises licence holder shall have arrangements in place to ensure any seats unoccupied in the outside rear area after 21:00 are taken out of use**
- **After 22:00 the outside rear area shall be vacated and not used for any purpose, including smoking until 10:00 the following day**
- **No amplified or live music shall be played within the rear open area at any time**

Conditions on the existing licence which will also apply to the outside rear area:

- **Alcohol consumed outside the premises building shall only be consumed by patrons seated at tables**

- **Notices shall be prominently displayed at all exits and external areas reminding patrons to respect the needs of local businesses and residents and leave area quietly**
- **Loud speakers shall not be located in the entrance lobby or outside the premises building**
- **A direct telephone number for the manager at the premises shall be publicly available at all times the premises are open. The telephone number is to be made available to residents and businesses in the vicinity.**
- **A CCTV system shall be installed to cover all entry and exit points enabling frontal identification of every person in any light condition.**

Reasons for Decision:

The Sub Committee gave detailed consideration to all the written evidence that had been submitted before the meeting and contained in Agenda Item 5, along with the verbal submissions made by Ms Fletcher the Licensing Officer, Mr Cox the Environmental Health officer and Mr Theodore and Mr Allen 'Other Persons' who both made written objections in response to the application to vary the premises licence and Mr Marshall, the DPS of the premises, as well as responses given to questions asked at the meeting by all parties. During their deliberations the Sub-Committee also had sight of the transcript of the verbal presentation made by Mr Theodore.

In granting the application the Sub Committee had regard to the proposed use of the outside seating area at the rear of the premises for dining, with the provision of drinks being ancillary to food, with no provision for vertical drinking. In particular the Sub Committee noted the steps considered and taken by the applicant to promote the licensing objectives in preparing for the use of the rear outside area, including security and control of access/egress, the construction of a breeze block enclosure, the ability to view the premises from the bar and kitchen, and CCTV coverage. From the detail contained in the application the Sub Committee were of the view that the DPS had approached the use of this outside space in a responsible manner and with regard that use of this outdoor area may impact on local residents.

The Sub Committee had regard to the conditions agreed between the applicant and Environmental Health following mediation, resulting in no objection to the application from Environmental Health. The Sub Committee was satisfied that these additional conditions, which ensured that the outside rear area was vacated and not in use for any purpose after 22:00hours, constituted proportionate and reasonable measures which would address the concerns around public nuisance raised in the written and verbal representations made by persons living and owning property in the immediate vicinity.

The reason for the application being made at this current time was to compensate for the loss of internal restaurant space due to Covid-19 social

distancing requirements and to provide a quieter, safer environment for customers to eat outside than the area provided at the front of the premises. It was noted that under the Business and Planning Act 2020 that premises licensed to supply alcohol on sale have automatically been given permission to supply alcohol off sale to 11pm until 30 September 2021 to encourage premises to use space adjacent to their premises such as pavements. This premises is already licensed for off sales and regardless of this application there is nothing to stop this premises automatically using this outside area at the rear of the premises for customers to drink alcohol supplied as off sales. The Sub Committee agreed that the application to vary the licence to increase the licensed area had resulted in conditions which offered the Licensing Authority more in the way of regulatory control over the operation of the outside rear area than had the application not been submitted.

It was noted that the area in question had already been operating under a series of Temporary Event Notices (TENs) from 8 July 2020 with no formal evidence or complaints received since the 'events' had been held. While the Sub Committee acknowledged the concerns expressed in each of the written and verbal representations, it was mindful of the spirit of the Licensing Act 2003 and the case of *Thwaites PLC v Wirral Borough Magistrates' Court* 2008. No evidence of public nuisance was presented to the Sub Committee only concerns raised by local residents of what may happen in the future as a result of the variation, although it was noted that Mr Theodore and his family had experienced some noise and adult language from construction workers when celebrating the completion of works to the outside rear area, which Mr Marshall dealt with once informed.

As the premises is not in a cumulative impact area the onus is on those making representations to show that varying the licence will give rise to negative impact on the licensing objectives, notwithstanding the measures put forward by the applicant in the operating schedule and in agreed conditions. Should there be a specific concern relating to the undermining of one or more of the licensing objectives caused by the premises, the Licensing Act 2003 provides that a responsible authority or any other person may subsequently ask for a review of the premises licence.

Any persons aggrieved by the decision have the right of appeal to the Magistrates Court, and any such appeal should be lodged within 21 days of receiving the decision letter.

19. Exclusion of Press and Public

RESOLVED that under Regulation 14 (2) of the Licensing Act 2003 (Hearings) Regulations 2005, and under Section 100 (A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraphs 1, 2 and 7 in Part I of Schedule 12A of the Act and that the public interest in being excluded from the hearing and in withholding the information

outweighs such interest in the hearing taking place in public and in disclosing the information.

Description of exempt information:

Paragraph 1: Information relating to any individual

Paragraph 2: Information which is likely to reveal the identity of an individual

Paragraph 7: Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

20. Application for a Review of a Premises Licence Chicken Express, 144 Old Christchurch Road. Bournemouth

Attendance:

From BCP Council:

Trudi Barlow, Licensing Officer

Nananka Randle, Licensing Manager

Linda Cole, Legal Advisor to the Sub Committee

Jill Holyoake, Clerk to the Sub Committee

Sergeant Gareth Gosling, Dorset Police – Applicant

Sarah Rogers, Senior Licensing Officer, BCP Council - representing the Licensing Authority as Responsible Authority in support of the review

Mr Philip Day, Solicitor representing the Premises Licence Holder

The Sub Committee considered a request from Mr Philip Day, representing the Premises Licence Holder, to further adjourn the hearing to enable him to establish contact with his client, take instructions from him and confirm his attendance at the suggested date for the adjourned hearing on 1 September 2020. Mr Day explained the personal circumstances of the Premises Licence Holder which had led to him making this request. He acknowledged that should he not be able to take instructions or confirm the Premises Licence Holder's attendance for the adjourned hearing on 1 September the hearing should proceed in his absence.

Sergeant Gareth Gosling, the applicant, confirmed that in light of the circumstances he would support the request to adjourn on the understanding that the hearing on 1 September would definitely proceed, to avoid any further delay in considering the concerns which had led to his application for review.

Sarah Rogers, representing the Licensing Authority as Responsible Authority, had no objection to the request to adjourn. One Other Person who had made a written representation in support of the review and was due to attend the hearing to give a verbal representation was contacted by the Clerk during the meeting and advised of the proposed adjournment and date.

Based on the information provided, the Legal Advisor to the Sub Committee recommended that the application be further adjourned in the interests of a fair hearing until 1 September 2020.

RESOLVED – That the application to review the premises licence for Chicken Express, 144 Old Christchurch Road, Bournemouth, be further adjourned in the interests of a fair hearing until the next Licensing Sub Committee on 1 September 2020 at 10.00am

The meeting ended at 12.01 pm

The Sub Committee concluded its deliberations at 12.50pm.

CHAIRMAN