

DECISION NOTICE

Western Area Licensing Sub Committee

Decision made on 6 July 2021

Application for a Variation of a Premises Licence in respect of The Prestbury Sports Bar, The Close, Warminster made by Nicholas Pitcher and Peter Bartley

Councillors:

Cllr Allison Bucknell, Cllr Peter Hutton (Chair) and Cllr Stewart Palmen

Decision:

The Western Area Licensing Sub Committee RESOLVED to REFUSE the application for a Variation to the Premises Licence which sought to extend the current licensable area to include the car park of the premises and to allow the provision of live music in the car park on Saturdays, Sundays and Bank Holiday Mondays between 12:00 and 20:00.

The Applicant

The Applicant, Nicholas Pitcher reported to the Sub Committee that the use of the car park area of the premises had been encouraged in recent times because of the Covid restrictions and customers had reported that they had enjoyed being able to listen to music and have a drink outside. Tables and chairs were set up in the car park area on occasion outside to facilitate this.

The Applicant accepted that he was unable to control the volume of acoustic music in outside areas but informed the Sub Committee that they would be able to regulate the volume of the amplified music. It was the intention that the music would be played at a level where a conversation could still be held without shouting and they wished to provide customers with some outside refreshment and entertainment on the odd occasion when the weather was suitable for this. The Application stated it was not intended to have outdoor music events every weekend, but they wished to have the flexibility to be able to put on events for customers to enjoy.

Responsible Authorities

Trish Morse, Public Protection Officer (Environmental Control & Protection) reported that she had visited the premises to discuss the application with the Applicant and at that time she had raised concerns about noise disturbance to local residents. It had

been brought to her attention that there had been previous noise complaints when music had been played from the car park location. The Public Protection Officer felt that if the space was to be routinely used for amplified music this would cause noise disturbance. The Applicants had stated that they planned for the amplified live music to be played between the hours of 2pm and 5pm on selected dates through the year and said there was support from local residents. In discussion with the Applicant about noise levels the Public Protection Officer noted that it was planned to be at a level where patrons would not have to shout to hear each other speaking.

On this basis the Public Protection Officer had recommended that if the application were to be granted that the Live Music Act 2012 ('The 2012 Act') should be disapplied for the outside space (to control the timings of live music) and that there should be a number of conditions being attached the licence to include a cap of up to 6 events per year, music only taking place between 2pm and 5pm and that the outside space be managed strictly in accordance with a submitted and approved Noise Management Plan.

Following the deadline for representations the Public Protection Officer was then advised that the Live Music Act could not be disapplied by a Sub Committee at a variation hearing and the Licensing Authority would be unable to place conditions on the Premises Licence and the 2012 Act could only be disapplied at a licensing review hearing. At the hearing the Public Protection Officer reported that her view now was that the Environmental Control and Protection Team would object to the application as they considered the car park was not a suitable location due to sound reflecting around the courtyard area and if there were to be frequent music events then the service would be very likely to receive noise complaints from residents who were being disturbed by the noise at those events.

Representations

Fifteen further representations were received in objection to the application from local residents and the following were present at the hearing to present their representations: Gary Rattray, Andrew Winter, Jeff Varker, Kett McAfee, Philip Torjussen and Peter Miles. In summary the concerns of the residents related to noise disturbance from previous occasions when music had been played in the car park area which constituted a public nuisance and the likely significant noise disturbance from music and their patrons if future events were to be held. Kett McAfee also referred to the petition with 43 signatories which objected to the licence variation on the grounds of preventing a public nuisance. The written representations of those not present at the hearing were also considered by the Sub Committee.

Reasons

In reaching its decision the Sub Committee took account of and considered all the written evidence and representations from the parties and the oral submissions received from Nicholas Pitcher, Trish Morse, Gary Rattray, Andrew Winter, Jeff Varker, Kett McAfee, Philip Torjussen and Peter Miles at the hearing.

The Sub Committee considered the representations made by the Applicant regarding the merits of his application, namely that the local residents would be made aware of planned outdoor events by way of posters displayed in the vicinity of the premises, that these events would be limited in number and that the live music would not extend beyond a 3 hour time period. The Applicant proposed to take measures to limit the volume of the amplified live music by checking the areas around the premises to check the volume was at a level where a normal conversation could be had between patrons.

However, the Sub Committee were not satisfied that the evidence they heard from the Applicant demonstrated that the Applicant would be able to satisfactorily mitigate any noise nuisance arising from amplified music which would cause disturbance to local residents. The Sub Committee concluded that the Applicant was not able to promote the Licensing Objective of the prevention of public nuisance.

In particular, the Sub Committee gave weight to the following matters below:

- That there were strong concerns expressed from the Public Protection Officer that the car park was not a suitable location for live music with sound reflecting around the courtyard area and if there were to be frequent music events then it was likely that there would be noise complaints from residents.
- Local residents had reported that they had been disturbed by the music on previous occasions whilst on their own premises

The Sub-Committee also considered the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 35); the four Licensing Objectives; the guidance issued under Section 182 of the Act and the Licensing Policy of Wiltshire Council.

Right to Appeal

All parties have the right to appeal to the Magistrates Court within 21 days of receipt of the written decision. In the event of an appeal being lodged, the decision made by the Licensing Sub Committee remains valid until any appeal is heard and any decision is made by the Magistrates Court.

A Responsible Authority or interested party has the right to request the Local Authority to review the licence in accordance with the provisions of section 51 of the Licensing Act 2003. However, a review will not normally be held within the first twelve months of the licence except for the most compelling circumstances.