

Western Area Licensing Sub Committee

DRAFT MINUTES OF THE WESTERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 6 JULY 2021 VIA MICROSOFT TEAMS IN RESPECT OF AN APPLICATION FOR A VARIATION OF A PREMISES LICENCE – THE PRESTBURY SPORTS BAR, THE CLOSE, WARMINSTER.

Present:

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

Also Present:

Applicant/Applicant's Representatives

Nicholas Pitcher
Peter Bartley

Those who made a Relevant Representation

Trish Morse – Public Protection Officer – Environmental Protection and Control
Gary Rattray
Andrew Winter
Jeff Varker
Kett McAfee
Philip Torjussen
Peter Miles

Wiltshire Council

Carla Adkins – Public Protection Officer – Licensing
Kevin Fielding – Democratic Services Officer
Sarah Marshall – Senior Solicitor
Lisa Pullin – Democratic Services Officer

1 Election of Chairman

Nominations for a Chairman of the Licensing Sub Committee were sought, and it was

Resolved:

To elect Councillor Peter Hutton as Chairman for this meeting only.

2 Apologies for Absence/Substitutions

No apologies were received. There were no substitutions.

3 Procedure for the Meeting

The Chairman explained the procedure to be followed at the hearing, as contained within the "Wiltshire Licensing Committee Procedural Rules for the Hearing of Licensing Act 2003 Applications" (Pages 5 to 11 of the Agenda refers).

4 **Chairman's Announcements**

There were no announcements but there was a short 5-minute delay to commencement of the hearing due to technical issues with the Live Stream.

5 **Declarations of Interest**

There were no interests declared.

6 **Licensing Application**

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

Licensing Officer's Submission

The Sub Committee gave consideration to a report (also circulated with the Agenda) in which determination was sought for an application for variation of a premises licence and which was presented by Carla Adkins (Public Protection Officer – Licensing) for which 16 relevant representations had been received. The application was for the following licensable activities:

- To extend the current licensable area to include the carpark.
- To allow the provision of live music in the carpark on Saturdays, Sundays, and Bank Holiday Mondays between 12:00 and 20:00.

Carla Adkins in her presentation reported the following to the Sub Committee:

- On 6 May 2021, an application for a variation to the existing premises licence was received and accepted as a valid application. Due to a delay by the Applicant in displaying the blue notices outside the premises advertising the application, the consultation period was extended from 3 June to 8 June 2021;
- The premises had benefitted from a premises licence since 21 April 2006 and the current premises licence had been issued on 5 January 2016;
- During the consultation period, 16 relevant representations were received and a petition of 43 signatories were received against the application. Those who had made a relevant representation raised concerns about noise from the music from the car park which could cause a public nuisance;

- During the Covid restrictions, the Applicants had made use of the car park for the consumption of alcohol and amplified live music. The amplified music generated a number of noise complaints to the Public Protection Team from local residents. In response to the complaints the Public Protection Officer explained to the Applicants that the carpark was not covered by the building's premises licence and therefore amplified music was not permitted to take place as the Live Music Act 2012 placed restrictions on amplified live music between 0800 and 2300. After receiving this information the Applicants ceased offering and advertising live amplified music and instead only provided live unamplified music;
- Under the Live Music Act 2012, no licence permission is required for:
 - a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises
 - a performance of amplified live music between 08.00 and 23.00 on any day provided that the audience does not exceed 500 on premises authorised to sell alcohol for consumption on those premises,
- The Public Protection Officer – Environmental Protection and Control had requested that the Live Music Act be disapplied in this case but was advised that this can only be granted at a hearing for a review of a premises licence and not a variation application hearing and an application for a review hearing cannot be submitted within 12 months on the same grounds; and
- The Licensing Officer confirmed that an appeal to the Magistrate's court may be made within 21 days and if an appeal is lodged, the Sub Committee's decision remains valid until it is heard by the Magistrate's court.

It was noted by the Sub Committee that there were 3 options available to them:

1. To grant the variation to the licence as applied for.
2. To grant the application as applied for, modified to such extent as considered appropriate to promote the Licensing Objectives.
3. To refuse the application in whole or in part.

The following parties attended the hearing and took part in it:

On behalf of the Applicant

- Mr Nicholas Pitcher
- Mr Peter Bartley

Responsible Authorities

- Ms Trish Morse, Environmental Protection and Control, Wiltshire Council

Relevant Representations in objection to the application

- Mr Gary Rattray

- Mr Andrew Winter
- Mr Jeff Varker
- Mrs Kett McAfee
- Mr Philip Torjussen
- Mr Peter Miles

The Chairman advised that the written representations had been read and considered by the members of the Sub Committee in advance of the meeting.

The Chairman invited the Applicant to introduce their application.

Applicant's submission

Mr Nicholas Pitcher (Applicant) spoke in support of the application, highlighting the following points:

- 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 activity;
- There had been discussions with Trish Morse, Public Protection Officer who gave advice on how the noise levels outside could be reduced – but while it was accepted that it was difficult to reduce the noise level for acoustic music the Applicant would be able to control any amplified music. The intention was that there would be flexibility for music to be played outside on the odd occasion for the customers to enjoy during the summer months; and
- On each occasion, the furniture needed to be taken out and set up and the events did not increase their drinks sales but were enjoyed by their older customers as they liked to be outside in the fresh air and it was not intended for every Friday but to give the applicant flexibility in the summer. The applicant regrets not putting this information on the forms when he made the application, so he didn't get across clearly his intentions.

Sub Committee Member's questions

In response to Members questions the following points of clarification were given:

- Concerning a question regarding letting his neighbours know of activities, the Applicant confirmed he planned to publicise any planned events by displaying posters around the premises and in the local area and any such event would only be held on one day over a weekend. The Applicants would inform Mr Varker from the Care Home of any planned events;

- Regarding Temporary Events Notices (TENS), the Applicant was aware he was able to apply for a TEN for an event, but these would not be transferrable in the event of bad weather and they could not decide to change the date from Saturday to Sunday for example to suit the weather;
- The Applicant had attempted to reduce the sound levels by asking a local duo who were playing outside to place their speakers on the ground so that the sound was absorbed by the ground and with recorded music they would be able to control the sound volume levels;
- The Applicant had carried out noise monitoring and had taken a decibel meter outside of the premises and judged that if the sound coming from the premises was taken out by a car passing by this was suitable. The Licensing Officer had advised on the appropriate noise levels and he would now ensure that these were adhered to and they would be ensuring that noise levels in the area would enable patrons to hold a conversation without raising their voices;
- The premises did not attract young clientele and had hosted an 80th birthday party. They generally played 60's/70's and 80's music and wished for flexibility in a licence that would allow them to make a decision on a Thursday if the music event would take place inside or outside of the premises that weekend depending on the weather and that way the performers would not miss out on a booking, but just perform in a different area of the premises;

Questions from those who made a relevant representation

In response to questions from those that had made a relevant representation, the following points of clarification were given:

- Notices of planned events coming up would be displayed although these would be subject to the weather, so that the local residents were aware of these and TV screens may be used outside for large scale sporting events; (*The Licensing Officer confirmed to the Sub Committee that live TV broadcasts were not licensable*)
- If younger people were in attendance at the premises this would likely be because they are part of a family group attending. Children were not allowed on the premises without adult supervision. 18-25-year-old patrons were not encouraged because of the Applicant's experience of them, and they advertised their events via Facebook and the Applicant felt that the younger population were more likely to use Instagram and Twitter;
- There were notices displayed in the premises asking patrons to keep the noise levels down and to respect the neighbours and the Applicant would

remind them of this. The Applicant also asked taxi drivers to drive into the car park area and not stop outside the premises although they continued to park outside the premises. The Applicant stated that Mr Varker from the care home had a contact number to raise any concerns with them and they generally had a good relationship to deal with any concerns raised by Mr Varker;

- In general for a few times a year the car park would be blocked off during an event, but the size of the premises was limited, and they would not be able to host or serve up to 500 patrons. They intended to continue with table service inside and out as this was preferred by customers and that would restrict the numbers they could accommodate. The Applicant stated that he would be happy for a number restriction placed on the licence so that it did not go up to 500 patrons;
- The Applicant confirmed that the premises' demographic was for 50+ year olds although some patrons were in their 40's. The music being played at the premises was not current (up to 1980's) and did not generally attract younger patrons;
- The Applicant monitored noise levels during events and if they had received a phone call/complaint they would reduce it again and then go and check the level outside again. The customers were just happy to be able to enjoy the music outside;
- The Applicant confirmed conversation could take place if loud bands were performing. If a complaint was received the sound level would not only be reduced but the Applicant's staff would be on site to check noise levels and would go outside and if the music could be heard above a car passing, they would reduce the volume levels;
- There may be changes to planned events because of the weather and this may not mean sufficient notice for local residents to make their own plans, but the Applicant offered to email out a list of planned events for local residents so that they were aware of them;
- Any live music would not exceed 3 hours (Applicant indicated that he was happy for this to be included as part of any licence granted) and would be between 2pm and 5pm or 5pm and 8pm; and
- The Applicant confirmed there are two smoking areas used at the back and front so the noise level of people smoking or talking was spread out.

Responsible Authorities' submissions

Ms Trish Morse – Public Protection Officer – on behalf of the Environmental Control and Protection Team who had made a relevant representation highlighted the following:

- That she had visited the premises on 19 May 2021 to discuss the application with the Applicant and at 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 and she felt that if the outside space was to be routinely used for amplified music this would cause noise disturbance to local residents;
- The Applicants had stated that they planned for the amplified live music to be played between the hours of 2pm and 5pm occasionally on selected dates through the year and said there was support from local residents. The Applicants had stated during discussions that the music 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 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; and
- The Public Protection Officer's 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.

Sub Committee Members' questions

In response to Members questions the following points of clarification were given:

- It was likely that if the variation to the licence was granted that there would be a series of complaints from local residents, and this would be more work for the Enforcement Team at Wiltshire Council; and
- If the variation to the licence was to be granted it was likely to cause significant harm and a statutory noise nuisance.

Submissions from those who made relevant representations

Submission from Mr Gary Rattray

- Mr Rattray informed the Sub Committee that he objected to the variation application. There had been disturbances arising from the music and when the football was shown shouting occurred. The car park was covered in broken glass. He spoke to the Applicant about this, but it appears nothing was done.

A Sub Committee Member highlighted that the variation application was for live music and felt that Mr Rattray's comments were not relevant and that the complaints should be addressed through a different medium.

In response to Mr Rattray's submission, the Applicant expressed his disappointment that the representations made by those that were in support of the application had not been published/shared with the Sub Committee. The Applicant had spoken to the two nearest residents to the premise's car park, and they had stated that they had not been disturbed by the music playing in the car park and another that they had not heard the music when it was really loud and since that time the volume had been reduced further.

The Chairman reported that the hearing would be conducted fairly, and the Sub Committee members would consider all representations and reassured all present that the decision would be based on the evidence before them. It was confirmed that the Sub Committee had not seen the letters in support of the application as they did not relate to the promotion of one or more of the Licensing Objectives and therefore could not be accepted as relevant representations on that basis.

Submission from Mr Andrew Winter

- The car park of the premises could be seen from his living room windows and previously when amplified music was being played it was of a level where he was not able to concentrate in his home; He had heard a cacophony of bands including contemporary music, not just music from the 1980's. He informed the Sub Committee that he had been forced to close every window shutter in his house due to volume of music and he was unable to hear conversations; and
- The foul language used by patrons had meant that they felt they were unable to entertain guests in the Chantry garden. There had also been instances of men urinating in the vicinity of their herb garden and there had been broken bottles strewn around the route they used to come in and out of their home.

The Applicant responded that he knew of another resident who was saying different things of their experience in the same place as Mr Winter.

Submission from Mr Jeff Varker

- The residents of Kyngeston Court (care home) had so far tolerated the infrequent music events but there had been concerns had been raised which Mr Varker had not raised with the Applicant. The views of the Public Protection Officer – Environmental Protection and Control had encapsulated their views about the application.

The Applicant wished to reassure Mr Varker that the music events would be a rare occasion.

Submission from Mrs Kett McAfee

- A petition objecting to the licence variation on the grounds of preventing a public nuisance had been signed by 43 residents and Mrs McAfee was also representing those residents;
- They (Mr and Mrs McAfee) made a complaint following the disruptions from the premises over the weekend of 17/18 April 2021. They had not made a complaint before as they wished to support the Applicant and the business during the difficult times with the Covid restrictions but due to the noise level they were unable to hold a phone conversation in their garden and the thought of this this continuing throughout the summer was too much;
- Mr and Mrs McAfee live in direct proximity to the alleyway by the car park and had been affected by the noise from the premises and by taxis arriving and leaving;
- Mrs McAfee represented the 43 petitioners who live with hearing distance of the premises and would be directly impacted by the proposed variation and she stated that she had not spoken to any residents that were in support of the outside licence. There had been overall no communications from the Applicant;
- Mr and Mrs McAfee's concern were not just the potential music events, but the possible screening of sports events which could occur at numerous times over the year, and this would not become just a short-lived solution and that it would change the demographic of the bar and the age group they might attract;
- With the lifting of Covid restrictions there could be up to 500 people and the noise level of people watching live sport would bounce off the walls and create a disturbance. Mrs McAfee felt that the Applicant standing in the street with a decibel reader was not a good representation of the noise heard in their house which was worse upstairs in their property and that this was not a viable mitigation;

- A number of the those who signed the petition were not able to simply leave their homes if they could not cope with the noise – the residents of Kyngeston Court were aged between 50 and 100; and
- Mr and Mrs McAfee's did not support the variation application and urged the Sub Committee to consider what it felt was fair and reasonable and justified on the evidence presented.

The Applicant stated that he had ticked the box for standard hours 1200 to 2000 because at times he likes to vary the hours for live music.

Submission from Mr Philip Torjussen

- Mr Torjussen endorsed the views submitted by Mrs McAfee and reported that whilst he did not live in very close proximity to the premises and he could talk to his family sitting next to him, but that he had found it extremely irritating having the background noise from the premises. After working hard it was fair and reasonable for residents to be able to enjoy their outside space and relax;
- If the variation was to be granted, he felt there would be many noise complaints and he felt that as rate payers they would rather the money be better spent rather than having to respond to noise complaints; and
- The music that had been heard previously was not just suitable for 70/80-year-olds. It had been loud and extremely unpleasant on a weekend afternoon and the residents should not have to put up with the disturbance.

The Sub Committee informed Mr Torjussen that they are only permitted to look at the evidence before the Sub Committee, they cannot consider what may or may not have occurred.

Submission from Mr Peter Miles

- Mr Miles agreed with previous submission and that his time to relax was mid-afternoon with a siesta and that with the music being proposed to be played between 2pm and 5pm this would not allow people to be able to rest during the afternoon.

Closing submissions from those who made relevant representations

Mr Gary Rattray, Mr Andrew Winter, Mr Jeff Varker, Mrs Kett McAfee, Mr Philip Torjussen and Mr Peter Miles who had made a relevant representation did not wish to make any closing submissions.

Closing submissions from Responsible Authorities

Ms Trish Morse (Public Protection Officer) on behalf of from Environmental Protection and Control team did not wish to make any closing submissions.

Applicant's closing submission

In his closing submission, Mr Nicholas Pitcher (Applicant) highlighted the following:

- He takes on board what we have heard from residents today and apologises for the lack of communication of the intentions of the premises to residents. It had seemed that the events were going well as they had not received any complaints;
- Going forward any music events would not be as loud as they had been previously and the nearest neighbours in The Portway had said they had not been disturbed;
- The premises were in a town centre location and there was a demand for music as people wanted to be able to enjoy themselves in their free time and they were trying to provide this for their customers. The provision was not about making money for them but to provide the opportunity for entertainment to their patrons;
- The views shared at the hearing had been a bit one sided today as the details of those in support of the application had not been shared and the Applicants both had full time jobs and they were just trying to ensure that the premises were cost effective and provide employment and a service to the town. They can still go inside but have lost the flexibility and he does not want to change the hours;
- The planned outside music events would be for up to 3 hours and would be at a quieter level. There was a difference between acoustic and amplified music, but they would be able to control amplified music much more than acoustic as you were not able to turn down the volume of the Band performing; and
- The Applicant would be open to idea to make this more acceptable to residents and suggested a committee or group be set up to discuss any plans and to go through what could be done in the future.

The Chair thanked the Applicant for his submission said that the Applicant's offer of a resident's group was outside the remit of the Sub Committee, but this point be taken up by Officers.

Points of Clarification Requested by the Sub Committee

A Sub Committee Member wished to comment on the suggestion that the hearing was unfair because the letters of support had not been included and confirmed that Members were bound by law as to what could be considered by the Sub Committee and as the letters were not accepted as a relevant representation they could not be shared.

The Sub Committee then adjourned at 11.50am and retired with the Senior Solicitor and the Democratic Services Officer to consider their determination on the licensing application.

The Hearing reconvened at 12:20.

The Senior Solicitor advised that she gave the following relevant legal advice to the Sub Committee:

- Brief advice was given to the Sub Committee in relation to the Licensing Act 2003 and the promotion of Licensing Objectives and that the Sub Committee members were not able to consider any planning matters.

Resolved that:

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.

Reasons for Decision

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 Mr Nicholas Pitcher, Ms Trish Morse, Mr Gary Rattray, Mr Andrew Winter, Mr Jeff Varker, Mrs Kett McAfee, Mr Philip Torjussen and Mr 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.

(Duration of meeting: 10.30 am - 12.25 pm)

The Officer who has produced these minutes is Lisa Pullin of Democratic Services, direct line 01225 713015, e-mail committee@wiltshire.gov.uk

Press enquiries to Communications, direct line ((01225) 713114 or email communications@wiltshire.gov.uk