

DECISION NOTICE

Eastern Area Licensing Sub Committee

Decision made on 21 June 2021

Application for a Variation of a Premises Licence in respect of The Marlborough, 90 High Street, Marlborough, made by Food Drink Rooms Limited

Councillors:

Cllr Allison Bucknell (Chair), Cllr Kevin Daley and Cllr Pip Ridout

Decision:

The Eastern Area Licensing Sub Committee **RESOLVED** to **GRANT** the application for a Variation to the Premises Licence to include the activity and timings detailed below:

Licensable Activity	Timings	Days
Sale by retail of alcohol (for consumption ON the premises) in the outside bar	11:00hrs to 23:30hrs	Sunday to Thursday
	11:00hrs to 00:00hrs	Friday and Saturday

The Applicant

Mr Jason Kalen the Applicant gave evidence to the Sub Committee that the outside area of The Marlborough had always been used for people to enjoy food, drinks and background music under the existing Premises License for The Marlborough. A wooden structure ('The Chalet') had now been built in the outside area of the premises to provide patrons shelter from the elements. The current capacity of the Chalet was 26 people. The application before the Sub Committee was to seek a variation in order to be permitted to serve alcohol from the outside bar set up inside The Chalet. Currently patrons were able to use the outside areas which included The Chalet, but drinks were only provided from inside The Marlborough. In the last 9 years the Applicant was not aware of any official complaints that had been received in respect of the premises and that there may have been some local confusion with the public that a new area was to be added to the outside area, but the Applicant confirmed to the Sub Committee that this was not the case.

Responsible Authorities

There were no representations received from Responsible Authorities.

Representations

There was one representation received from Mr and Mrs Harvey-Evers who live on the High Street, Marlborough with their concerns relating to public nuisance arising from the congregation of people in the late evening and use of flood-lighting; harm to children arising from the location of the outside area the subject of the variation being adjacent to a school boarding house and crime and disorder arising from people leaving other licenced premises on the High Street and causing noise and disorder. Mr and Mrs Harvey-Evers were not in attendance at the hearing. In Mr and Mrs Harvey-Ever's absence the Chair of the Sub Committee went through their concerns as raised in their representation with the Applicant to enable the Applicant to provide a response for 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 the Applicant, Mr Jason Kalen at the hearing.

The Sub Committee considered the representations made by the Applicant regarding the merits of his application, namely that there would be no change to the use of the outside area, but if granted the variation would provide the Applicant with the ability to be able to serve alcohol from the outside bar located within The Chalet. The Sub Committee also considered the concerns raised in the written representation from Mr and Mrs Harvey-Evers but after hearing from the Applicant, the Sub Committee did not feel that the concerns raised by Mr and Mrs Harvey-Evers were justified as the outside area was (and has been for many years) already in use and the Sub Committee were not provided with any evidence that the granting of the variation would lead to an increase in any public nuisance, crime and disorder or harm to children. No representation was received from Marlborough School. No evidence of any complaints made in relation to The Marlborough were submitted to the Sub Committee and the Sub Committee noted that no relevant representations were received from the responsible authorities. It was further noted by the Sub Committee that The Marlborough is in close proximity to another establishment with a Premises Licence that makes use of its outside area – The Bow Belles at 84 High Street, Marlborough.

In reaching its decision, the Sub Committee took account of all representations made both written and at the hearing and was satisfied with the steps that the Applicant proposed to promote the licensing objectives. Having regard to all the material before it, the Sub Committee did not consider there to be evidence that if the variation to the Premises Licence were granted, the likely affect would be that one or more of the licensing objectives would be undermined.

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

- That none of the responsible authorities had raised concerns or made representations about the application
- The outside areas of the premises were already in use and had been for many years

The Sub Committee further noted that if subsequently, there was evidence of noise nuisance, anti-social behaviour, public safety issues or similar arising from the use of the premises for the licensable activities with the potential effect of undermining the licensing objectives then it was open to any person (including Responsible Authorities) to request a review of the licence under the provisions of the Licensing Act 2003 and the matter would come back to the Sub Committee.

The Sub-Committee also considered the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 18); 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.