

Eastern Area Licensing Sub Committee

MINUTES OF THE EASTERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 21 JUNE 2021 VIA MICROSOFT TEAMS IN RESPECT OF AN APPLICATION FOR A VARIATION OF A PREMISES LICENCE, THE MARLBOROUGH, 90 HIGH STREET MARLBOROUGH

Present:

Cllr Allison Bucknell, Cllr Kevin Daley and Cllr Pip Ridout

Also Present:

Applicant/Applicant's Representatives

Jason Kalen – Applicant
Zoe Benson – On behalf of Applicant

Wiltshire Council

Kevin Fielding – Democratic Services Officer
Sarah Marshall - Senior Solicitor
Lisa Pullin - Democratic Services Officer
Jemma Price – Public Protection Officer - Licensing

1 Election of Chairman

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

Resolved:

To elect Councillor Allison Bucknell as Chair for this meeting only.

2 Apologies for Absence/Substitutions

There were no apologies or 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 – 11 of the Agenda refers).

4 Chair's Announcements

The Chair apologised for the technical difficulties with the live stream at the beginning of the meeting which had caused a slight delay to the start of the meeting. There would be no live stream of the hearing due to the technical difficulties. A recording of the hearing would subsequently be uploaded on the Council's website.

5 **Declarations of Interest**

There were no interests declared.

6 **Licensing Application**

Application by Food Drink Rooms Ltd for a variation of a Premises Licence in respect of The Marlborough, 90 High Street, Marlborough

Licensing Officer's Submission

The Sub Committee gave consideration to a report (circulated with the Agenda) for which determination was sought for an application for a variation of a Premises Licence which was presented by Jemma Price (Public Protection Officer – Licensing). One relevant representation had been received from local residents. The application was for the following licensable activity:

- To permit the Sale of Alcohol for consumption ON the premises in the outside bar
 - Sunday to Thursday 11:00hrs to 23:30hrs
 - Friday and Saturday 11:00hrs to 00:00hrs

Miss Price reported the following to the Sub Committee:

- On 21 April 2021, an application for a variation to the existing premises licence granted on 21 October 2005 was received and accepted as a valid application. On 5 May 2021 the consultation period was extended until 26 May 2021 due to the application not being advertised correctly;
- During the consultation period, one relevant representation was received from local residents, Mr and Mrs Harvey-Evers expressing concerns about public nuisance and crime and disorder;

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

1. To grant the variation to the licence as applied for.
2. To modify the conditions of the licence.
3. To reject (refuse) the whole or part of the application.

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

On behalf of the Applicant

- Jason Kalen – Applicant
- Zoe Benson – On behalf of the Applicant

Relevant Representations

Mr and Mrs Harvey-Evers who had made a relevant representation were not present at the meeting.

The Chair advised that all the written representations had been read by the members of the Sub Committee in advance of the meeting.

The Chair then invited the Applicant to introduce their application.

Applicant's submission

Jason Kalen (Applicant) spoke in support of the application, highlighting the following points:

- The outside space at The Marlborough had always been used by people to enjoy food, drinks, and background music under the existing premises licence;
- A wooden structure which they had called The Chalet had been built in the outside area to provide patrons shelter from the elements;
- The current capacity of The Chalet was 26 people and the application sought was a variation to allow alcohol to be served from the outside bar set up inside The Chalet. Currently patrons were able to use all of the outside area of the premises, but drinks were only provided from inside the premises;
- The Applicant had attempted to speak to those who made a relevant representation, but this was not forthcoming;
- The Applicant was aware that on 12/13 April 2021 a noise complaint was received by local residents, but this was not caused by The Marlborough as they did not open until 14 April 2021;
- 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 this was not the case;
- The Applicant was trying to adapt his business to pick up after Covid and comply with all of the current regulations. There was no wish to create a

disturbance to local residents and it was felt that with The Chalet in use any noise disturbance would be reduced;

- For the first 5/6 days The Chalet was in use the Applicant had carried out noise monitoring of their background music and had set markers on the volume control not to exceed:
- The Chalet was close to a boarding house for Sixth Form students; however Marlborough College had not raised any concerns with the application; and
- The Chalet was situated on the top tier terrace which was within the boundary and the area had been used for a long time.

Sub Committee Member's questions

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

- The roof to The Chalet was retractable as they had wished for something that would provide ventilation if needed. A breathable plastic had been used and the Applicant had done this for cost reasons and the flexibility to be able to remove the whole structure if this was not a success and the area was to be returned to just an outside terrace area;
- The rest of the lower outside area of the premises would remain as it with tables and chairs set up and only obviously be used in dry weather; and
- The Chalet was currently already in use as a seating area and table service was provided from the main bar – the difference would be if the variation granted was the ability to serve alcohol from The Chalet and not just from the main bar inside the premises.

Responsible Authorities' submissions

There were no Responsible Authorities present as no representations had been submitted.

Submissions from those who made relevant representations

Mr and Mrs Harvey-Evers live on the High Street, Marlborough had made a representation 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. The Applicant responded as below:

- There would be no increase in the noise of people congregating outside of the premises as this was already the current practice as the space was already in use;
- There would be no change to the flood lighting, nothing would be changing. The back car park was already flood lit – the fire brigade were happy with the lighting and nothing was to be added to the existing lighting;
- Whilst metered sound checks were not carried out once the Applicant had begun to use The Chalet they visited the nearby block of residential house and could only hear the music when it was turned up so loud that you would not be able to bear it in The Chalet;
- Bow Belles, another premises in the vicinity have their own music and the Applicant suspected it was their loud music that was the source of the noise complaint earlier in the year;
- Background music for the lower part of the terrace/garden would continue as it always had, and the background music would be separate in The Chalet;
- The beer garden was already in place before Marlborough College converted the neighbouring premises into a boarding house. The college had spoken to the Applicant before submitting their planning application and so obviously felt that it was not an issue as it was a 6/7-bedroom house that was only used for 6th formers and older for part of the year; and
- The Applicant confirmed that the application was not seeking to extend the licensing area or timings to enable more patrons to possibly cause more noise nuisance when vacating the premises.

Applicant's closing submission

In his closing submission, Jason Kalen (Applicant) highlighted the following:

- The outside area was not new, it would not cause an increase in the customers that come into the premises and it was not felt that it would increase any nuisance by those leaving at night;
- The application was to solve a logistical issue and give them the ability to serve alcohol from the outside area. It was hoped that the regulations currently in place for table service only would soon end and that patrons are able to go up to a bar to purchase their drinks and provide the income to allow the business to stay afloat and continue.

Points of Clarification Requested by the Sub Committee

The Chair confirmed that the Sub Committee would be considering the application as set out in the Agenda papers.

The Sub Committee then adjourned at 11.10am and retired with the Senior Solicitor and the Democratic Services Officer to consider their determination on the licensing application.

The Hearing reconvened at 11.22am.

The Senior Solicitor advised that she gave no significant or relevant legal advice to the Sub Committee

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

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; and
- 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 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: 10.40 - 11.25 am)

The Officer who has produced these minutes is Lisa Pullin, email:
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