

AGENDA SUPPLEMENT (1)

Meeting: Licensing Committee

Place: Online meeting

Date: Monday 1 March 2021

Time: 10.30 am

The Agenda for the above meeting was published on 19 February 2021. Additional documents are now available and are attached to this Agenda Supplement.

Please direct any enquiries on this Agenda to Lisa Pullin, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 713015 or email lisa.pullin@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225)713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

6 **Minutes of the Licensing Sub Committees (Pages 3 - 18)**

The minutes of the Southern Area Licensing Sub Committee held on 21 January 2020 are now available - Application by Keystone Entertainment Ltd for a Variation to the Premises Licence at The Bank Cocktail Lounge & Events, 18 High Street, Amesbury.

DATE OF PUBLICATION: 26 February 2021

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Southern Area Licensing Sub Committee

MINUTES OF THE SOUTHERN AREA LICENSING SUB COMMITTEE MEETING
HELD ON 21 JANUARY 2020 AT ALAMEIN SUITE - CITY HALL, MALHOUSE
LANE, SALISBURY, SP2 7TU.

Present:

Cllr Trevor Carbin, Cllr Jose Green and Cllr Ian Thorn

Also Present:

Wiltshire Council

Carla Adkins - Licensing Officer
Sarah Marshall – Senior Solicitor
Lisa Moore Democratic Services Officer
Vicky Brown - Environmental Health Officer

Applicant
Nathan Muirhead - Applicant
Elle Strong – Supporting Applicant

Those who made a relevant representation
Graham Aymes
Aaron Tyack
Mrs Madeley

Also in attendance to observe
Katharine Clark & Partner Linda Holland – Licensing Manager
Katharine Edge – Public Protection (Licensing)

1 **Election of Chairman**

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

Resolved:

To elect Councillor Ian Thorn as Chairman for this meeting only.

2 **Apologies for Absence/Substitutions**

There were none.

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 1 – 6 of the Agenda refers).

The documents referred to in the Reports were;

Appendix 1 - Application & Plan
Appendix 2 and 2a
Appendix 3 - Location Plan of Premises
Appendix 4 – Map
Appendix 5a to 5i – Representations
Appendix 6 - Map of Representations

4 **Chairman's Announcements**

The Chairman gave details of the exits to be used in the event of an emergency.

5 **Declarations of Interest**

There were no interests declared.

6 **Exclusion of Press and Public**

The Chairman considered a request to view part of the photographic and video evidence provided in a closed session, due to there being some members of the public caught on film, which had not given consent to this footage being shown in public.

Resolved:

The Southern Area Licensing Sub Committee agreed to enter into closed session for part of the hearing, solely to view the footage containing members of the public, as governed by the Licensing Act 2003 (Hearings) Regulations 2005.

7 **Licensing Application**

Application by Keystone Entertainment Ltd for a Variation to the Premises Licence at The Bank Cocktail Lounge & Events, 18 High Street, Amesbury, SP4 7DN.

The Sub Committee gave consideration to a report (circulated with the Agenda) for which determination was sought to vary the Premises Licence presented by the Licensing Officer, Carla Adkins who introduced the purpose and scope of the application, the premises to which it related and the key issues for consideration.

A valid application for Variation was received on 2 December 2019, which requested:

- To remove the current condition that stated the entrance shall be relocated to the side door.
- To include a condition that the front entrance could be used when there was no recorded music or live music performed on the ground floor otherwise the side entrance must be used.
- To include a condition that the first floor be limited to background music only.
- To update floor plans (by removing a wall on the ground wall and moving the location of the bar on the first floor).

Seven relevant representations had been received, as detailed in the summary included on pages 11 & 12 of the agenda.

In accordance with the procedure detailed in the agenda, the Applicant, the Responsible Authorities and those who had made a Relevant Representation were given the opportunity to address the Sub Committee.

Key points raised by the Applicant were:

The application sought to achieve four things which were inter-linked and reliant on each other.

Responses to the concerns highlighted in two of the representations had been provided and circulated.

The consultation started on 3 December, and Environmental Health did not respond until a day before that period closed.

The applicant had since met with the Environmental Health Officer and offered some compromises.

The applicant had a close relationship with the Police.

Three points were proposed which could be added to the conditions of the operating schedule, these were:

1. Smoking not permitted at front of property. An application to Planning to amend the condition would be made.
2. The front door would only be in use until 22:00 hours.
3. The front door would not be used when any licensable activity was taking place.

Using data from the ID scanner, it showed there had been over 20,000 people visit over last 18 months.

The upstairs area had seating for 15 and the opportunity for a further 15 people to stand around the bar.

The applicant admitted that they made use of the front door, and were picked up on this and have apologised and the action will not be repeated. This occurred when the premises was in use for a private party and not for public entry, and no regulated entertainment was taking place.

The applicant stated they have also used the door for emergencies such as ejecting a person misbehaving.

In terms of the general nightlife in Amesbury, and the front entrance being the most contentious part of the application, the applicant stated he struggled to see how it impacts.

The door would only be used when the ground floor was closed and it would be operated on an intercom system and the applicant would walk down and open the door to a handful of people on a reservation basis.

The ID scanner was not used for the upstairs bar, the main bar would be closed, before 10pm and no licensable activity taking place downstairs.

Their bar has the least amount of Police incidents in Amesbury, and Antisocial behaviour reported had reduced since their premises opened.

The applicant has a check and clear across the whole area after the premises is closed by security staff.

The applicant has argued that the noise complaints were not always caused by the Bank as their noise limiter restricts this. Neither of the other two public houses have restrictions on their noise which suggests to the applicant that it is coming from their venues.

The first floor was now refurbished and has tables and chairs and, a docking station to play jazz type music as background.

When the premises opened, Environmental Health had not set the noise levels.

The applicant has repositioned the speakers, so they are all facing inwards and there is new noise insulation on the windows where the stud wall has been taken down.

The applicant has learned from their mistakes over the last 18 months and feel that their business does not impact on their neighbours and the applicant has improved the standard of living for them.

Questions from the Panel:

- When you first submitted the second application in July 2018, the side door usage was a contentious issue, why did you not consider appealing against that?

Answer: It was quite appropriate for clients to go through that door, it has been remodelled since then and the applicant does not now wish to mix the clients. He was content at the time for the side entrance being used for the opening hours.

- What is your definition of plays?

Answer: That has not been executed that yet but a range of events from comedy clubs to performances offered.

- The background music upstairs, is that Jazz?

Answer: This has only been used it twice since the refurbishment done late last year. Previously there was a DJ booth and loud speaker.

- What is the limit for guests upstairs?

Answer: There is a self-imposed limit of 30 and guests can book online and ring the door downstairs and the applicant can would go and let them in. The ground floor had not changed and in general the public turn up and provide their photo ID which is scanned. They move through to a general area with bar and dancefloor, with approximately 200 people per night. The ground floor opens from 22:00 to 02:00, the upstairs is open Fridays and Saturdays maybe possibly Sundays from 19:00 to 22:00 as a cocktail bar called 'The Office'. The downstairs is only open Friday and Saturday. Other events such as open mic and comedy club also take place occasionally. Usually we only open around 8 hrs a week unless we have events.

- In terms of internal configuration of your building, if someone comes in through the door for downstairs, could they access the upstairs?

Answer: The applicant has security. Access for upstairs would be needed whilst the downstairs was closed as the applicant is not comfortable for people to access upstairs by travelling through a closed bar with cash and stock. 'The Office' is only open when the downstairs bar is closed.

- The figure of 20k visitors seems extraordinary for a bar only open for 8hrs a week.

Answer: We spoke to the owner of the Chapel Night club in Salisbury, she said we were having an impact on her business as people were choosing us as an offer over going to Salisbury.

- Having accepted the previous condition on the front door, but then breached it, would it not have been better to come back to us?

Answer: I personally only recall using the front door for one event taking place upstairs. We have had the door open for stock purposes or private functions.

There were no questions from the Responsible Authority.

Questions from those that made representations:

- From the original application you said you would deal with the smoking and congregation of people outside?
Answer: The applicant does not believe they have people standing outside smoking, the only people outside smoking are those on their way to the premises from another location, once inside they do not go out there to smoke.
- So the people we see outside are not from your premises?
Answer: They may be leaving and waiting for a taxi or from another venue.
- The front door is a fire door, what provisions will you make when using it as an entrance?
Answer: No extra provisions are needed as many premises use their front door which is also a fire door.
- Why can't you use the side door for access?
Answer: The bar downstairs being closed would mean extra resources for security.
- How many door supervisors would there be when the upstairs was open?
Answer: None as their conditions do not require any staff until 22:00. The staff working on the bar upstairs take guests down to the smoking area.
- What was your sound limit?
Answer: Set to minus 8 decibels by Environmental Health.

Note: The Environmental Health Officer in attendance explained that there was a cross fader in place, and as no complaints were being received, then the level had been set at minus 8 decibels. The last complaint was in 2018, Officers had been out to the George and take measurements.

There were planning conditions which detailed some levels. There was noise generally in the area on a Friday or a Saturday night but it was very difficult to get a 5 minute measurement from one premises alone.

- If there is a sound limiter what is -8?
Answer: Assuming the starting point is 0, rather than turn off, the applicant removed the decibels, so planning condition is 32 inside and 40 outside.
- The Company that owned the George Hotel opposite was concerned with the noise and the smoking outside. Could those issues become part

of a condition on the license, to reduce the disruption to the guests at the George Hotel.

- Opening the doors on the pavement is a concern. Planning had good reason to keep the doors closed in the first place. The door is a fire exit and used for emergencies, these types of exits should be kept clear. The side entrance has a forecourt where people could wait, unlike the front doors where people will wait on the street.

Answer: Because of the building age and restrictions on it the applicant does not have to meet some of the requirements of access for disabled users upstairs. There are always have 5 door staff at the close of shift and they sometimes bring two from the New Inn to help with dispersal.

- There was a condition that the applicant notified us in advance of any extra events, yet we have not had any notice.

Answer: They have not had any events since then.

- Goods are deposited on to the pavement when using front doors for deliveries, blocking it for pedestrians.

Answer: The applicant has their deliveries to the New Inn and wheel them across directly.

- Where will the smokers go from the upstairs rooms, would they be ushered round to the smoking area every time. The noise was not just music, it was also from other proposed events which would bring chattering and cheering and clapping, then there's the intercom. People need sleep, children and shift workers. It is a human right to have uninterrupted sleep.

- What decibel was proposed for the background music, the downstairs from 75 to 125dbls is very loud.

- Why is the monitoring of alcohol to customers only to take place after midnight?

Environmental Health - Vicky Brown, Senior Environmental Health Officer, addressed the Sub-Committee, noting that she had met with the Applicant the previous week to discuss aspects of the application. He had clarified that the access would be restricted for upstairs guests and limited to 30 people.

Despite his efforts to control noise and the use of the front door, Environmental Health objected to the removal of the condition relating to the use of the front door, as it is a weak spot, and the use of it would lead to the customers queueing and that would be closer to the residents.

The applicant stated that he would stick to the conditions, but evidence had shown that this had not been the case.

The applicant advised that smokers would be escorted to the rear, it was difficult to see if this would be consistently applied.

The applicant said he would apply for use of the fire escape on the first floor through Planning, however there was no evidence that it would be approved.

Conditions were imposed at the time to reduce noise when the original permission went through. With regards to the suggested condition that there only be background music on the first floor, if that was controllable through the licensing regime that would be fine but may be difficult in future because of the conditions for live and recorded music before 12:00 midnight.

The wall was removed in 2019, however that was part of the noise mitigation from the main room but without that wall in place that room has no noise mitigation. The applicant stated that he had taken steps to reduce the noise levels, but there was no evidence to support that.

Environmental Health had contacted some of the residents and there was a plan to use some noise monitoring devices in their properties during the evening in the future.

Their main objection was to the removal of the conditions as they cannot see how appropriate measures could be put in place.

There should be no smoking at the front of the building, yet they have sat in the George Hotel and seen them on a few evenings. Potentially you could put a condition on when the upstairs and downstairs may use it.

Questions from the Panel

- What was the complaint about?
Answer: A variety of complaints were received but some aspects included were the noise aspect.
- Had there been any other complaints about this premises?
Answer: In April a complaint about a drum and bass night was received, and they were assured it would not happen again.
- How would the removed wall have made a difference?
Answer: The wall created a room with self-closing doors which acted as a noise barrier. The applicant has installed something to the windows in that room now, we have not yet had a chance to assess the impact of that.
- Any decision we make does not override anything in Planning terms. What was the Planning Permission condition?
Answer: Until the access door had been fitted the entrance door shall remain locked/closed when access is open to the public so there is a noise barrier.

- The bar has been relocated, are there any issues about that?
Answer: The bar may provide a bit more of a barrier to the noise as it's at the front now.
- With regards to the proposal of the condition preventing smoking outside the front door, how would that be enforced?
Answer: Licensing Officer – They would have to sit and watch and observe, if there were reports. If there are conditions to say how many were allowed.

Questions from the Applicant and those that had made representations:

- On the basis that there would be no licensing activity taking place on the ground floor, why was the door considered a weak spot?
Answer: If there were no activities taking place then that would be reasonable.
Licensing Officer - If licensing activities were not taking place then the licence would not apply. It's not just the live music act.
- If he cannot conduct any licensable activity, then he cannot sell alcohol so why would he play live music?

The Environmental Health relationship has been pretty poor. At the last hearing they were asked to come and set the noise limiter but it took three to four months, but when there is a problem they are there quickly.

- How can noise be distinguished from one set to another with noise such as that coming from different premises especially when several have music playing.
Answer: The majority of the monitoring of the late night venues is done in person, where the applicant can stand there and can tell where the noise is coming from. But it is appreciated that when noise equipment is installed it is not clear.
- If late night noise is being monitored Wetherspoons closes at 23:30 and they do not have music.

Those that made representation then addressed the Sub-Committee.

Mr Aymes - Stated he did not live there, but owned the properties in Beechwood court, and some of the residents have made complaints to Mr Aymes about noise and on occasion, fighting. Those detailed in on pages 71 to 73 of the agenda are the accounts of a young mother late at night.

On the plan showing the numbers on beechwood court, No. 2 is the property above the book makers closest to the Bank and No. 3 is the first house in the terrace of houses.

There was good reason to have the front doors conditioned. An internal wall had now been removed and should be reinstated as it was intended to combat the noise.

The ground floor is now a nightclub, from a cocktail bar. I feel the noise is greater and query whether a change of use is needed.

If the applicant could demonstrate effective control for a year I feel the neighbouring community would be happy to see a change of use of the doors.

Finally consider the views of the local residents as they have to live with the disturbance on Fridays and Saturday and possibly Thursdays also.

Questions from the Panel:

- The issues raised do not all possibly emanate from the Bank?
Answer: Yes, there is noise from people walking up and down the street, that is accepted. The Resident say there are people congregating around the Bank but they own the properties and live elsewhere in Amesbury elsewhere, so can only pass on resident comments.

Questions from the Applicant:

Regarding the local population, there were 7 representations received but there are over 100 residents in the town centre, so this is a low percentage. Some of those residents visit the Bank on a Friday and Saturday nights.

- The representation makes no reference to other venues and the premises is very close to the George Hotel, who had recently been running Karaoke. Could that be the cause of some of the complaints?

Answer: I don't know.

- Do those properties have double glazing?
Answer: Yes they do and built to a high standard.
- When there was a need to complain about antisocial behaviour, a lot of the music complaints go straight to them but they are not sure if any of them also go to Environmental Health.

Answer – Environmental Health Officer - When there are general complaints, that are mixed and music is thrown in, we are copied in to those emails.

Mr Tyack – The response was from Popplestone Allen, the Solicitors acting for the company. Mr Tyack confirmed he runs the George and in the same business as the applicant. The George's priority is to the hotel guests..

Questions from the Panel

- You have 32 rooms, how many are usually occupied?
Answer: Around 65%

- On Trip Advisor, how many complaints emanate from the effect of the Bank?

Answer: The head office use that as evidence, they would say there has been a slight decline due to the noise but it's the noise of the whole street. A lot of the problem is during dispersal at 02:30 hours. Most of the questions asked by the solicitors have now been answered.

Applicant questions

- They were surprised at seeing the representation, as the applicant considered they have a good relationship with the manager of the George. The applicant's question to their solicitor today was what gives them the impression the applicants premises is causing an impact when their premises has loud music until 01:00 hours?

Answer: The solicitors confirmed on behalf of the manager of the George that it is the door that opens straight onto us.

- Of the 53 photos sent through – 10 of them show the front door being used when our premises was closed during the day, and some show a police car, and parked police cars, and some driving through the town. This only shows that Amesbury Town has a police presence.

Answer: They were trying to present a picture. Most were taken after we were closed, so if any police or ambulance vehicles were parked out front it was due to the Bank.

- Could it easily be possible that it involves people leaving the other venues?

Answer: Yes

At 11:40am the Southern Area Licensing Sub-Committee:

Resolved:

To agree that in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in Item Numbers 14 – 17 because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraphs 1& 3 of Part I of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

The Observers, the applicant, the Responsible Authority and those that had made Representations, left the room to enable a closed session to take place. During that session, the Licensing Officer provided the Panel and the Senior Solicitor with photographic and video footage taken outside the premises.

The Committee and all attendees reconvened at 12:05pm, to continue with the hearing in open session.

The Chairman explained that the Panel had viewed all of the video and photos provided as evidence and clarified that the Panel was only able to consider those directly relevant to the case in hand.

The Applicant noted that details of a Facebook page set up in support of the application had been presented to the Licensing officer on Monday, however it had been rejected as evidence due to the page containing names of members of the public. The Applicant had since redacted the names and asked if the Panel would like it to be presented.

This was declined by the Chairman.

Environmental Health

Changing the first floor into a cocktail bar was a possible step, despite the applicant's intentions it was difficult for Environmental Health to see how the use of the door in the future would impact. At this stage they have no evidence to ask for the wall to be reinstated but would be looking at that in the future.

Mrs Madeley

Planning have said the doors at the front are to be kept closed, can Licensing overrule Planning?

Answer: No, they are separate.

Mr Aymes

The planning conditions were that the fire doors should be closed, so that should stand.

Answer: The decision of the Licensing Sub-Committee was not based on Planning issues.

Applicant

If the Sub Committee approved the application the applicant would still need to seek planning approval and there would be an opportunity for people to submit their views then. It was very difficult to distinguish from one venue to another and the applicant did not think the application alone was creating any issues in relation to public nuisance.

The applicant stated he would encourage the Sub Committee to find ways to enforce these things rather than refuse them. If that door cannot be used then there was no point in having a cocktail bar upstairs, so they may as well revert to what they had before with a DJ.

The Sub committee has seen the photos and videos and agreed that the door was used when it should have not been used to exit customers.

The Sub-Committee retired to consider the application at 12:15pm.

The Sub Committee reconvened at 13:11.

Following the deliberations of the Sub Committee Members, the Solicitor for the Council made a statement of material legal advice given in the first closed session as follows:

That the Sub Committee was advised to disregard any activities that were not taking place at or immediately adjacent to the Premises.

The Sub Committee considered all of the submissions made to it and the written representations together with the Licensing Act 2003, Statutory Guidance and Regulations and the Licensing Policy of the Council

Resolved:

The Southern Area Licensing Sub-Committee resolved to grant the licence, as applied for, subject to the following conditions:

- 1. The side entrance shall be the only entrance and exit for all licensable activities taking place on the ground floor.**
- 2. The front entrance using an intercom system for entry into the building may be used for licensable activities on the first floor.**
- 3. The front entrance may not be used when any licensable activity is being undertaken on the ground floor.**
- 4. The maximum number of customers on the first floor will be limited to 30.**
- 5. The front entrance can only be used when there is no licensable activity taking place on the ground floor.**
- 6. The first floor be limited to background music only.**
- 7. The first-floor operation/opening hours will be restricted to 19:00 to 22:00 hours.**
- 8. Changes to the floor plans be permitted, subject to the submission and approval of an updated floor plan to the Licensing Authority by 21st February 2020.**

Reasons for the Decision;

The Sub-Committee considered the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 18) and the four Licensing Objectives; the guidance issued under Section 182 of the Act and the Licensing Policy of Wiltshire Council.

In reaching its decision, the Sub Committee took account of and considered all the written evidence and representations in addition to the oral arguments presented at the hearing and made on behalf of the Applicant, the Licensing Authority, Environmental Health, and parties who had made relevant representations and their representative. The Sub Committee also took account of the photographic and video evidence which only concerned the Premises and viewed in a private hearing

The Sub Committee noted that the concerns raised by parties at the hearing relating to public nuisance, crime and disorder, public safety, noise and the front doors of the premises being in use during opening hours (whilst noting there were three licenced premises (including the Licensed Premises) on the High Street with activity taking place on the street outside all of the premises during opening hours). However, no representation from the Police as a responsible authority was received. The Licence Holder apologised to the Sub Committee for the use of the front door to enter and exit the property on occasions. The Sub Committee further noted the concerns regarding noise arising from music from the Licenced Premises as raised by Environmental Health and two local residents making representations and the impact of the noise on neighbouring properties and determined that the maximum number of customers on the first floor be limited and the use of the front and side door for licensable activities taking place on the first floor and ground floor respectively for specified hours with the use of an intercom system. Due to the noise from music, the Licence Holder was required to only have background music in place on the first floor. Works had taken place inside the property and the Sub Committee required the Licence Holder to send the floor plans to the Licensing Authority for approval.

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

(Duration of meeting: 10.00 am - 1.20 pm)

The Officer who has produced these minutes is Lisa Moore 01722 434560 of Democratic Services, direct line 01722 434560, e-mail lisa.moore@wiltshire.gov.uk

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