

## **EAST DEVON DISTRICT COUNCIL**

### **Minutes of the meeting of Licensing and Enforcement Sub Committee held Online via the Zoom app on 21 April 2021**

#### **Attendance list at end of document**

The meeting started at 9.30 am and ended at 2.05 pm

#### **37 Minutes of the previous meeting held on 24 February 2021**

The minutes of the previous meeting held on 24 February 2021 were agreed as a correct record.

#### **38 Declarations of interest**

**Minute 41. Determination of an application for the grant of a premises licence to allow regulated entertainment, late night refreshment and the sale of alcohol for consumption ON the premises at Mickey's Beach Bar & Restaurant and Café Patisserie Glacerie, Unit 1 Sideshore, Queens Drive, Exmouth EX8 2GD.**

Councillor Joe Whibley, Personal, The member is also a member of Exmouth Town Council.

The member knows several of the interested parties and has received lobbying emails regarding the application.

Cllr Whibley also confirmed that he is free of bias and pre-determination and able to consider the application.

**Minute 41. Determination of an application for the grant of a premises licence to allow regulated entertainment, late night refreshment and the sale of alcohol for consumption ON the premises at Mickey's Beach Bar & Restaurant and Café Patisserie Glacerie, Unit 1 Sideshore, Queens Drive, Exmouth EX8 2GD.**

Councillor Kim Bloxham, Personal, The member had previously been a neighbour of Mr Buller who was an interested party.

Cllr Olly Davey is known to the member.

The member had received lobbying emails regarding the application.

Cllr Bloxham confirmed that she is free from bias and pre-determination and able to consider the application.

**Minute 41. Determination of an application for the grant of a premises licence to allow regulated entertainment, late night refreshment and the sale of alcohol for consumption ON the premises at Mickey's Beach Bar & Restaurant and Café Patisserie Glacerie, Unit 1 Sideshore, Queens Drive, Exmouth EX8 2GD.**

Councillor Maddy Chapman, Personal, The member is also a member of Exmouth Town Council.

The member is a friend of an interested party, Ms Nash.

The member has received lobbying emails regarding the application.

Cllr Chapman also confirmed that she is free of bias and pre-determination and able to consider the application.

39 **Matters of urgency**

There were no matters of urgency.

40 **Confidential/exempt items**

There were no confidential / exempt items.

41 **Determination of an application for the grant of a premises licence to allow regulated entertainment, late night refreshment and the sale of alcohol for consumption ON the premises at Mickey's Beach Bar & Restaurant and Café Patisserie Glacerie, Unit 1 Sideshore, Queens Drive, Exmouth EX8 2GD**

The Sub-Committee considered the application for the grant of a new premises licence to allow regulated entertainment, late night refreshment and the sale of alcohol for consumption ON the premises at Mickey's Beach Bar and Restaurant and Café Patisserie Glacerie, Unit 1 Sideshore, Queen's Drive Exmouth EX8 2GD.

The Chair of the meeting introduced the members of the Sub-Committee and the East Devon District Council Officers present. Also present was Mr Asitha Ranatunga, Legal Advisor to the Sub-Committee. The Chair confirmed that the meeting was a hearing to consider an application for a premises licence under the Licensing Act 2003.

The applicant, Maer Beach Limited, entitled to make representations, was represented by Mr Gareth Pinwell of Ashfords Solicitors.

The interested parties present and entitled to make representations were Jane Ashton, Daphne Barnes-Phillips, Jim Barnes-Phillips, Cllr David Poor for Exmouth Town Council, Kevin Brown, David Buller, Daphne Currier, Cllr Olly Davey, Simon Davidson (The Avenues Residents Association), Anne Fardon, Michael Fardon, Michael Golby, Jenny Heslop, Martin Heslop, Cecilia Jenkins, Elaine Lewis, Ann Louis, Carol Metcalfe, Ron Metcalfe, Mary Nash, Pat Packe, Roger Packe, Charlie Salter, John Sealey, Lynda Tweedie, Peter Tweedie, Robert Tweedie, Michele Ward, Irene Warman and Martin Warren (The Rockland Residents Management Company).

The responsible authority in attendance was East Devon District Council, Environmental Health, represented by Alice Gill, Environmental Health Officer.

Mr Ranatunga, Legal Advisor to the Sub-Committee, summarised the procedure for the hearing.

The Licensing Officer outlined the application to allow regulated entertainment, late night refreshment and the sale of alcohol for consumption on the premises. The development is on Exmouth seafront and the proposed licensed area includes a two storey building with outside space and adjacent event space. A site plan had been provided at appendix B of the Officer's report. The licensable activities proposed are the sale of alcohol for consumption on the premises, late night refreshment and regulated entertainment.

78 representations against the application had been received. The Licensing Officer advised that some conditions were agreed between the applicant and the Police prior to the submission of the application, including the provision of door staff and CCTV within the premises. These conditions were included in the operating schedule at appendix F of the Officer's report.

Further conditions, proposed by EDDC Environmental Health, had been accepted by the applicant. Environmental Health information was contained in appendix G of the report.

Representations from local residents were included within the report to the Sub-Committee.

The applicant's legal representative, Mr Pinwell, presented the application and advised that the directors of Maer Beach Limited have extensive experience in the restaurant and hospitality industry and are a highly regarded brand.

Mr Pinwell welcomed the opportunity to respond to the issues raised by the representations which are primarily perceived noise issues, objection to the hours of operation and wider issues of concern which were not directly attributable to the operation of the premises. The response included the following points:

- Regarding acoustic issues, the building had been designed and built to the highest specification and facing away from residential properties
- The design incorporated a high level of noise attenuation and centrally controlled sound system
- The applicant had engaged an acoustic consultant who had liaised with the Environmental Health Officer resulting in agreed conditions relating to acoustic issues
- Regarding operating hours, the applicant was requesting licensed hours of 11am to 2am. Mr Pinwell referred to the licensed operating hours of the Ocean premises which had been raised in the representations by the interested parties and considered that the applicant was seeking only a modest increase above those hours
- No objections had been raised by the Police during the application process and there was no evidence to suggest that the operating hours applied for would offend the licensing objectives
- Letters of objection had raised concerns regarding anticipated issues, but these were not based on facts relating to the premises
- Mr Pinwell referred to de-regulation and requested the Sub-Committee to consider the application in light of this
- Regarding the licensing objectives of prevention of crime and disorder, protection of children from harm and public safety, the applicant had liaised with the Police and the responsibilities of the applicant for the premises were set out in the operating procedures
- Representations had raised issues which were not in the control of the applicant and which should not form part of the Sub-Committee's deliberations

In response to questions from members of the Sub-Committee, the applicant's legal representative made the following points:

- It was unlikely that the premises would be open until 2am every day of the week, but the applicant wished to retain the commercial flexibility, particularly with regard to pre-booked events
- The proposed terminal hour for the marquee area was 11pm
- It was proposed to have separate facilities available for those attending events in the marquee, but if this was not possible, facilities in the bar would be used
- The outside marquee space would only be used from April to October and not during the winter months
- There would not be fixed furniture in the outside space during winter months

In response to questions from interested parties, the applicant's legal representative advised the following:

- Regarding making a judgement about risk [ref. ], as the premises had not yet opened, there was no evidence attributable to risk from its operation
- Similar safeguards would apply to the outside marquee space regarding noise levels to ensure that it operated within recognised limits and did not offend licensing objectives
- Mr Pinwell referred interested parties to the acoustic report which set out details of all noise monitoring undertaken in order to determine ambient noise levels. Comparative

evidence of noise emanating from other premises had not been requested and this application should be considered on its own merit

- Parking facilities had been considered as part of the planning consent for the development and are not within the remit of the licensing application
- The marquee would be removed for the winter months
- The Environmental Health Officer had attended all parts of the building and had observed the sound system in operation. Conditions to mitigate noise levels had been agreed
- The applicant would be willing to undertake future noise monitoring to ensure conditions were complied with when the building becomes operational
- The period for sale of alcohol would be until 2am with 30 minutes to vacate the premises

Prior to the interested parties addressing the Sub-Committee, the Chair advised that all written representations had been included in the reports and had been read by the Sub-Committee members.

Interested parties raised the following points:

- The EDDC Licensing Policy recognised continued preservation and protection of coastal areas and locations as an on-going consideration and further recognised that the Licensing Authority and Sub-Committee may use its discretion
- Availability of alcohol, proximity to a dangerous sea current and visibility at night time is a risk to life and should be taken into account, particularly as the premises is close to the South West coast path
- Polycarbonate drinking vessels would require hundreds of years to biodegrade and measures should be taken to ensure that they do not leave the premises
- The well-being of all members of the public should be taken into account and a licence for the outside marquee space should be applied for on an individual event by event basis
- The serving of alcohol in a restaurant was supported, but opening hours until 2am were not supported
- It is the duty of the local community to raise concerns regarding potential consequences and the duty of authorities to consider potential risks
- The arrival of Sideshore was welcomed but its operation should be in keeping with the local area. The proposed extended opening hours are in conflict with this obligation
- There was concern that the environmental impact of the operation was not part of the consideration of the licence application
- It was expected that levels of anti-social behaviour would rise
- The stretch of the Exe estuary directly opposite the premises is particularly dangerous for swimmers due to the narrow channel and strong tidal races
- Patrons leaving the premises late at night would add to public nuisance
- Exmouth Town Council's objections to the application support those raised by individual residents
- Earlier closing of the premises would reduce the risk to public nuisance
- Beach safety is a major concern and portable safety barriers and increased signage could assist with preserving public safety
- Noise from the venue will travel across the estuary to the Dawlish wildlife area
- The proposed operating hours do not allow sufficient down time for clearing up and respite for local residents from additional disturbance
- The venue is not part of the night life in the centre of Exmouth and will be a draw for those seeking a late night drink when other premises have closed
- The lack of CCTV on the seafront is a real concern when seeking to minimise anti-social behaviour and public nuisance
- Anti-social behaviour and public nuisance is already a problem on the seafront and the proposed long licensing hours will exacerbate the issues
- The hours applied for may be a modest increase above the operating hours of other local venues, but are highly significant in terms of the lateness of the hour when patrons will be leaving the premises
- Licensing objectives have to be balanced with the effect on local residents and their rights under the Human Rights Act, Article 8

- Although not relevant to licensing objectives, residents wished to record their disappointment that the anticipated water sports centre had not been delivered
- No evidence of the possible detrimental impact of the proposed late night hours is available as the venue is not yet operating
- As there was no mediation, there has been no opportunity to discuss issues of concern and to clarify possible misunderstandings for both the applicant and the interested parties
- Concern was expressed that noise would leak from the windows facing residential properties
- The playing of late night music and serving refreshments for the hours sought in the application will have an impact on hundreds of residents which is both disproportionate and unreasonable
- The application states that bottles of wine and champagne will be available for the outside space and could possibly be taken on to the beach
- The grant of a licence will have the effect of turning the outside marquee space into an extension of the bar and restaurant
- The acoustic report shows that the majority of the current noise comes from birdsong
- There is a lack of control of the outside event space which will be unfenced and a lack of control of those leaving the premises
- There is the potential for approximately 500 people at the venue late at night
- Reference was made to the Law Commission paper 3358 of 2015 which summarised public nuisance and the need to prevent public nuisance
- If the application is granted in its current form it will create a precedence for other similar applications in Exmouth

The applicant's legal representative, Mr Pinwell, responded to the points raised by interested parties as follows:

- The use of polycarbonate vessels is a requirement of the Police
- The applicant wishes to operate a responsible premises and quality venue which is an asset to Exmouth and procedures will be in place to ensure it operates as such
- The applicant wishes to record that they have no intention of causing a public nuisance

The Sub-Committee's legal advisor, Mr Ranatunga advised the following:

- Regarding public safety outside the premises, the licensing function should not be seen as a means of controlling anti-social behaviour and there should be proportionality with regards to measures such as signage
- Conditions cannot be imposed which are outside of the direct control of the licensee
- In carrying out the licensing functions, the Sub-Committee must consider the four licensing objectives and should have regard to national and local policy on other matters such as the environment only as far as it refers to the licensing objectives
- Article 8 of the Human Rights Act is a qualified right with respect for family and private life. Any person will have the right to a review should there be concerns at a future date that the licensing objectives are not being met
- A key purpose of the licensing function is not to respond to crime, disorder and public nuisance once it has happened, but to make an informed assessment of the risk of such things occurring if the licence is granted and to take appropriate steps to minimise the risks

The East Devon District Council Environmental Health Officer, Alice Gill, responded to questions from the Sub-Committee as follows:

- Agreement has been reached regarding conditions to control noise levels
- Regarding regulated entertainment, after 11pm there should not be any noise exceeding existing levels from music from the premises
- Before 11pm, Environmental Health considered an increase of five decibels on regulated entertainment to be acceptable
- Noise levels have been set at residential facades and the operator of the premises must take into account and manage noise from both inside and outside space together when monitoring noise levels at those facades

- Residents are able to request an Environmental Health review of noise levels should there be concerns going forward
- Light pollution had not been considered under the licensing regime and was a planning matter
- Five decibels as an agreed increase during the day time has come from widely accepted standards and is considered by Environmental Health to be reasonable, although this was noted as being more than was offered by the applicant
- Noise levels as conditioned have to be met at the measuring point regardless of whether doors and windows are open and the operator will be responsible for managing and adjusting noise
- Current ambient day and night time noise levels are recorded in the report and can be independently monitored by Environmental Health

The Sub-Committee's legal advisor clarified various points regarding the conditions requested by Environmental Health and the monitoring of noise levels should the licence be granted and the premises be operating.

The Chair invited any interested parties who had not yet spoken to address the Sub-Committee.

Interested parties who had not previously spoken made the following points:

- Development plans for Exmouth, which were broadly welcomed, had never included a late night drinking establishment
- Considerations about noise levels should also take account of wind direction which is predominantly from the south west
- Vibration from loud beat music should also be taken into account

The applicant's legal representative made a final statement and drew attention to the following matters:

- The application has to be considered against the licensing objectives
- It was noted that protection against noise was a significant concern for local residents and conditions would be imposed to address the concerns in a robust manner
- The wider issue of anti-social behaviour is not a responsibility of the applicant and a full and robust regime would be in place to ensure that patrons behave properly and leave the premises in an orderly way
- Patrons will not be permitted to take bottles from the premises
- The Police have not raised objections to the application and strict policies would operate to minimise the risk of public nuisance emanating from the venue
- At present the assumption is unfounded that the venue will add to crime, disorder and anti-social behaviour in the area and with the appropriate license and robust enforcement of conditions the premises can be operated so as not to contribute to these issues
- Responsibility for the safety of the public when on the premises will be taken very seriously and appropriate procedures will be in place to protect children from harm, including strict regimes to prevent children from leaving the marquee to enter the main building. Portable toilets would be provided for use in the marquee area
- A licence till 2am would allow flexibility in the operation of the venue and is commensurate with the type of operation envisaged by the applicant

The Sub-Committee's legal advisor summarised advice given to members. The Sub-Committee was advised to refer to the model conditions in the EDDC Licensing Policy should it wish to impose additional conditions beyond those set out in the application. Conditions should be appropriate and proportionate for the promotion of the licensing objectives.

At the Chair's discretion and with the agreement of the applicant's legal advisor, an interested party made a further statement regarding the risk of an increase in anti-social behaviour and the lack of an explanation as to why the application sought such a late operating hour. The interested party requested that the Sub-Committee consider proper safeguards when considering the application.

The applicant's legal advisor, Mr Pinwell, confirmed that he had nothing further to add to his closing statement.

The Chair thanked all participants for the orderly and succinct conduct of the hearing which had set out the issues clearly.

Due to the complexity of the issues the Sub-Committee would notify all parties of its decision within five working days.

**Attendance List**

**Councillors present:**

K Bloxham (Vice-Chair)

M Chapman

J Whibley (Chair)

**Councillors also present (for some or all the meeting)**

None

**Officers in attendance:**

Lesley Barber, Licensing Officer

Stephen Saunders, Licensing Manager

Rebecca Heal, Solicitor

Susan Howl, Democratic Services Manager

Sarah Jenkins, Democratic Services Officer

Alethea Thompson, Democratic Services Officer

Anita Williams, Principal Solicitor (and Deputy Monitoring Officer)

Louise Bennett, Licensing Support Officer

**Councillor apologies:**

Chair .....

Date: .....