

## **EAST DEVON DISTRICT COUNCIL**

### **Minutes of the meeting of Licensing and Enforcement Sub Committee held Online via the Zoom App on 19 May 2021**

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

The meeting started at 9.30 am and ended at 2.37 pm

#### **42 Minutes of the previous meeting held on 21 April 2021**

The minutes of the previous meeting held on 21 April 2021 were agreed as a correct record.

#### **43 Declarations of interest**

**Minute 47 . Determination of an application for the grant of a premises licence to allow the provision of regulated entertainment, provision of late night refreshment and the sale of alcohol for consumption ON and OFF the premises at The Grand Hotel, 5 Morton Crescent, Exmouth EX8 1BE.**

Councillor Joe Whibley, Personal, Member is an Exmouth Town Councillor. The Grand Hotel, Exmouth is located in the ward represented by the Member.

#### **44 Matters of urgency**

There were no matters of urgency.

#### **45 Confidential/exempt items**

There were no confidential or exempt items.

#### **46 Determination of an application for the grant of a premises licence to authorise the provision of regulated entertainment, provision of late night refreshment and the sale of alcohol for consumption ON and OFF the premises at The Blue Ball, Sandygate, Exeter, Devon, EX2 7JL**

The Sub-Committee considered the application for a premises licence to authorise the provision of regulated entertainment, provision of late night refreshment and the sale of alcohol for consumption on and off the premises at The Blue Ball, Sandygate, Exeter EX2 7JL. The meeting was a hearing to consider the application for a premises licence under the Licensing Act 2003.

The applicant, St Austell Brewery Co Ltd, entitled to make representations, was represented by Mr Ewen Macgregor of TLT Solicitors. Also in attendance were Mr Chris Faulkner of St Austell Brewery and Mr Adam Holland, manager and tenant of The Blue Ball.

The interested parties present and entitled to make representations were Mr Robert Pond, Mr Jonathan Sewell and Mrs Helen Sewell.

Also present was Mr Asitha Ranatunga, legal advisor to the Sub-Committee.

The Licensing Officer, Mr Steve Saunders, outlined the application. The premises currently operates under an existing premises licence, the license holder being St Austell Brewery. The license holder is now applying for a new premises licence following alterations to the premises including the addition of a shelter area and alterations to outside areas including the addition of an external servery bar which is proposed to be licensed for the sale of alcohol.

Should the application be granted to a satisfactory standard, the applicant would surrender the existing premises licence. The application was set out in Appendix A of the report and plans could be viewed under Appendices B1, B2 and B3. The licensable activities and the timings applied for had been set out in Appendix C, and for comparison the timings authorised by the existing licence were shown in Appendix D to the report.

The Licensing Officer summarised the licensable activities which were now being applied for as the sale of alcohol for consumption on and off the premises, late night refreshment indoors and outdoors and regulated entertainment.

Since the report had been prepared, the Chair of the Licensing & Enforcement Sub-Committee had requested further information from the applicant and additional Appendices are now included in the report before the Sub-Committee. Additional documents are Appendices L, M, M1 and M2 which had been circulated to all parties on 18<sup>th</sup> May 2021.

Nine representations against the application had been received. The applicant's representative had undertaken mediation with the interested parties although it was understood that no subsequent agreement had been reached.

A representation was made by Devon and Cornwall Police who have reached an agreement with the applicant and the subsequent amendments and additions that have been offered by the applicant are set out in Appendix I.

All representations received are set out in full in the Licensing Officer's report.

The applicant's legal representative, Mr Ewen Macgregor, addressed the Sub-Committee and referred to Appendices C, D and J of the Officer's report. Mr Macgregor made the following points:

- The premises are well-established and have held a license for many years
- The premises are not, and have not been, subject to regulatory enforcement action
- No responsible authorities have made representations
- The application before the Sub-Committee seeks more restrictive conditions than those under the current license
- The applicant has no intention of changing the style and nature of the premises and the application sought to rectify changes which have been made, particularly the addition of an external bar

Regarding Appendix C, the summary of proposed licensable activities and Appendix D, the summary of existing licensable activities, Mr Macgregor highlighted various points in order to clarify what is now being sought under the new application.

Appendix J contained a full list of conditions, including those agreed with the Police, which enhance and update the conditions on the existing license. Mr Macgregor highlighted the conditions which relate to the use of the outside bar and to public nuisance which are not currently on the premises license.

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

- Additional conditions have been included requiring noise checks to be made, with reference to condition 36 during the provision of regulated entertainment when noise checks will be carried out at the nearest noise sensitive property and a noise log will be kept
- Physical noise checks will be made and residents will be consulted and included in any future noise monitoring
- During the provision of entertainment, staff monitor noise levels on a regular basis and noise monitoring equipment will be provided if required in the future
- The purpose of the application is to remedy the situation regarding obtaining a license for the outside bar area which is already in use
- The intention for the live music is to provide entertainment suitable for families

The Sub-Committee viewed the plan at Appendix B2 and photograph at Appendix F in order to clarify the area for the external bar and the provision of live music.

In response to a question from an interested party, the applicant's legal advisor confirmed that the current license application seeks to ensure that the outside bar area, which was not previously licensed, can be used properly and with the required license.

The interested parties presented their case to the Sub-Committee.

The following points were raised:

- During the previous ten years, local residents have made several formal complaints to both Planning and Environmental Health at EDDC, and residents are concerned that the current application, if granted, would exacerbate the problems
- There have been occurrences of disorderly behaviour, including rowdiness and brawling on leaving the premises by a minority of patrons and this sometimes puts public safety at risk
- The most serious source of public nuisance is noise, particularly from music in the beer garden
- A recent performance of live music had been accompanied by amplified recorded backing music which could be heard in a neighbouring property which was distressing to residents

In response to a question from the Sub-Committee regarding previous complaints to EDDC Environmental Health, an interested party confirmed that a formal noise assessment had been carried out at that time and that the premises had a history of loud music.

The Sub-Committee was advised that where live music included a recorded and amplified backing track, it was still classed as live music for licensing purposes.

A formal complaint had been submitted to Environmental Health following events on the 17 and 18 April 2021 and the complainant had been advised that a letter would be sent to The Blue Ball regarding the issue.

Further points were made by the interested parties as follows:

- The Blue Ball is appreciated and respected by local residents and is a valued part of the community, however, the main issue of concern is with live music, for example, the events of Saturday 17 April when the volume rendered a neighbouring garden unusable and could not be managed within the neighbour's property itself
- This event also raised concerns regarding the potential for anti-social behaviour impacting on the neighbouring property more frequently in future
- There are alternative areas within the premises where live music could be sited to reduce the impact on neighbouring properties

The applicant's legal representative made a final statement and advised that the current license allows more flexibility than that now being applied for. It was noted that no responsible authority had made representations on issues of concern, including the complaint regarding the event on 17 April.

Residents were able to speak directly to the manager at The Blue Ball and would have recourse to the appropriate authority should issues arise in the future.

In response to a question from the Sub-Committee's legal advisor, Mr Ranatunga, the applicant's legal advisor confirmed that the applicant committed to comply with the conditions offered, notwithstanding the terms of the de-regulation of live music.

The location and direction of speakers for live music was considered. The applicant's legal representative confirmed that the area proposed for live music and entertainment is that which was outlined at the start of the meeting and that all speakers would be inward facing and directed away from neighbouring properties.

In response to a question from one of the interested parties regarding the need for amplification in a small area, the applicant's legal representative advised that the issue is the level at which amplified music is set, rather than the amplification itself and that the conditions of the license would seek to control noise levels.

The Chair thanked those present for participating and advised that all parties would be notified in writing of the Sub-Committee's decision within five working days.

The meeting was adjourned at 11.10am and reconvened at 2.00pm.

47 **Determination of an application for the grant of a premises licence to allow the provision of regulated entertainment, provision of late night refreshment and the sale of alcohol for consumption ON and OFF the premises at The Grand Hotel, 5 Morton Crescent, Exmouth EX8 1BE**

The Sub-Committee considered an application for a new premises license to authorise the provision of regulated entertainment, provision of late night refreshment and the sale of alcohol for consumption on and off the premises at the Grand Hotel, Morton Crescent, Exmouth.

The Chair introduced the East Devon District Council Officers present.

The applicant, Axcel Hospitality (Exmouth) Limited, entitled to make representations, was represented by Mr Angus Gloag of Clerksroom, with Mr Peter Hutchinson also in attendance.

There were no responsible authorities present.

Regarding representations from responsible authorities, the Chair advised that the agreed position between the Police and the applicant is set out in Appendix G. EDDC Environmental Health had stated that no noise complaints about the premises had been received since 2005 and that the applicant had been advised regarding potential noise measures and equipment that could be imposed if complaints are received in the future.

There were no interested parties present. Mr A Rowsell had given notice to attend, but had subsequently sent apologies.

The Chair confirmed that Sub-Committee members have read the documents submitted by the parties in advance of the hearing and summarised representations received which appeared to relate principally to two of the four licensing objectives, namely the prevention of crime and disorder and prevention of public nuisance.

The legal advisor to the Sub-Committee, Mr Giles Salter, outlined the hearing procedure.

The Licensing Officer, Ms Lesley Barber, summarised the application and drew the Sub-Committee's attention to the plans in the report and the three licenses for three proposed areas; the function room and the dining room on the lower ground floor and the bar area (referred to as the lounge) on the ground floor.

Page 186 of the Officer's report sets out the Police agreed position following their request for a number of changes to the timings within all of the proposed licensable areas of the premises and it has been agreed that the hours will be pulled back to 11.00pm for the sale of alcohol, unless there are bona fide functions taking place.

As a result of the Police agreements, a number of interested parties had withdrawn their representations with fifteen remaining outstanding from the original thirty representations.

A number of outstanding representations relate to live and recorded music which were not part of the Police representation. Local residents remain concerned regarding the timing of live or recorded music and the applicant has indicated that there was scope for discussion on the proposed timings.

The applicant's legal representative, Mr Angus Gloag, presented the application and introduced Mr Peter Hutchinson, DPS for the Grand Hotel, and representing Axcel Hospitality. Mr Hutchinson confirmed that the Grand Hotel is currently closed, but was previously a three star hotel.

In response to questions from Mr Gloag, Mr Hutchinson further confirmed that the position as agreed with the Police was accurately set out in Appendix D of the Officer's report and that the Hotel would abide by the terms agreed.

It was noted that local residents had expressed concern that the intention was to run a night club and Mr Hutchinson confirmed that this was not the case. Regarding the playing of recorded or live music, the intention was that this would be confined to the

downstairs area. Noise levels would be monitored and a decibel limiter would be installed if deemed appropriate at a future date.

Responding to questions from the Sub-Committee, Mr Hutchinson advised that it was difficult to predict with any certainty how many functions would take place.

Refurbishment of the Hotel was underway, focussing on bedrooms and public areas before refurbishment of the basement area and function rooms. If noise subsequently became an issue in the basement and function rooms, the Hotel would firstly consider noise reduction measures and then potentially soundproofing.

The applicant's legal representative, Mr Gloag, made a final statement and advised that the applicant takes its responsibilities seriously and is an aspirational brand.

The Chair advised that all parties would be notified in writing of the Sub-Committee's decision within five working days.

The Chair thanked all those participating in the hearing.

**Attendance List**

**Councillors present:**

K Bloxham (Vice-Chair)

A Dent

J Whibley (Chair)

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

None

**Officers in attendance:**

Giles Salter, Solicitor

Rebecca Heal, Solicitor

Lesley Barber, Licensing Officer

Stephen Saunders, Licensing Manager

Emily Westlake, Licensing Officer

Sarah Jenkins, Democratic Services Officer

Alethea Thompson, Democratic Services Officer

**Councillor apologies:**

None

Chair .....

Date: .....