

LICENSING PANEL HEARING held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on FRIDAY, 26 MAY 2023 at 1.00 pm

Present: Councillor G Driscoll (Vice-Chair)
Councillors S Barker and M Tayler

Officers in attendance: S Bartram (Licensing Support Officer), N Coombe (Interim Legal Services Manager and Deputy Monitoring Officer), S Mahoney (Licensing and Compliance Manager) and C Shanley-Grozavu (Democratic Services Officer)

LIC1 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence.

Introductions were made by all present.

LIC2 APPLICATION FOR A PREMISE LICENCE - KAPPA HOUSE, BUNTENS BARN, HIGH STREET, NEWPORT

The Licensing and Compliance Manager presented the report for an application by Odysseos Ltd for a Premise License. The proposed licensable activities were as follows:

- Supply of alcohol: 11.00 – 21.00 (Tuesday, Wednesday, Sunday); 11:00 – 22:00 (Thursday, Friday, Saturday)

Mr Blatt, an objector, made his representation to the Panel. He explained that the premises and his house were both old buildings, adjoined through a thin party wall made of historic materials in most part. On his side of the party wall were his children's bedrooms and the main living room. When the premises was previously used as a co-working space, his family were able to hear the activity next door throughout the daytime and they were concerned that music and other activity from a new bistro during the evening would cause further noise nuisance and impede on the quiet enjoyment inside of their property.

In addition, the window to the front of the house was single glazed and crittal which meant that they could hear people outside and at the bus stop. Whilst this was usually for short periods, installing tables outside of the premises could result in permanent noise, which was further cause for concern, particularly if alcohol was involved.

Mr Blatt said that he was not trying to stop the premises from opening, rather he was looking to find a balance that provides a reasonable and proportionate approach to satisfy the applicants needs to run a profitable business and his families' requirements to avoid unnecessary noise and have peaceful enjoyment of their property.

The meeting adjourned between 13:14 and 13:18 due to technical difficulties.

In response to a question from Councillor Barker on parking, the objector said that historically, the convention on the street had been for cars to park on the opposite side of the road. He was concerned that customers would park directly outside of his house which could cause a safety issue as he would not have any visibility when reversing onto the road. He highlighted that the original planning permission required that parking be provided within the curtilage of the property, but this was not satisfied. Whilst parking was not a condition which could be imposed on a licence, he expected the applicant to stop parking in front of the house.

Mr Blatt continued with his representation and said that the evidential burden was on the applicant to evidence the promotion and satisfaction of the licensing objectives, but the evidential test was on the balance of probabilities and the committee must exercise any discretion in accordance with public law principles. The applicant had filed the licensing application without any prior consultation with the objector and their subsequent negotiations had failed. The application sought for the sale of alcohol for 10 hours on Tuesdays, Wednesdays and Sundays and for 11 hours on Thursdays, Fridays and Saturdays, along with the ability to hold large parties. He had offered a compromise to allow for the sale of alcohol for 9 hours on Tuesdays, Wednesdays and Sundays, and 10 hours on Thursdays, Fridays and Saturdays.

The applicant, Mrs Odysseos, made their representation to the Panel. She outlined the many years of public service which she had given to community, including 20 years working in the Public Sector, 10 years supporting Essex Police and 7 years sitting on the Essex Police, Fire and Crime Panel.

For transparency, Councillor Barker declared that she recognised the applicant as they had both sat on the Essex Police, Fire and Crime Panel, but they did not know each other outside of the meeting.

Mrs Odysseos continued with her representation and said that the target audience for Kappa House would be groups, charities and families, and she hoped for it to become a community space which supported local events. The premises was located on a road which was a mix of commercial and residential property, and both pubs in the nearby area held alcohol licences up to 23:00.

Mrs Odysseos said that she appreciated Mr Blatt's concerns and had made a number of improvements to her application which included:

- Positioning the music and serving bar away from the party wall. At the rear of the property was a dry store beside the rest of the adjoining wall.
- No standing areas available. All service would be seated.
- Private parties would be limited to 50 people, the current capacity of the premise, and would require food to be provided.
- The kitchen had been inspected by the Council's Environmental Health team who commented that it was well-equipped.

- The ventilation system was on an internal circuit so that there were no pipes to the outside of the property.
- Customers would be requested not to smoke outside of the premise.
- Customers would be encouraged to take the train or walk to the premises. Those who travel in by car would be asked to park on the opposite side of the road, via social media advertisement.
- The Licensing hours had been reduced to 11.00 - 21.00 (Tuesday, Wednesday, Sunday) and 11:00 – 22:00 (Thursday, Friday, Saturday). The bistro would not be opening after 23:00.
- Suppliers would be asked to make deliveries at convenient hours.
- The promotion of the business was food over drinking, and Challenge 25 would be imposed.
- Only background music would be played at any time

She explained that external noise was already prevalent due to both buildings' proximity to the bus stop and main road. The tables outside were intended for customers passing through, such as dog walkers, which would limit the impact on further noise.

The applicant concluded that she was willing to compromise and adapt to the community, however she also needed to be agile in the current economic conditions with some scope to be flexible about hours. Shifting licensing hours further would make the business unviable.

She said it was ignorant for Mr Blatt to suggest that her anxiety, caused from their negotiations, was mischievous.

In response to questions from the Panel, the applicant clarified the following:

- She happy for an additional condition to be impose which would restrict the disposal of waste between 21:00 and 9:00.
- A food menu would be available throughout the day and alcohol would be emphasised as an accompaniment for this.
- There was additional space as the rear of the premise which could fit approximately 10 tables. This was currently being used as a co-working space.
- The premise would receive daily deliveries of fresh produce, and a weekly one for other stock.
- The seating outside of the property would be bistro tables with two seats. The applicant felt the pavement width was adequate to still allow wheelchair and pushchair access.

Mr Blatt said that the noise during the day was accepted by residents and was different to the noise in the evening. The dominant noise in the evening would be from the premises operations.

The meeting adjourned at 13:40 and reconvened at 13:56

Meeting ended at 14:03

Decision Notice

The application before the panel today is for the grant of a Premise Licence in respect of Kappa House, Buntens Barn, High Street, Newport, CB11 3PE. The application is dated 30 March 2023 and has been made by Odysseos Ltd.

The application has sought to grant the following:

- Supply of alcohol: 11.00 – 21.00 (Tuesday, Wednesday Sunday); 11:00 – 22:00 (Thursday, Friday, Saturday)

We have had the opportunity of reading the officer's report on this case, a copy of which has been served on the applicant, the objectors, the supporters and the statutory consultees.

The original proposed licensable activities and times are set out in the application form in Appendix A. However, due to subsequent mediation with the neighbouring property, the applicant has compromised on their original requirements which are now stated in Appendix F. The proposed licensable activities is therefore for the supply of alcohol between 11:00 and 21:00 on Tuesday, Wednesday and Sunday, and between 11:00 and 22:00

A plan of the premises and photos of the exterior premises can be found in Appendix B.

The application had been advertised, as required, by way of a public notice displayed at the premises and by advertisement in a local newspaper as well as on the Council's website. One valid representation was received from Other Persons, which is contained in Appendix C. The representation referred to matters that related to the prevention of public nuisance. In addition, the Other Person raised concerns regarding the ambiguity of the proposed operations, parking, noise, smell and compliance with building regulations.

Two other representations were received, but these were not stated as official objections. The Parish Council also submitted concerns but this was outside of the consultation period and therefore not included.

Two notices of support were received, which are outlined in Appendices D and E.

Copies of the application had been served on all the statutory bodies and no objections were received. A copy of the Police's response is included in Appendix G.

In carrying out its statutory function, the Licensing Authority must promote the licensing objectives as set out in the Licensing Act 2003. These are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

There is no hierarchy of importance among the objectives, and all must be given equal weight.

The decisions that the Committee can make in respect of this application are to:

- Grant the application
- Modify the application by inserting conditions
- Reject the whole or part of the application

When determining an application, due regard should be given to the Council's Licensing Policy and the Secretary of State's Guidance issued in accordance with the 2003 Act. Copies of these documents are before us and our Legal Advisor has reminded us of the requirements of the statutory regime under which we operate.

The Secretary of State's Guidance provides at paragraphs 10.8 and 10.10 the following assistance for members:

10.8 *“The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions must be included that are aimed at preventing illegal working in licensed premises.”*

10.10 *“The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions.”*

Furthermore, if the Committee's decision is to impose conditions, the only conditions that can be imposed are those that are necessary and proportionate to promote the licensing objective relevant to the representations received. The Committee should not impose conditions that duplicate the effect of existing legislation.

We have considered the application carefully and have read the documents before us, including written submissions both in support of and against the application and the additional representations from the Other Person. We have also listened carefully to all of those who have spoken before us this afternoon and remind ourselves that no objections have been received by the statutory

authorities. It was noted that concerns were raised by the Parish Council but this was outside of the consultation period.

We also note that the applicant had done their utmost to satisfy the objector and were willing to submit to the following additional conditions:

- A limit on large private functions to 3 per week
- Ambient background music only
- No patrons to use any outside tables and chairs between the hours of 20:00 and closing time on any day, except during the summer months (June - September) when this will extend to 21:00
- To display a clear and legible notice asking customers to respect neighbouring properties whilst leaving, at the main exit of the premises.
- Disposal of glass bottles will not take place between the hours of 21:00 and 08:00 on any day. (Bin collection may fall out of these hours)
- To remove the door chime on the front door which causes a noise nuisance to the neighbours.

We have heard from the applicant and from Mr Blatt, who raised a variety of matters which included the impact of noise which the operations would have on the enjoyment of their property, particularly when enhanced by the sale of alcohol.

The applicant clarified that their intention was to serve food throughout the day, with alcohol only being emphasised as an accompaniment for this.

We therefore grant this application subject to the additional conditions previously submitted by the applicant as well as the following:

1. No music to be played after the hours of 22:00
2. No disposal of any waste between 20:00 and 09:00 every day
3. Only 6 chairs be permitted outside of the premise at any time, with the appropriate licence.

All parties have a right of appeal against this decision to the Magistrates Court. This must be exercised within 21 days of the date of service of this decision notice. All parties will receive notification from the Legal Department explaining this but in the circumstances, we feel it right to add that we have given our decision anxious consideration and it is the policy of the Council to defend the decisions of this Committee. All respondents to an unsuccessful appeal are entitled to seek their costs of defending, and caselaw suggests they will receive them.