

LICENSING PANEL HEARING held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on MONDAY, 16 JANUARY 2023 at 1.00 pm

Present: Councillor P Lavelle (Chair)
Councillors S Barker and G Smith

Officers in attendance: K James (Licensing Support Officer), S Mahoney (Senior Licensing and Compliance Officer), C Shanley-Grozavu (Democratic Services Officer), E Smith (Solicitor) and R Way (Licensing and Compliance Manager)

Also Present: G Denman (Applicant) and T Taylor (Objector)

LIC36 REPRESENTATIONS

Mr Taylor made his representations to the Panel, on behalf of the objectors in attendance, and raised the following concerns:

- Their objections were primarily around the extension of trading hours.
- As a courtyard, their homes were in close proximity to the rear of the property where the business was situated. When the business was operating as a café, it had not previously caused major issues; there had been some problems around parking and littering but this was within the confines of the current trading hours.
- Extending the licensing hours would conflict with the trading hours imposed within the building's planning consent which only allowed the business to operate between 7:00 and 18:00.
- Operating later into the night would generate greater noise pollution from the patio area.
- Parking was already an issue on Lower Street and on a Saturday night, all pavement parking was taken up. The business was supposed to have six parking spaces, but there were only two available as the patio was filled with tables and chairs.
- The whole rationale of extending hours and the sale of alcohol would create significant problems to immediate neighbours.

LIC37 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC38 VARIATION OF A PREMISES LICENCE

The Senior Licensing Compliance Officer presented their report for a variation to the current Premises Licence of Bear and Eden in Stansted Mountfitchet. The application sought to extend the terminal hour for the sale of alcohol from 18:00 until 23:00 Monday to Sunday, as well as to amend the current sale of alcohol on the premises to include off sales.

In response to questions from members, the officer clarified the following:

- To date, the Licensing Team had received two complaints about the business; one regarding social distancing measures during Covid-19 restrictions and another for table and chairs positioned outside.
- The applicant had confirmed that they did not intend to operate outside the trading hours imposed to the planning consent on the property. Should a variation to the licensing activities be granted, the owner would then have to obtain an amendment to the conditions attached to their planning consent before they could operate under the revised trading hours.

The applicant, Ms Denman, addressed the Panel. She said that she empathised with the comments made in the letters of objection and had proposed additional conditions to her application as a result. These conditions included no customers to be seated outdoors after 19:00, no customer access from the rear of the building and all deliveries to be made through the front door. She also confirmed that the application had been amended to only offer onsite alcohol sales.

In regards to the parking provisions, she explained that parking was only available to staff and clear signage had been displayed. If they found customers to be parking in areas where they shouldn't, then staff would ask them to move their vehicle.

The applicant agreed to the following conditions requested by the Panel:

- To impose a time curfew on disposing of rubbish in the secure bin store, located to the rear of the property.
- To erect signage at the rear of the building to inform customers that there was no access through the back entrance.

Additionally, she confirmed that she would still modify the terminal hours to 22:00 on Monday to Saturday and 18:00 on Sundays.

To summarise, the applicant highlighted that in the last seven years, the property had four tenants whom all ran a coffee shop. The large overhead costs to run a business in the building meant that they had to look to offer more in order to operate successfully in the long term.

An objector raised a question clarification as to whether the business would be able to operate in their proposed trading hours, given that they exceeded the current granted trading hours for the property. The Chair said that it was not in the remit of the Panel to consider planning matters.

Meeting adjourned at 13:15 for the Panel to deliberate.

The meeting reconvened at 13:31

DECISION NOTICE – BEAR AND EDEN, BREWERY BARN, 31 LOWER STREET, STANSTED.

The application before the panel today is for the grant of a variation to the current licence PL0398 in respect of Bear and Eden, Brewery Barn, 31 Lower Street, Stansted, CM24 8LN. The applicant seeks to extend the terminal hour for the sale by retail of alcohol from 18:00 until 23:00 Monday - Sunday and to amend the current sale of alcohol on the premises to include off sales. The application is dated 30 November 2022 and is made by Gemma Denman who has held the licence since September 2020 although the premises have benefited from a licence since at least 2019. The options open to the Committee are set out by law, and are:

- To grant the application
- To modify the application by inserting conditions
- To reject the whole or part of the application

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on the applicant, the objectors, and the statutory consultees. The statutory consultees have made no comment but there are a number of individual objectors, all local residents, and copies of their letters are before us. We have also heard from Mr Taylor, who the objectors elected as their spokesperson, and from the applicant.

Bear and Eden currently operates as a coffee shop/restaurant in the village of Stansted Mountfitchit from 10am - 4pm daily. As a coffee shop they do not currently sell much alcohol. Due to the high running costs of the building they now need to operate during the day (as they currently do) and also of an evening as a family style restaurant and thereby increase the allowed daily trading hours, which in turn will increase turnover to allow them to continue to trade and keep up with ever increasing running costs. They plan to operate in the evening as a family style restaurant selling food and alcohol, and now propose to extend the licensing hours until 22:00 daily Monday to Saturday and 18.00 on Sunday. Currently the only licensable activity is the supply of alcohol to be served upon the premises.

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."

Further, if the Committee's decision is to impose conditions other than those requested, the only conditions that can be imposed are those that are necessary and proportionate to promote the licensing objective relevant to the representations received. Furthermore, 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 the letters submitted by neighbouring residents and listened carefully to all of those who have spoken before us this morning. We remind ourselves that no statutory consultee has raised any objection. We also note that the applicant has done their utmost to satisfy the individual objectors, including attendance at a mediation meeting facilitated by the Licensing Team and are willing to submit to the following additional conditions:

- Supplier deliveries to all be delivered via front entrance door only from 7am - 4pm daily)
- From 7pm customers to only use front entrance door to enter and exit building (except in an emergency back door to be used. Signage to the front and rear of building stipulating this to customers). This also includes collection point for any takeaway food orders.
- From 7pm daily no outside tables to be occupied by customers at all - inside seating only

- Amend the application to "on sale alcohol" only with a meal and seated at an inside table only - no takeaway alcohol allowed
- Amend extension time to Mon - Sat 11.00 am – 10.00pm and Sundays 11.00 am – 6.00pm
- No loud music - background music only
- Staff parking only at the rear of building (5 spaces) - ask customers to move their cars if they didn't adhere to the "No Customer parking" signage in our rear car park.
- Customers smoking from 7pm only at front of the building not at rear (can install smoking area signage and wall mounted ash tray at front. This also reduces smoking litter. No customers to use rear of building at all from 7pm daily.
- The premises benefits from a "tables and chairs licence" and are allowed to have customers sitting at the front and rear outside seating areas between our already permitted trading hours during the daytime.
- The cooking extractor fan system was installed in accordance with current planning conditions. This would stay the same. It gives out very little ventilation / smells to outside houses / areas and more into the shop.
- All rubbish be sorted in a secure bin store at the rear of the building, and no rubbish to be deposited there after 7.00PM.

We have heard from the applicant, and she confirmed her willingness to submit to these conditions. She also undertook, if a licence is granted today, not to trade under the terms of it until she has obtained an amendment to the conditions attached to her planning consent.

We have considered what everyone has said very carefully, and our decision is to grant the application subject to the conditions offered by the applicant regarding access to the rear of the building, the amended opening hours, and the removal of the request to add off sales of alcohol to the 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.

Meeting ended 13:42