

# TEWKESBURY BOROUGH COUNCIL

**Minutes of a Meeting of the Licensing Sub-Committee (Licensing Act 2003 and Gambling Act 2005) held at the Council Offices, Gloucester Road, Tewkesbury on Tuesday, 22 December 2015 commencing at 3:00 pm**

**Present:**

Chairman

Councillor R E Garnham

**and Councillors:**

Mrs G F Blackwell and R Furolo

**LSB/A.1 ELECTION OF CHAIRMAN**

1.1 It was proposed, seconded and

**RESOLVED** That Councillor R E Garnham be appointed as Chairman for the meeting.

**LSB/A.2 ANNOUNCEMENTS**

2.1 The evacuation procedure, as noted on the Agenda, was advised to those present.

**LSB/A.3 DECLARATIONS OF INTEREST**

3.1 The Committee's attention was drawn to the Tewkesbury Borough Council Code of Conduct which was adopted by the Council on 26 June 2012 and took effect from 1 July 2012.

3.2 There were no declarations made on this occasion.

**LSB/A.4 APPLICATION FOR THE GRANT OF A PREMISES LICENCE - EMPORIUM, HIGH STREET, WINCHCOMBE**

4.1 The report of the Licensing and Systems Officer, circulated at Pages No. 1-54, outlined an application for a premises licence in respect of Emporium, High Street, Winchcombe. The Licensing Sub-Committee was asked to determine the application, taking such steps, if any, as it considered appropriate for the promotion of the licensing objectives.

4.2 The Chairman asked all parties present to identify themselves and explained the procedure which would be followed by the Sub-Committee. The Licensing and Systems Officer advised that the premises licence application sought permission for recorded music between the hours of 08:00 and 00:00 Sunday to Thursday and 08:00 and 02:00 on Friday and Saturday; late night refreshment between the hours of 23:00 and 00:00 Sunday to Thursday and 23:00 and 02:00 Friday and Saturday; and supply of alcohol between the hours of 10:00 and 00:00 Sunday to Thursday and 10:00 and 02:00 Friday and Saturday. The application set out that the premises would be open to the public between 08:00 and 00:00 Sunday to Thursday and 08:00 and 02:00 Friday and Saturday. The applicant had also applied for non-standard timings during National Hunt meetings at Cheltenham Racecourse with the opening time and sale of alcohol starting at 07:30 hours. The application was

attached in full at Appendix A to the report. Officers had drafted a number of conditions for inclusion on the licence if the application was granted. The conditions were considered to be consistent with the steps the applicant intended to take to promote the licensing objectives, as identified in the Operating Schedule accompanying the application. These conditions related to the installation of a CCTV system to be maintained in good working order; the protection of the premises by an alarm system to be maintained in good working order; staff being trained on general health and safety; signage being displayed asking patrons to leave quietly; the adoption of the Challenge 25, or equivalent scheme, so that any customer attempting to purchase alcohol who appeared to be under the age of 25 would be asked for an accredited photographic proof of their age, and that a sale would not be made unless that evidence was produced; and a refusal register being maintained on the premises to record details of any alcohol purchases refused by staff. No other responsible authorities had made representations about the application, however, the applicant had agreed with Gloucestershire Constabulary to modify the application on the basis of sale of alcohol being between the hours of 10:00 and 23:00 Monday to Saturday and 10:00 and 22:30 on Sundays with non-standard timings between the hours of 07:30 and 02:00 during Bank Holiday weekends; Christmas Eve, Christmas Day and Boxing Day; New Year's Eve; and Cheltenham race meetings scheduled for March and November. The applicant's agreement with the Police was attached at Appendix B to the report.

- 4.3 During the consultation, 20 representations had been received from members of the public who wished to object to the grant of the application on a number of grounds. It was noted that the report stated that 19 representations had been received, unfortunately, one representation had been omitted from the papers in error and this was circulated separately around the table. Copies of the other 19 representations were attached at Appendix D to the report. The representations mainly referred to crime and disorder and public nuisance but, in general, they addressed all licensing objectives. Some representations mentioned why there was a need for more premises in Winchcombe, however, the Council did not have a special policy area, or any cumulative impact policies, and therefore this was not a relevant consideration for the Licensing Sub-Committee when determining the application.
- 4.4 The Sub-Committee was reminded that it was obliged to determine the application with a view to promoting the licensing objectives of the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. In making its decision, regard must be had to the national guidance and the Council's own licensing policy, as well as the representations made and the evidence provided at the meeting. The Sub-Committee was advised that it could resolve to grant the application as requested; to modify the conditions and/or timings of the licensable activities, by altering, omitting or adding to them; or, to reject the whole, or part, of the application.
- 4.5 The Chairman sought confirmation from the applicant's representative as to the modifications to the application which had been agreed with the Police. The applicant's representative confirmed that the applicant had agreed that the sale of alcohol would take place between the hours of 10:00 and 23:00 Monday to Saturday and 10:00 and 22:30 on Sundays. Although the Police had agreed that non-standard timings between the hours of 07:30 and 02:00 could apply during Bank Holiday weekends; Christmas Eve, Christmas Day and Boxing Day; New Year's Eve; and Cheltenham race meetings scheduled for March and November, the applicant's representative confirmed that an extension to 02:00 was only required on New Year's Eve.

- 4.6 As there were no questions for the Licensing and Systems Officer, and no responsible authorities were present, the applicant's representative was invited to present her case to the Sub-Committee. She explained that The Emporium would be a continental style bar/café, rather than a public house, and there would be a limited food menu. The aspiration was that customers would be able to go into the coffee shop to buy a sandwich or pastry and a cup of tea or coffee but they would also be able to purchase an alcoholic drink if they wished to. In terms of the objections which had been raised, the most notable one related to the noise impact on the apartments above and adjacent to the premises and she totally understood this concern. She advised that the applicant intended to install extra sound-proofing on the wall to the adjacent flat and on the ceiling which it was hoped would address the issue of noise for the immediate neighbours. Planning Officers had confirmed that listed building consent would be required for these measures, as opposed to full planning permission. In terms of music, she confirmed that only background music would be played; this would be ambient 'lift' style music and the location and direction of the speakers would be reviewed in order to keep the sound inwards, as opposed to upwards and outwards. With regard to smoking, she recognised that people did still smoke but she felt that they tended to be in the minority. There was a plan in place for a smoking area to the front of the premises, which the Police and Planning Department had been consulted upon, and she circulated a photograph outlining where it would be. She explained that there would be a removable barrier which would be put out each day to stop people from spilling out onto the street and causing an obstruction. She confirmed that the barrier would be within the curtilage of the shop entrance. She went on to explain that there was an alleyway to the side of the building and the applicant was prepared to install a gate with a push combination lock, subject to obtaining listed building consent. It was proposed that this would be kept locked which would overcome the concern about people urinating and being sick in the alleyway; although it was not anticipated that the clientele visiting the premises would cause that type of problem. In terms of antisocial and disruptive behaviour, she clarified that all staff would be personal licence holders and would be given ongoing training. The applicant's representative confirmed that she would be managing the business and had many years of experience running public houses. Whilst she would take a zero tolerance policy in terms of nuisance behaviour, she did not think that it would be the type of establishment which would attract very young people so this was unlikely to be an issue. With regard to waste, she confirmed that the bins which were in the alleyway would not be used as a private contractor would be collecting the waste from the premises on a daily basis during normal working hours and it was anticipated that the amount of waste would be minimal i.e. one bin bag of recyclables and one bin bag of residual waste each day.
- 4.7 A Member questioned how many people would be permitted to use the smoking area at any one time and the applicant's representative indicated that she was unsure. The area was currently used for smoking by the staff of neighbouring shops and offices and she generally saw five or six people there at any one time. She advised that she would not have a problem with limiting the number of people using the smoking area, if Members considered that to be necessary. A Member queried whether there was an alternative area to the rear of the premises which could be used for smoking and was advised that the proposed area to the front was considered to be the best option. The Member asked what the total capacity of the premises itself would be and was advised that there would be seating for 29 people. In response to a Member query regarding the food which would be served in the premises, the applicant's representative explained that, whilst the full menu had not been decided, the food would be along the lines of sandwiches, salads and Mediterranean platters as opposed to heavy meals. A Member questioned where the customer toilets would be located and the applicant's representative pointed this out on the floor plan, attached at Appendix A to the report; it was noted that they

would be in the same location as the staff toilets. A Member queried whether the use of a contractor to collect the waste could be included as a condition on the premises licence and the Licensing and Systems Officer confirmed it could; Members may also wish to consider a condition restricting the timing of collections. A Member sought confirmation as to where the waste would be stored prior to collection and was advised that there would be two covered bins inside the premises. The Member went on to seek further information in respect of personal licences, which the applicant's representative had indicated all staff would be required to hold. The Licensing and Systems Officer explained that a personal licence was a qualification and the minimum requirement was for the Designated Premises Supervisor to hold a personal licence, anything above and beyond that was considered best practice. In response to a query, he went on to advise that personal licence holders had to undergo a basic Disclosure and Barring Service (DBS) check but he could not share any information on that. It was noted that only the Police were able to object to a personal licence.

- 4.8 The Chairman invited the other parties who had attended the Sub-Committee to make representations. One local resident indicated that he had lived opposite The Emporium building for 26 years with his bedroom directly facing it. Sound travelled at night and he could often hear every word being spoken by people talking quietly on the street. In terms of the smoking area, he did not feel that people would want to stand in such a small area and he raised concern that their voices would be easily heard by himself and other residents. He had particular sympathy for the residents who lived above and adjacent to the premises and felt that there was enough noise on the High Street from existing pubs, wine bars and restaurants without adding to it further. Given the limited space, he could envisage people smoking on the pavement and noise becoming a big issue. Ultimately people would do what they wanted to do and he found it hard to believe that people would be sat quietly eating cakes and drinking coffee at 11.00pm at night; in reality they would be drinking and getting increasingly louder, something which the local residents would have to put up with. Another local resident advised that he lived around the corner from the premises and he echoed the previous speaker's comments in respect of noise and disturbance. He recognised that the Sub-Committee was unable to take account of the amount of other premises in Winchcombe when determining the application but they did generate noise. He went on to raise concern that there would be an increase in traffic as a result of the premises licence being granted, particularly in terms of taxis which would have to queue outside the premises along the main thoroughfare. The Licensing and Systems Officer clarified that traffic in itself was not a licensing objective although it could be considered in terms of nuisance.
- 4.9 The next speaker indicated that he owned a flat in the Emporium building and was speaking on behalf of all of the residents who were united in their opinion. The Emporium was a Grade II listed building which contained many original windows and meant that noise was a particular concern for residents, particularly those with bedrooms overlooking the street. When he had lived at the rear of the property, he had been able to hear noise from the highway and the premises would inevitably generate considerable additional noise, exacerbated by smokers who would spill out onto the street. In terms of the alleyway and the potential installation of a locked gate, as suggested by the applicant's representative, he explained that this had been discussed in the past, however, the alleyway was a thoroughfare into a cottage and the owners of that cottage had not wanted a gate so overcoming that objection could be a problem. Any works to the building would require listed building consent and there was no guarantee that the proposed soundproofing measures would be approved. He reiterated that his main concern was that the building was inhabited by both children and the elderly who did not want this on their doorsteps. Taxis frequently collected and dropped people off during Cheltenham Gold Cup week, generating a lot of noise, and people entering and exiting the premises, combined

with the fact that people raised their voices when they had been drinking, would make the noise unbearable.

- 4.10 A local resident indicated that, although it had been suggested that the purpose of the licence was so people could have an alcoholic drink with their pastry, when the premises was open late at night, people would inevitably be consuming more alcohol and their behaviour would not necessarily be the same as had been portrayed by the applicant's representative. He reiterated that there would be significant noise, particularly from people spilling out onto the pavement, which they did currently at other establishments. He considered that the smoking area was impractical; there were still plenty of people who did smoke and needed to be accommodated. He imagined that pedestrian traffic would increase as people walked to the premises from the car park at the end of Cowl Lane generating additional noise. Cowl Lane was a very narrow lane and increased use by vehicles accessing the car park could only be problematic in his view. Another local resident reiterated the concerns regarding noise and went on to indicate that it was her understanding that, if the licence was granted, alcohol could be purchased from the premises for consumption elsewhere. In response, the applicant's representative confirmed that the application was solely for consumption of alcohol on the premises. The local resident went on to express concern about the increase in delivery vehicles which blocked the highway and added to the general congestion in Winchcombe. She indicated that she would like some assurance that, if the licence was granted, the premises would remain as a wine bar/patisserie as she would not wish to see any extension into a large formal restaurant or night club. In response, the Licensing and Systems Officer confirmed that there was no provision in the Licensing Act 2003 to specify a type of premises as licences were granted for licensable activities. Regardless of the type of operation, the premises licence holder would have to comply with the conditions of the licence.
- 4.11 A local resident explained that he owned a property opposite the premises, which was currently occupied by an existing wine bar, and he was currently in a dispute with the tenant for all of the reasons which had been raised by the local residents today. In terms of the premises licence application, he felt that smoking was a particular problem and the suggestion to control it with limited numbers would not stop smoke from going through the windows of surrounding properties or prevent sound penetration within the building. He questioned whether background music was strictly necessary as he felt that it would inevitably be turned up according to the volume of voices in the bar. The Licensing and Systems Officer confirmed that a licence was not required for background music as it was incidental to the main activity. On that basis, the resident questioned why an application had been made for recorded music and he raised concern that, if that element of the licence was granted, it would not be possible to prevent discos from being held on the premises in the future.
- 4.12 The Chairman invited all parties present to make any final comments. In summing up, the applicant's representative indicated that she had listened carefully to the comments made by the other parties. She had not intended to mislead people about the nature of the business and fully accepted that people would be more likely to drink alcohol in the evenings. In terms of smoking, the applicant was willing to do whatever she could to improve the situation, however, it was considered that the solution put forward was the best one. Similarly, in respect of noise, she could not state that this would be completely alleviated but every effort would be made to reduce it as far as possible, although she did raise concern about whether any

conditions which may be imposed to restrict the noise level would be feasible given

the nature of the building. If there was an issue in terms of music, she confirmed that she would be happy to remove the request for a licence for recorded music as it had only ever been intended to play background music.

4.13 The Chairman indicated that the Sub-Committee would retire in order to make its decision.

4.14 When the meeting reconvened, the Chairman explained that, having considered the application; the evidence provided; the representations made by all parties, including those made at the hearing; the four licensing objectives; the national guidance; and the Council's Statement of Licensing Policy it was

**RESOLVED** That the application be **GRANTED** as set out in the attached Decision Notice.

The meeting closed at 4:25 pm

## DECISION NOTICE

**COMMITTEE:** Licensing Sub-Committee (Licensing Act 2003 and Gambling Act 2005)

**DATE:** Tuesday, 22 December 2015

<b>Premises:</b>	Emporium, High Street, Winchcombe, GL54 5LJ.
<b>Applicant:</b>	Karen Adams.
Application for a premises licence.	
<b>Present:</b>	Councillors Mrs G F Blackwell, R Furolo and R E Garnham (Chairman)
<b>Representative of Applicant:</b>	Zainah Salam – Manager
<b>Other Parties Addressing the Sub-Committee:</b>	Tim Benton – Owner of a property in Emporium building, High Street, Winchcombe. Bette Galloway – Resident of Royle Mews, Cowl Lane, Winchcombe. Stephen Howarth – Resident of Royle Mews, Cowl Lane, Winchcombe. Steve Meredith – Resident of High Street, Winchcombe. Keith Pritchard – Resident of High Street, Winchcombe. David Wilson – Resident of Royle Mews, Cowl Lane, Winchcombe.

### SUMMARY OF REPRESENTATIONS

1. No representation was received from responsible authorities, however, the applicant agreed with Gloucestershire Constabulary to modify the application. The applicant also agreed with Environmental Health that background music would be played no longer than 02:00 on New Year's Eve and 00:00 on all other nights.
2. 20 representations had been received from other parties, all of whom wished to object to the application. The representations mainly referred to the licensing objectives of crime and disorder and public nuisance.

Some representations referred to whether there was a need for more licensed premises in Winchcombe but this was not a relevant consideration for the Licensing Authority in determining the application.

**THE APPLICATION**

Relevant licensable activities and (standard) hours applied for:

Recorded Music	Sunday to Thursday	08:00 – 00:00
	Friday and Saturday	08:00 – 02:00
Late Night Refreshment	Sunday to Thursday	23:00 – 00:00
	Friday and Saturday	23:00 – 02:00
Supply of Alcohol	Sunday to Thursday	10:00 – 00:00
	Friday and Saturday	10:00 – 02:00
Hours premises are open to the public	Sunday to Thursday	08:00 – 00:00
	Friday and Saturday	08:00 – 02:00

Non-standard timings applied for:

During National Hunt Meetings at Cheltenham Race Course the opening time and sale of alcohol will start at 07:30.

**AMENDMENT TO THE APPLICATION BY THE APPLICANT**

Supply of Alcohol	Monday – Saturday	10:00 – 23:00
	Sunday	10:00 – 22:30

Non-standard timings applied for:

During Cheltenham Race meetings scheduled for March and November the opening time and sale of alcohol will start at 07:30.

On New Year's Eve permitted hours for sale by retail of alcohol will be extended to 02:00.

**DECISION**

Having considered the application; the evidence provided; the representations made by all parties, including those made at the hearing; the four licensing objectives; the National Guidance; and the Council's Statement of Licensing Policy it was resolved that the application for the premises licence be **GRANTED** as follows:

Supply of Alcohol	Monday – Saturday	10:00 – 23:00
	Sunday	10:00 – 22:30

All other timings to be by way of an application for a Temporary Events Notice.



**CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE**

1. A CCTV system must be maintained in good working order.
2. The premises shall be protected by an alarm system which must be maintained in good working order.
3. Staff will be trained on general health and safety.
4. Signage must be displayed asking patrons to leave quietly.
5. The 'Challenge 25' scheme must be adopted so that any customer attempting to purchase alcohol who appears to be under the age of 25 shall be asked for an accredited photographic proof of age (e.g. passport, photo driving licence or a Pass approved card) and that a sale shall not be made unless this evidence is produced.
6. A refusals register must be maintained on the premises to record details of any alcohol purchases refused by staff.

**CONDITIONS CONSISTENT WITH THOSE RECOMMENDED BY THE RESPONSIBLE AUTHORITIES AND AGREED WITH THE APPLICANT**

1. CCTV must be installed and retained for a minimum of 14 days if digital, 28 days if non-digital, and must be available to Police or a Responsible Authority upon request.
2. A risk assessment must be carried out prior to any event, in particular Cheltenham Races.

**ADDITIONAL CONDITIONS IMPOSED BY THE SUB-COMMITTEE**

1. It is accepted in good will that the applicant will explore all avenues possible to ensure that the alleyway is not used by its clientele, however, notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and to use the area quietly.
2. Patrons are permitted to temporarily leave and then re-enter the premises, e.g. to smoke, but shall not be permitted to take drinks or glass containers with them.
3. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises, nor vibrations be transmitted through the structure of the premises which gives rise to a nuisance.
4. There will be no use of the alleyway at the side of the premises by Emporium clientele.
5. A sign must be erected reminding patrons not to use the alleyway at any time.
6. A sign will be displayed stating the designated smoking area.

**REASON**

The Sub-Committee placed these conditions on the licence for the purpose of promoting the licensing objectives. In all other respects, the Sub-Committee found that the licensing objectives had been satisfied and the conditions imposed on the licence would ensure that the licence would continue to meet those objectives.