

# 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 Monday, 13 November 2023 commencing at 10:30 am**

**Present:**

Chair

Councillor G M Porter

**and Councillors:**

S Hands and R J E Vines

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

- 1.1 It was proposed, seconded and  
**RESOLVED** That Councillor G M Porter be elected as Chair 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 Code of Conduct which was adopted by the Council on 24 January 2023 and took effect on 1 February 2023.
- 3.2 There were no declarations of interest made on this occasion.

**LSB/A.4 PREMISES LICENCE APPLICATION REF: 23/01625/LIQPRM - 35 CHURCH ROAD, BISHOPS CLEEVE, CHELTENHAM, GLOUCESTERSHIRE, GL52 8LP**

- 4.1 The report of the Licensing Officer, circulated at Pages No. 1-47, outlined an application for a premises licence in respect of 35 Church Road, Bishops Cleeve, Cheltenham, Gloucestershire, GL52 8LP. The Licensing Sub-Committee was asked to determine the application by granting the application as applied for; granting the application but with modifications to times or conditions appropriate to promote the licensing objectives; or, rejecting all or part of the application.
- 4.2 The Chair asked all parties present to introduce themselves and explained the procedure that would be followed by the Sub-Committee. The Licensing Officer advised that the application was for a new premises licence at 35 Church Road, Bishops Cleeve. The applicant intended for the ground floor of the premises to trade as a wine bar and restaurant. The applicant had applied for the sale by retail of alcohol for consumption on the premises, and the performance of recorded music indoors, for the hours stated at Page No. 2, Paragraph 1.2 of the report. The application had been subject to a 28 day consultation period and both the Gloucestershire Constabulary and the Environmental Health Authority had agreed conditions with the applicant to be added to any granted licence as set out at Pages No. 3-4, Paragraph 2.2-2.3 of the report. This included an amendment from the original application to the sale of alcohol hours by 30 minutes each day to allow

for a drinking up time. Representations had also been received from three local residents and Bishops Cleeve Parish Council as attached at Appendix F to the report. In the original application plan, attached at Appendix C to the report, the applicant had included an external seating area to the side of the premises, alongside Church Approach. This had since been removed from the application and the updated plan was attached at Appendix D to the report. The applicant had confirmed their intention to provide external seating at the front of the premises on Church Road. In determining the application, the Sub-Committee must have regard to the statutory guidance issued by the Secretary of State, the Council's adopted policy statement, the representations made and the evidence presented at the meeting. The Sub-Committee must take such steps as it considered appropriate for the promotion of the licensing objectives which could include: granting the application as applied for; granting the application but with modifications to times or conditions appropriate to promote the licensing objectives; or, rejecting all or part of the application. It was noted that the applicant's agent had been contacted by telephone today and confirmed the applicant would not be attending the meeting.

- 4.3 In response to a query regarding seating, the Licensing Officer advised that the applicant had stated they intended to provide seating at the front of the premises, not at the side as previously requested, and they would need to go through the relevant channels with County Highways and any other organisations in order to obtain required consents. A local resident sought clarification as to whether the premises included both the building and the outside area and was advised the premises licence would encompass all of the area on the plan at Appendix D to the report and, if granted, would apply to both the inside and outside.
- 4.4 As there were no responsible authorities present at the meeting, the Chair invited the other persons who had made representations to address the Sub-Committee. A local resident indicated that they did not intend to go through all the points raised in their written submission but the overwhelming concern was whether any conditions imposed would be adhered to, and how quickly enforcement action could be taken. He did not feel the applicants had endeared themselves to the community based on what had happened so far in terms of changing the paving outside on the assumption there would be seating, and the various planning issues. He was concerned the applicants asked for forgiveness rather than permission and, if the door was open with music blaring out, he questioned who would go and enforce it at that very moment. The premises was located at the quiet end of the village; although the Royal Oak Public House was across the road, the premises licence holder had respect for the neighbours and the applicant had not shown the same character through their behaviour so far. He was concerned about noise at that end of the village and introducing an eating establishment would mean people having to traverse around the customers spilling out onto the street and crossing the road on a difficult bend. Deliveries had been seen blocking the road causing very difficult traffic situations which was a public safety issue. School children also used the road as a cut through. He was of the opinion that conditions imposed would not be adhered to and people would suffer pending enforcement action. Another local resident indicated that he had not been consulted in any way over the three year period, and he would not have known about the licence if he had not contacted the Council himself. He was under the impression that residents were supposed to be notified but he had heard nothing. The original planning permission had included conditions such as no food, restrictions on building height etc. yet the plans had been changed without consultation and there was now a restaurant in the building. He did not currently experience any interruptions but was now very concerned about public nuisance in the form of noise, light, noxious smells and litter. He requested that alcohol consumption be restricted to inside the building in order to preserve what was a quiet road next to the church entrance. The outdoor seating was originally due to

be part of a separate application at a later date but the plan was now to move the outside seating to the front. The pavement was 15-20ft wide but some had been taken up by the extension of the building meaning it was now only four feet wide excluding the outside eating/drinking area. This was very narrow for pedestrians, children and wheelchair users and would not be practical with the proposed seating. In addition, there was now a roof flue on top of the building which looked to be around six or seven feet high, and he believed that cooking had already been taking place in the kitchen as he could smell food. He understood the Council had objected to the flue and required it to be moved but nothing seemed to have happened as far as he could see. He felt that cooking smells, seven days per week for 12 hours per day, was objectionable given the close proximity of the residential dwellings only a few feet from the building. In terms of public safety, this would be compromised by people crossing the road directly in front of the premises on the bend. He requested that alcohol consumption be restricted to inside the building only.

4.5 The Licensing Officer clarified that the applicant had complied with all legal obligations in terms of notices and advertising etc. The Licensing Team Leader explained there may be some confusion between planning and licensing which had different advertising requirements. A Member noted the local resident had stated the applicant should have consulted local residents and the Licensing Team Leader advised that was recommended but not required. She stressed the application was for consumption of alcohol on the premises only so the outside area was not covered. A Member sought clarification as to whether a new application would be needed to serve drinks outside and was advised that, currently, there was a relaxation of the legislation regarding off sales which had been introduced during the pandemic and was due to end in 2025 - only on-sales had been specified in this application so a variation application would be required to serve drinks outside. The Legal Adviser clarified that, should the application be granted, drinks could be purchased inside the premises and consumed outside until the relaxation of the legislation came to an end in 2025. In response to a query, the Licensing Team Leader advised that the entitlement could be lost if there were issues and the licence was reviewed. A local resident indicated that he was concerned about the impact on the Royal Oak which had agreed to ensure that customers did not sit at the front, despite the relaxation of the legislation, as this could set a precedent for the area. A Member asked whether the relaxation of the legislation applied to seating as well and was informed that was a separate issue which would be dealt with under the temporary pavement licensing regime. As it was private land it did not apply and there was also a relaxation under planning which allowed tables and chairs.

4.6 In response to a query regarding the pavement width, the Licensing Team Leader advised that under inclusive mobility there was a legal requirement to ensure sufficient walkway. In response to a question about the type of enforcement action which could be taken, Members were advised that the enforcement policy advocated a stepped approach - residents were encouraged to contact the Licensing team should there be any breaches and each would be addressed on its own merits with warning letters generally being the first step. A local resident asked what would happen if there were drunk people outside, with music blaring from the open doors, and a warning letter was issued but ignored. The applicant's approach in respect of the planning process had shown they did not adhere and he was concerned something like this could drag on. The Licensing Team Leader explained that noise and disorder may not be a breach of licence conditions; however, in the scenario described, the Environmental Health team would be able to investigate under the Environmental Protection Act – they would send log sheets for completion and install sound equipment to establish if the noise was a statutory nuisance. Any complaints about crime and disorder would need to be referred to the Police. In terms of the length of time it could take, it was noted that the Council

was currently dealing with a review application and it had been three months from the start of the issues to consideration by the Licensing Sub-Committee.

4.7 As there were no final comments from the Licensing Officers, the Chair invited the other parties to make a final statement. A local resident felt that his concerns had been reinforced in that it seemed the licensing authority's hands were tied in certain respects, even if conditions were added to the licence, therefore, he still believed the application should be refused. Another local resident felt that granting the application would turn a quiet area into a commercial one. The third local resident pointed out that the applicant had not attended the meeting today and that was reflective of what had happened over the past three years. Residents thought they were getting three small shops which would be useful to the public but instead would end up with another eatery which was not necessary given the existing establishments in the area.

4.8 The Chair indicated that the Sub-Committee would retire to make its decision.

4.9 When the meeting reconvened, the Chair advised that, having considered the application; the evidence provided; the representations made by all parties, including those made at the hearing; the provisions of the Licensing Act 2003; the obligation to promote the four licencing objectives; the relevant sections of the Council's Statement of Licensing Policy and the Statutory Guidance it was

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

The meeting closed at 11:30 am

# DECISION NOTICE

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

**DATE:** Monday, 13 November 2023

**Premises:** 35 Church Road, Bishops Cleeve, Cheltenham, Gloucestershire, GL52 8LP.

**Applicant:** Mihaela Bodini

Application for a premises licence under the Licensing Act 2003.

**Present:** Councillors S Hands, G M Porter (Chair) and R J E Vines.

**Representatives of applicant:** None

**Responsible Authorities:** None

**Other Persons addressing the Sub-Committee:** Three local residents.

## SUMMARY OF REPRESENTATIONS

1. Two responsible authorities had made representations in relation to the application: Environmental Health Authority and Gloucestershire Constabulary.
2. The Environmental Health Authority and Gloucestershire Constabulary subsequently agreed conditions for inclusion within the Operating Schedule.
3. Three representations had been received from other persons in relation to the application all objecting to the application.

## THE APPLICATION

Relevant licensable activities and hours applied for:

Sale by retail of alcohol for consumption on the premises	Monday to Thursday	12:00 – 21:30
	Friday and Saturday	10:00 – 22:30
	Sunday	12:00 – 19:30
Performance of recorded music indoors	Monday to Thursday	12:00 – 22:00
	Friday and Saturday	10:00 – 23:00
	Sunday	12:00 – 20:00

**DECISION**

Having considered the application; the evidence provided; the representations made by all parties, including those made at the hearing; the provisions of the Licensing Act 2003, the obligation to promote the four licencing objectives; the relevant sections of the Council's Statement of Licensing Policy and the Statutory Guidance it was resolved that the premises licence be **GRANTED** in accordance with the application set out, subject to additional conditions agreed with Environmental Health and the Gloucestershire Constabulary.

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

1. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises that gives rise to a nuisance.
2. There must be no deliveries or collections relating to licensable activities at the premises between the hours of 2000 hours and 0800 hours on any day.
3. There must be no emptying of recycling (including bottle bins) or waste bins between the hours of 2000 hours and 0800 hours on any day.
4. The Premises Licence Holder must ensure that all external doors and windows are closed when regulated entertainment is taking place internally, except to allow entry and egress.
5. The premises will operate and enforce a Challenge 25 policy where all persons who appear to be under the age of 25 will be challenged for acceptable identification to prove they are over 18 prior to the purchase of alcohol. The only acceptable forms of identification will be a valid photo driving licence, valid passport or a valid PASS approved proof of age card.
6. Challenge 25 posters will be displayed at the entrance to the premises, all areas where alcohol is displayed and at the cash till payment area. The posters will be displayed prominently and in the sight of customers and staff.
7. A CCTV system with a minimum of 3 cameras will be in operation and recording when the premises is open and licensable activities are taking place. Recorded images shall be retained for a minimum period of 28 days (14 days for digital systems). The CCTV system shall be maintained in good working order. CCTV images will be provided to the Police and other responsible authorities if requested as soon as practicable.
8. The correct time and date will be generated onto both the recording and the real time image screen.
9. Any person left in charge of the premises must be trained in the use of any such CCTV equipment, and be able to produce CCTV images to an officer from a responsible authority upon request.
10. Where appropriate, prominent, clear and legible notices shall be displayed at all exits requesting the public respect the needs of local residents and to leave the premises and area quietly.
11. The Designated Premises Supervisor (DPS) or other suitably competent person will undertake a risk assessment on an event-by-event basis at times when the premises is being used for hire or events. The risk assessment will identify if SIA door supervisors are required and if deemed necessary the rate employed shall be 1 per 50 of occupancy (or part thereof) and subject to a minimum of 2 door supervisors.
12. Non-alcoholic/Low-alcohol drinks shall be promoted especially to 'designated drivers' of groups.

13. A log shall be kept at the premises to record all refused sales of alcohol for reasons that the person(s) is, or appears to be, under 18 years of age. The log shall record the date and time of the refusal and the name of the member of staff who refused the sale. The DPS will sign and date the book each time it is checked. The book shall be made available for inspection upon the request of a duly authorised officer of the Licensing Authority or Police.
14. An incident log will be kept which will include the date, time and details of incident that has taken place. The DPS shall check the book once a month ensuring that it is up to date. The DPS will sign and date the book each time it is checked. The book shall be made available for inspection upon the request of a duly authorised officer of the Licensing Authority or Police.
15. The DPS shall ensure that all staff concerned in the sale of alcohol are trained in their responsibilities under the Licensing Act 2003, particularly concerning drunk sales, underage sales and proxy sales. Training will include challenging every individual who appears to be under 25 years of age and to refuse service where individuals cannot produce acceptable means of identification and using the refusal register. Such training (including any refresher training) will be logged and provided not less than every six months. The training log shall be made available for inspection by Police and "authorised persons" immediately upon request.

## **REASON**

The Licensing Sub-Committee considered that it must carry out its functions with a view to promoting the four licensing objectives, as set out in Section 4(2) of the Licensing Act 2003. The Sub-Committee could not take into account representations which did not relate to one or more of those licensing objectives and it was acknowledged that any representations received must be relevant and evidenced-based.

## **CONSIDERATION**

In determining the application, the Licensing Sub-Committee considered the fact that no Responsible Authorities had objected to the application. It also took into account the concerns raised by the Other Persons and the steps put forward by the applicant in their written submission to promote the licensing objectives.

## **APPEAL**

All parties were reminded of their rights of appeal against the Licensing Authority's decision pursuant to Section 181 of and Schedule 5 to the Licensing Act 2003. An appeal must be made to the Magistrates' Court and commenced within 21 days of notification of the authority's decision.

## **REVIEW**

All parties were reminded of the procedures contained within the Licensing Act 2003 relating to the potential review of a premises licence. This provision allowed the public, businesses or Responsible Authorities to apply for a review of a premises licence where problems arose, in relation to the licensing objectives: crime and disorder, risks to public safety, public nuisance or failure to protect children from harm.

The Licensing Authority respectfully reminded all parties that, for any review to be successful in restricting a licence, evidence would need to be collected of incidents occurring that demonstrated that the licensing objectives were not being adequately promoted. The Environmental Health team could be contacted out of hours to report complaints of excessive noise nuisance.