LICENSING ACT 2003 SUB-COMMITTEE 1

19 OCTOBER 2018

Present:

Councillors Hockin (Chairman), Bromell and Jones

Officers in Attendance:
Trish Corns, Democratic Services Officer
Andrea Furness, Licensing Manager
Marie Downey, Solicitor

1. MINUTES

The Minutes of the meeting held on 15 March 2018 were approved as a correct record and signed by the Chairman.

2. DECLARATIONS OF INTEREST

There were no declarations of Interest.

3. APPLICATION FOR A NEW PREMISES LICENCE - RAFIKIS, 17 WEST STREET, ASHBURTON, TQ13 7DT

3.1 Introductions

The Chairman introduced the Members of the Sub Committee, Legal Adviser, Licensing Officer, Democratic Services Officer and explained their respective roles.

The Chairman advised that the Sub Committee would take into account the merits of the application against the four licensing objectives: the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm, in addition to the Home Office Guidance and the Council's Licensing Policy.

3.2 Procedure to be Followed

The Legal Adviser referred to the procedure to be followed for the Hearing and those present wishing to make verbal submissions. There had been no requests from any other party to speak at the hearing. The procedure was as previously circulated to all interested parties with the Notice of Hearing. All parties had been sent an agenda.

3.3 The Council's Licensing Manager's Report

The Sub-Committee has had before it an application for a new premises licence for the supply of alcohol and the provision of regulated entertainment: live and recorded music, on the premises at Rafikis, 17 West Street, Ashburton.

The hours sought are set out in the report circulated with the agenda, and the Notice of Hearing. This includes the supply of alcohol no later than 2230hrs, the performance of live music until 2200hrs and the playing of recorded music until 2300hrs.

The Licensing Manager referred to the report previously circulated with the Notice of Hearing and the agenda, which contained full details of the application.

The licensing authority has received seven letters of objection from local residents objecting to the application on the grounds of public nuisance, in particular the objections relate to noise nuisance. Twenty representations have been received supporting the application and promoting the licensing objectives.

3.4 Address by Interested Parties

3.4.1 Supporters

Several supporters were in attendance at the Hearing. The spokesperson for the supporters advised that she spoke on behalf of the twenty supporters of the application. Fifteen of the supporters reside in West Street, of which 12 live within 200 metres of the premises. She had a small business located opposite the premises. The supporters consider the proposals for Rafikis would benefit the community and economy of the town, and make the town a more attractive place to live. More restaurants are required in town, and none of the existing cafes and restaurants were open past 8.30 p.m. She considered an alcohol licence was necessary to make the business viable. She had resided in West Street for 10 years, with single glazed windows, with no disturbance from noise of people leaving the local pubs. The applicant is happy to close Rafikis at 2300hrs, serve alcohol only with food, and have the occasional live performance. The premises is small with only 25 covers.

3.4.2 Objectors

Several objectors were also in attendance. The spokesperson submitted that the proposed use of the premises would have an enormous and disproportionate negative impact on her and her neighbour's properties which were located above the premises. Due to the nature and structure of the old building the sound proofing was very poor. Any noise from the premises would emanate up through her property, immediately above the premises, and through the stairwell to her neighbour's at the top of the building. They were not opposed to the café opening but any live or recorded music would result in noise and a public nuisance. The premises was on the edge of the commercial town and in a mainly residential area. There are already five licensed premises in the town open in the evening. The spokesperson's neighbour which resided in the top flat added that his bedroom was above the premises.

3.4.3 Applicant

The applicant and her representative were in attendance. The applicant advised that the premises would provide a small, friendly, community restaurant with just 25 covers, enabling the premises to be easily managed. The lease on the

premises allows opening hours from 0800hrs to 1800hrs. Approval of the current licence would enable her to negotiate with the owners of the building for an amendment in the trading hours. An alcohol licence is needed to make the business viable, and alcohol would only be served with food. She had already been approached by local businesses wishing to have staff Christmas meals, and for special occasion birthdays. The applicant also submitted that she wanted to work with other businesses in the town such as the Arts Centre by offering a pre Arts Centre dinner which would finish at 2000hrs in time for their shows.

The applicant further submitted that she had arranged a meeting with the objectors to which two tenants were present and supported the application, and three landlords who were not residents. The spokesperson for the objectors present at today's hearing, and who had addressed the hearing was no longer living above the premises, and was letting her property. Live music would only be played occasionally because it would take up too much floorspace, and she did not wish to compete with the shows at the Arts Centre. Recorded music would be turned down at 2200hrs. The premises would close Monday and Tuesday 1800hrs, Thursday to Saturday 2300hrs and Wednesday and Sunday evenings at 2200hrs. Notices would be on display requesting customers to leave quietly. She would get to know her regular customers and manage them accordingly if necessary. There were four flats above the premises. She was not aware of the soundproofing structure but added that this was the legal responsibility of each flat owner. The valuation of the flats would not be detrimentally affected by a restaurant on the ground floor because it has a commercial premises use. She added that the measures to meet the four licensing objectives is detailed in the report circulated with the agenda.

In response to questions: the applicant advised that she was not intending to open Thursday and was happy not to open Sunday evening; and the Licensing Manager advised that under the Live Music Act 2012, live music could take place between 0800hrs and 2300hrs without the requirement of a licence or complying with any conditions relating to noise from music.

3.4.4 Summaries

The speakers were given opportunity to summarise. In doing so the spokesperson for the supporters submitted that there was a great deal of support for the proposal and a licence was essential for the viability and success of the business.

The objectors had nothing more to add.

The applicant advised that she was willing to make adjustments to the licence so that all are content with the situation.

3.4.5 Decision

We have listened to the representations of the applicant, objectors and supporters at the hearing, and we have read and carefully considered all written material from the applicant, objectors and supporters.

The Licensing Authority's Licensing Policy states that terminal hours will normally be approved when the applicant can show that the proposal would not adversely affect the licensing objectives, unless after hearing relevant representations, the licensing authority believes it necessary, proportionate and reasonable to restrict the hours required. We do not consider that it is necessary, proportionate or reasonable to restrict the hours, because we have not seen any evidence which would support doing so.

We are satisfied that the applicant is experienced and responsible and we are satisfied, on the balance of probability, that the premises will not cause an unreasonable nuisance to local residents.

We acknowledge that objectors are concerned about noise emanating from the premises. We trust that all parties will be open to dialogue and give careful consideration specifically in relation to noise nuisance. The Council's Environmental Health Department would assist with any statutory noise nuisance issues.

In the circumstances we grant this application as detailed in the report.

Rights of Appeal

An appeal may be made by the licence holder or any person who made relevant representations in relation to the application.

If you wish to appeal you must give notice of appeal to the Clerk to the Justices at the South Devon Magistrates' Court, 1st Floor, Riviera House, Nicholson Road, Torquay TQ2 7TT, within the period of 21 days beginning with the day on which you were notified of the decision, this being 19 October 2018.

Should there be problems associated with the event the Council's Environmental and Safety Department has powers under the Environmental Protection Act 1990 to take action against statutory noise nuisances.

4. APPLICATION FOR A NEW PREMISES LICENCE - ASHBURTON ARTS LTD, 15 WEST STREET, ASHBURTON, NEWTON ABBOT,

The hearing noted that following discussion between the applicant and the objector, the objector had withdrawn the objection to the application.

Resolved

The approval of the application be confirmed.

EDWARD HOCKIN
Chairman