

# **LICENSING AND REGULATORY SUB-COMMITTEE**

**THURSDAY, 29 OCTOBER 2020**

Present:

Councillors D Cox (Chair), Hocking and Kerswell

Officers in Attendance:

Marie Downey, Solicitor

Debbie Rosenveldt, Licensing Officer

Beth Tipton, Administrative Assistant

## **1. APOLOGIES**

None.

## **2. DECLARATIONS OF INTEREST**

None.

## **3. LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 - EXCLUSION OF PRESS AND PUBLIC**

## **4. APPLICATION FOR A PRIVATE HIRE VEHICLE EXTENSION - S16 EXC**

Members noted that the application had been withdrawn.

## **5. APPLICATION FOR A NEW PREMISES LICENCE - BASKERVILLES ICE CREAM PARLOUR AND COFFEE SHOP**

### **5.1 Introductions**

The Chairman introduced the Members of the Sub Committee, Legal Adviser, Licensing Manager and Democratic Services Officers.

The Chair 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.

### **5.2 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.

### **5.3 The Council's Licensing Officer's Report**

The application is for a Premises Licence to be granted under the Licensing Act 2003 is to allow the Supply of Alcohol. Attached is a copy of the location plan and plan of premises (Appendix A).

The operating schedule shows:-

Hours Premises Open to the Public:

Monday to Thursday	0700hrs to 2200hrs
Friday and Saturday	0700hrs to 2300hrs
Sunday	1000hrs to 1730hrs

Relevant licensable activities:

- Supply of alcohol.

Hours of licensable activities:

Supply of Alcohol (on/off the premises)	Monday to Thursday	
	1000hrs to 2130hrs	
	Friday and Saturday	1000hrs
	to 2230hrs	
	Sunday	1000hrs
	to 1700hrs	

Seasonal variation on all licensable activities

Bank Holidays	1000hrs to 2230hrs
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Supply of alcohol is for consumption on and off the premises.

The Council has received 22 representations of objection, on the grounds of Public Nuisance. 1 objector was present at the Hearing acting as a representative for others who had made representations.

The Applicant was also present at the hearing.

### **5.4 Address by interested parties**

#### **5.4.1 Objectors**

We heard from the objector who highlighted that the noise levels from the Ice Cream Parlour were loud but bearable during the day and busy summer season however, if the hours were to be extended late into the evening the residents felt that those levels would become intolerable and impact on amenity.

There was also concern that people would start using the premises as a place to buy cheap alcohol once the local shop shut at 10pm, again increasing noise levels.

The objector stated that the front of the premises was open and therefore made it easy for children to enter potentially putting them at risk. There were often bikes resting against railings from visiting cyclists which meant that members of the public were having to walk into the road which was a safety concern.

The Objector also mentioned that there were concerns that the Applicant would be unable to uphold the licensing objectives effectively.

There were no questions put to the objector by the committee.

#### **5.4.2 Applicant**

We then heard from the applicant, who submitted that the premises was not intended to operate as a place for people to buy cheap alcohol, they simply wanted the option to serve drinks with hot food such as soup. It is a family orientated site and their main clientele are cyclists and family. The opening times were to attract those families and holidaymakers who often had nowhere to go in the early morning, however they could look to reduce these times.

The Applicant stated that whilst the front of the garden was open this is due to building delays caused by Covid-19 and this will be enclosed in due course. The applicant stated that noise is not excessive and in fact they often can't hear people in the garden due to the road noise and other establishments.

The applicant confirmed that they were premises licence holders and they owned 3 other business providing employment. They are currently dealing with planning issues raised and this was due to misinformation.

The applicant's partner has a small producers licence and it is this that they would like to be able to sell as off sales. It is a niche market and so only people who want the product will be buying. They also have another local producer who would like to sell through their premises.

In response to questions the applicant advised:

- They were unlikely to use the outside space in winter due to weather and the seasonality controlled how they used the shop and when it opened.
- They can normally seat 24-30 people upstairs but currently this was 16 due to regulations.
- They would predominantly be selling cider but would like the ability to serve wine and beer with a meal. They did not see spirits as a priority at the moment.

- Building control had been consulted all the way through but the applicant would clarify they had all the certificates required.
- Planning allows them to sell heated food such as soups and Paninis such as similar cafes do. Again they are in consultation with DNP and believe they are allowed to do this.
- They did not want to apply for entertainment and that this must have been an error on the application form.
- The charity event where alcohol was sold was an honest mistake due to it being sold for donations but admitted they may have been naïve.
- They have a bike rack to stop bikes being left on the public path, they don't believe that cycles being left on the pavement are their customers.
- They are moving forward in their discussions with DNP and their consultant has advised to put in an application.
- The barn is purely for cider storage and not for selling.

## 5.5 Summaries

The objector and applicant summarised their points.

*At this juncture the committee adjourned to debate the decision. On reconvening the Chair announced the decision.*

## 5.6 Decision

We have carefully considered all the written material and also the oral submissions on behalf of the applicant, and objectors.

Arising from consideration of the report, all the representations, the relevant provisions of the Licensing Act 2003 and delegated legislation made thereunder, the guidance given to Licensing Authorities and the Council's own Policy, the Sub Committee unanimously resolve that the application for a New Premises Licence in respect of Baskervilles Ice Cream Parlour and Coffee Shop be refused as the Sub Committee were not satisfied from the information presented that Baskervilles Estates Ltd would be able to ensure that the Licensing Objectives would be upheld. The Sub-Committee noted in particular the lack of detail provided in the application and were not satisfied with the information relating to "the steps to promote the licensing objectives".

The Sub Committee listened to the concerns expressed by the objector speaking on behalf of the local residents and noted the concern for public safety and that currently the garden is not enclosed properly. It was felt that not enough had been done at this stage to prevent children from entering the garden of the premises. The sub-committee also considered that the areas that were intending to be licensed were not sufficiently clear

The Sub Committee were also concerned about public nuisance and the impact that the opening hours would have on the residents surrounding the premises and

were not convinced by the applicant's claims that you could not hear any noise from the garden due to the high stone wall. The committee felt that under 5.3.7 of the licensing policy, there was a risk to public harm and nuisance and the Applicant did not offer up any real conditions that they would be happy to adhere to in order to remedy this. The committee therefore felt that there was a risk of public nuisance and harm if the licence was granted.

#### Rights of Appeal

This decision does not take effect until the period for making an appeal has expired, or if an appeal is made, until that appeal has been determined. An appeal may be made by the applicant for the review, 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, 1<sup>st</sup> 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.

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.

CLLR D COX  
Chairman