

NEWARK & SHERWOOD DISTRICT COUNCIL
LICENSING SUB-COMMITTEE

RECORD OF HEARING HELD ON
23 NOVEMBER 2021
10:00 HOURS
MEETING HELD AT
CASTLE HOUSE, GREAT NORTH ROAD, NEWARK NG24 1BY

HEARING TO CONSIDER AN APPLICATION FOR THE GRANT OF A
PREMISES LICENCE

BROOK HOUSE BREWERY
12 BESTHORPE ROAD
COLLINGHAM
NG23 7NP

SUB – COMMITTEE: Councillor R. White (Chairman)
(The Panel) Councillor M. Cope
Councillor I. Jackson

ALSO IN ATTENDANCE: Simon Smith (Legal Advisor - NSDC)
Alan Batty (Business Manager – Public Protection - NSDC)
Richard Marshall (Senior Planning Enforcement Officer – NSDC)
Brian Beddows (Environmental Health Officer – NSDC)
Jonathan Henson (Environmental Health Officer – NSDC)

Applicant: Henry Bealby (Brook House Brewery Ltd.)
Unnamed Supporter of Mr. Bealby

Representors: Chairman of Collingham Parish Council
Clerk to Collingham Parish Council
Iain Orme
Trevor Dodds

In opening proceedings, the Chairman advised all participants that the meeting was being recording and livestreamed on social media e.g. YouTube.

Presentation by the Business Manager – Public Protection

The Business Manager presented to the Panel details of the application made by Brook House Brewery Ltd. The report before the Panel presented Members with a summary of the application, the licensing history of the premise, the reasons for the Hearing and the conditions agreed with the Police and Environmental Health Services.

The report set out the legislation in relation to the powers that licensing authorities had to grant the premises licence, the options available to the Panel and the relevant policies and guidance.

Presentation of Application

Mr. Bealby provided the Panel with a history of the premises and that the Brewery traded under the name of the Cat Asylum. Initially the premise had opened as a micro-brewery but that had proved not to be profitable and therefore began to sell the beer brewed to customers at the premises from 12 noon to 7pm on one Sunday per month. Subsequently the premise had held culturally diverse events which were often ticketed, giving an example of events: poetry reading; stand-up; folk singer; performance of plays; story tellers; morris dancers.

In addressing the representations received, Mr. Bealby stated that the allegations of public nuisance were distorted. None of the events held had resulted in it being necessary for the Police to attend. There had been no incidents or concerns raised involving children or public safety issues. In relation to specific issues, Mr. Bealby commented as follows:

Litter – most litter is from McDonalds. The premise did not offer any takeaway service.

Quiet Residential Area – up until 2 years previously, the village had had a public house which the Parish Council supported.

Noise – Planning permission had applied a condition that noise from brewery operations would be limited. It had been problematic keeping to that as the brewery was not noisy.

Daily Noise Problems – the premise only opened once per month so any noise was not daily.

Amplified Music – this has only occurred once and will not happen again.

Application a Trojan Horse – this allegation was not true. Conditions had been agreed with Environmental Health Officers (EHOs) and if the premise opened as was suggested they would be in breach of those conditions. Also, it was not economical viable to open more frequently.

Parking – personally have been annoyed by parking, however, it is not illegal to park on side roads. There are no double yellow lines but if the village wished to run a campaign to get them approved, he would support.

Mr. Bealby noted that the representations received focussed mainly on 3 events held since the ending of the lockdown. He added that he may have been unprepared for the events but that not all residents had found them to be a nuisance.

He noted that some of the conditions agreed with the Environmental Health Officer (full list on page 10 of the Agenda papers) would prevent amplified music being provided externally and that EHOs must be informed of any external event being held 2 weeks prior to the date. He added that if the conditions were breached then he would be reported and likely have to reappear before another Licensing Panel.

Mr. Bealby informed the Panel that he had received letters of support but they had, unfortunately, been received too late to be included within the papers for consideration.

Questions

In noting the agreed conditions with EHOs, the Business Manager stated that they did not include no amplified music to be provided at external events. Mr. Bealby confirmed that inclusion of that condition was acceptable.

Mr. Dodds sought clarity on the number of events permitted and the difference between the hours applied for and as amended. The Business Manager advised that Mr. Bealby had been operating using Temporary Event Notices (TENs) as there was no Premise Licence. Should the application for the Premise Licence be approved then that would take precedence over the TENs. However, agreement had been reached that only 12 events per year would be held externally. By way of explanation, Mr. Bealby advised that the hours applied for were to offer flexibility to allow the premise to open daily for the provision of off sales. The number of days he could have held external events using a TEN was 15 but he had agreed, with the EHO, that he would hold no more than 12.

Mr. Orme again sought clarity of the number of events permitted in a year. Mr. Batty stated that agreement had been reached to hold no more than 12 externally but no figure had been set for internally. Mr. Bealby added that he had agreed with Planning Services to limit internal events to 24 per year.

Collingham Parish Council advised that they had submitted their representation based on the original application, prior to hours applied for being amended. They confirmed that they would be willing to reconsider in light of the proposed changes.

In noting the agreed conditions with the EHO, Councillor Cope queried as to what equipment would be used to monitor the noise levels at the boundary of the premises whilst regulated entertainment was taking place and whether it would be calibrated. Mr. Bealby advised that at a previously held event a sound technician had used a decibel monitor but going forward a more permanent solution was required, perhaps sited on the Rio Drive side of the premise. He added that any device would need to be able to be monitored from inside the premise but he was open to suggestions as to the best solution e.g. installation of a noise limiter.

Councillor Cope noted that the number of external events was limited to 12 per year but that these could be back to back in the summer months. Mr. Bealby confirmed that it was likely that they would not be required in the winter months so it could be that they had more in the summer, e.g. 2 in May.

In relation to parking, Councillor Walker queried as to the number of spaces provided at the premise. Mr. Bealby confirmed that in accordance with Planning requirements there was provision of 3 spaces. The premise was not designed to host events and the provision was primarily for disabled and/or commercial delivery vehicles. He went on to note that the One Stop Shop in the village and the Church offered their 'customers' no parking facilities but there was ample on-street parking. He added that Planning Services had said that if the premise began to open more frequently it would be necessary to convert his own garden into a car park.

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In noting the agreed limit on the number of external events, Councillor Walker queried whether Mr. Bealby would be agreeable to limiting the number of events held internally to 12 also. Mr. Bealby said he would consider that but was mindful that it may result in him breaching the condition.

The Business Manager advised the Hearing Panel that they should be cautious in limiting the number of events as it was difficult to define what an 'event' was, noting that it was not as simple of when the premise was open. Any condition applied must be clear and enforceable.

The Senior Planning Enforcement Officer advised that the premise had planning permission to be used as a micro-brewery and no other development. He sought to clarify that whilst the permission did not cover the type of activity being applied for with the Premise Licence, it was considered that should the agreed 24 internal events in 12 months be so insignificant then it was likely that a further planning permission was not required. However, should the events be of a significant nature there would be no permission and it would constitute a material change of use.

Mr. Orme noted the 2018 planning permission, citing the opening hours for the micro-brewery and that no other use was permitted. He queried whether the planning legislation overrode that of licensing. Mr. Marshall stated that planning enforcement action would only be taken if it was expedient to do so and the granting of the Premise Licence would not stop planning enforcement action being taken if necessary. The Legal Advisor confirmed that planning and licensing legislation were equal but relied on difference considerations.

Presentation of Representations

Collingham Parish Council advised that they had submitted a presentation based on the objections they had received from residents and that these had been made based on the original application. It was noted that there had only been a few objections and it was now believed that these could now be resolved with the changes. Mr. Bealby confirmed that the application should have been that any performance would cease at 22.30 not 23:00 hours.

Mr. Dodds sought clarification that all written and verbal representations would be taken into consideration by the Panel. The Chairman confirmed that they would.

Mr. Dodds referred to the inappropriateness of the hours applied for and the issues with amplified and recorded music. He acknowledged that there had been little nuisance recently and that the agreed condition of 12 external events per year was acceptable. He noted that amplified music from inside the premise was unrestricted and that the noise could escape. He referred to the parking at the premise, noting that vehicles would need to reverse onto the busy road. Again referring to parking, he noted that the One Stop Shop had parking directly outside the premises and that customers would not be parked for long periods of time. Customers to the premise would be required to park on residential streets for longer periods of time.

In response Mr. Bealby stated that he was agreeable to limiting recorded music inside the premise to 22:30 hours. Any amplified music outside previously had been limited to a Morris Dancing performance.

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In relation to parking, Mr. Bealby stated that the majority of customer walked so it was not an issue. Any occasional drivers parked on side roads and that was not for long periods of time.

Mr. Bealby stated that he used the premise for theatrical events and performance by artists. If they were on tour then they could only be booked to perform when their scheduled allowed e.g. mid-week.

The Senior Planning Enforcement Officer confirmed that the planning permission at the premise requiring parking for 3 vehicles also required that a turning space be provided. Should the application for a premise licence be granted then that space would need to be kept clear at all times. He also confirmed that, as per the agreed conditions to limit the number of events internally to 24 per year, any increase on that would be stopped as there was no planning permission in place.

Mr. Orme had submitted recordings of events held at the premise on 23 July; 4 September; and 11 September 2021. These were played to the Panel with Mr. Orme providing commentary. He stated that the level of noise provided a disturbance which was of concern to him in relation to his children. He referred to British Standard levels which could be used to measure noise and queried whether they would be used should a planning permission be submitted. Mr. Bealby stated that there was no decibel reading on the videos and that they only related to 3 events. In acknowledging the number of events agreed, both internally and externally, he stated that it was not his purposeful intention to use the maximum number. He added that due to the lockdown he had a backlog of booked events which he needed to hold as tickets had been sold.

In relation to the reference to British Standards, the EHO advised that they were more relevant to assessing noise from an industrial premise or from a building, not entertainment noise.

In noting the representations made, the Business Manager suggested that when the applicant summed up his case, he confirmed what amendments to the application had been made and agreed, similarly to the conditions.

In order to offer assurance about noise levels and the monitoring thereof, the EHO advised that decibel readings could be influenced by ambient background noise e.g. traffic. A simple method to check whether noise levels were too high was for the applicant to walk around the immediate area and if he thought it was loud, to turn the volume down. Mr. Orme noted that it might be one event which caused a nuisance. The EHO advised that the agreed conditions did not mean that enforcement action could not be taken. Calibrated equipment to monitor noise levels could be supplied when it was known that an event was to be held, as per the agreed conditions.

In response to whether Mr. Orme had complained to the Council about the noise nuisance, he confirmed that he had. The Business Manager advised that a number of complaints had been received and were subject to investigation.

Summing Up

Collingham Parish Council queried whether a Premise Licence could be transferred to a new owner should Mr. Bealby leave. The Business Manager confirmed that it could together with all the agreed conditions. The Senior Planning Enforcement Officer confirmed that no planning permission or conditions thereon were being agreed for the premise.

Mr. Bealby queried who would set the level for any noise limiter. The Business Manager advised that this would be undertaken by EHOs. Mr. Bealby stated that should there be any noisier events held the limiter should mitigate any noise nuisance. He added that he would like to have better communication with residents and he would welcome them getting in touch with him before lodging any complaints with the Council.

The Chairman thanked everyone for the attendance and advised that they would be notified of the Decision within 48 hours.

Decision

The decision of the Panel was to grant the licence subject to the following modifications and conditions:

Licensable Activity	Days	Times
Plays (Indoors)	Monday to Sunday	14:00 to 22:30
Plays (Outdoors)	Monday to Sunday	14:00 to 20:00
Live Music indoors	Monday to Friday Saturday to Sunday 31 December	10:00 to 22:30 14:00 to 18:00 19:00 to 22:30 14:00 to 00:00 (midnight)
Live music Outdoors	Monday to Friday Saturday to Sunday 31 December	19:00 to 20:00 14:00 to 18:00 19:00 to 20:00 Until 00:00 (midnight)
Performance of Dance (Indoors)	Monday to Sunday	12:00 to 22:30
Performance of Dance (Outdoors)	Monday to Sunday	12:00 to 20:00
Recorded music indoors	Daily	12:00 to 22:30
Supply of alcohol on and off sales	Daily 31 December	09:00 – 23:00 09:00 – 00:00
Opening times	Daily 31 December	09:00 –23:30 09:00 - 00:45 (1 January)

1. All mandatory conditions as set out in Annex 1 (reference paragraph 7.1 Agenda pack of today’s hearing) shall apply. These are the conditions relating to:
 - Designated premises supervisor,
 - Authorisation by Personal Licence Holders,
 - Irresponsible Promotions
 - Potable water
 - Age Verification

- Small Measures
- Sale of alcohol below the permitted price
- Door supervision

Annex 2 - Conditions

Applicant and Police Agreed Conditions

1. A CCTV system shall be installed and operative in the premises when licensable activities are taking place. All recordings used in conjunction with CCTV shall:
 - be of evidential quality
 - indicate the correct date and time
 - be retained for a period of 31 days
 - sufficient numbers of staff to be trained to use the system
 - Recordings to be made available for inspection when requested by the Police or any other authorised person pursuant to the Data Protection Act 1998.
2. A bound and sequentially paginated incident/accident book or electronic record shall be kept to record all instances of disorder, damage to property, personal injury and refusals of service at the premises. This book shall be made available for inspection and copying by the Police and other officers upon request and all such books shall be retained at the premises for at least 12 months.
3. All members of staff shall be fully trained in the retail sale of alcohol. The training shall be on-going and each member of staff shall be reviewed every six months. All details of the level of training will be recorded in a bound and sequentially paginated book or electronic record.
4. The information shall be made available for inspection and copying by Police or any other authorised person immediately on request and all such books shall be retained at the premises for at least 12 months.
5. A Challenge 25 policy will be implemented and enforced at all times. Any person who appears to be under 25 years of age shall not be allowed to purchase alcohol unless they produce an acceptable form of photo identification. (e.g. passport, driving licence, Military ID or PASS accredited card).

Applicant and Environmental Health Agreed Conditions:

1. Signage shall be displayed advising customers to be respectful to residents and to leave the area in a quiet and orderly manner.
2. Employees must monitor customers leaving the premises at closing time to ensure customer leave site promptly.
3. All doors and windows shall remain closed when regulated entertainment is taking place, except for when actually being used for access and egress and in the event of an emergency.

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4. The external area of the premises shall not be used for the provision of licensable activities or consumption of food and beverages after 20:00 hours.
5. No more than 12 events shall be held outside in any calendar year.
6. The premises licence holder shall inform the Environmental Health Service in writing at least two weeks before holding an outdoor event.
7. No regulated entertainment shall be provided in any external areas except for during these events.
8. Where outside events are held noise levels shall be monitored at the boundary of the premises every 30 minutes whilst regulated entertainment takes place to ensure that no vibration or noise nuisance is caused to any residential premises. The results of all monitoring shall be recorded in either a bound and sequentially paginated book or as an electronic record, which shall be kept at the premises and be available at all times for inspection by an authorised officer of the council or Police Officer. A record of all actions taken as a result of the monitoring shall also be kept.

The Committee decided to impose the following conditions for the licensing objective of Prevention of Nuisance:

1. Recorded music indoors is to finish at 10:30 as per the amended table above.
2. There shall be no amplified music played outside at any time save by customers visiting in their cars, in which case, the amplified music from inside the car in question shall cease within 30 seconds after it has entered the premises.
3. A noise attenuation scheme (to include details of the specification of noise limitation devices to be installed and maintained as fit for purpose) to the licensed area, shall be submitted to and approved by the licensing authority in writing as soon as practicably possible and implemented as soon as possible in accordance with the approved scheme before the outside seating area is used for the consumption of alcohol. The scheme shall be kept on the premises and made available for inspection by the police or any other authorised person upon request.
4. The Licence Holder will notify local residents of any function to be held on the premises that involves live entertainment and recorded music (other than background music) at least 48 hours before the event.

Appeal: Any party may appeal against the decision of the Licensing sub-committee.

Any such appeal must be to the magistrate's court for the area in which the premises concerned are situated.