

NEWARK & SHERWOOD DISTRICT COUNCIL
LICENSING SUB-COMMITTEE

RECORD OF HEARING HELD ON
21 AUGUST 2020
10:00 HOURS

BROADCAST FROM
CASTLE HOUSE, GREAT NORTH ROAD, NEWARK NG24 1BY
*(Attendance at this Hearing and public access to it were by remote means
due to the Covid-19 Pandemic)*

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

18 CASTLE GATE, NEWARK NG24 1BG

SUB – COMMITTEE: Councillor Mrs R. Crowe (Chairman)
Councillor Mrs K. Arnold (Reserve)
Councillor L. Brazier
Councillor R. White

ALSO IN ATTENDANCE: Caroline O'Hare (Senior Legal Advisor - NSDC)
Nicola Kellas (Licensing Officer - NSDC)
Alan Batty (Business Manager – Public Protection - NSDC)

Applicant: Mr. Matthew Clark

Representors: Nottinghamshire Police
- James Armstrong-Holmes
- Kate Ansty
- Daveen Brown
Environmental Health Officer (NSDC)
- Brian Beddows
Anthony Aspbury
Denis Power-Neads
Jane Williams
Mark Larter
Millgate Conservation Society
- Sue Pickles
- Christine Stevenson
Linda Reeves
Lucy Worrell

In opening proceedings, the Chairman advised all participants that the meeting was being held remotely using MS Teams due to the Covid-19 Pandemic and that the proceedings would be livestreamed on social media e.g. YouTube.

Prior to the commencement of the Hearing, the Panel's Legal Advisor advised all parties of the key considerations for determining the application to grant the premises licence. She reminded those present that any decision must promote the four licensing objectives. She advised that any decision must be justified and proportionate to the full circumstances relevant to the application and any applied conditions, should the licence be granted, must be reasonable.

Presentation by Licensing Officer

The Licensing Officer presented to the Panel details of the application made by Corn Exchange Newark Ltd. The report before the Panel presented Members with a summary of the application. It also noted other licensed premises in the area and that representations had been received in relation to the application.

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.

Questions to the Licensing Officer

Mr. Power-Neads sought clarification as to why relevant comment from the Fire Authority was not included in relation to public safety. The Panel's Legal Advisor advised that whilst this could be included as part of the Panel's consideration they could not duplicate the Fire Authority's legislation and any such condition placed on the Premise Licence, should it be granted, was a matter for them. The Licensing Officer advised that the Fire Authority were a Responsible Authority and had not submitted any comments in relation to the application.

Prior to the Applicant's presentation, the Chairman acknowledged the late submissions circulated that morning just prior to the Hearing. She confirmed that they would not be considered due to there being insufficient time for the Panel to read them.

Presentation by the Applicant

The applicant, Mr. Matthew Clark, advised that whilst he owned the site he had not, to-date, ran a business from there. He provided two presentations to the Panel and those participating in the Hearing, setting out his vision and business case for how the premises would operate.

Mr. Clark stated that the application was not for a premise licence to operate a night club. The major change from previous operations was the provision of food, stating that there was nothing else like it in the town. It was a food hall type provision, transient and ever changing. He added that he would also be looking to do an online delivery service for which he would employ his own couriers. This service would also deliver alcohol, high end coffee provision and soft drinks. He commented that he had had some interest in the food concessions and that this could be a break even in terms of profit for the venture.

It was noted that the building was split over three floors with each floor offering a different experience.

The first floor was a balcony area and would offer high end refreshments together with a unique games experience being provided on the ground floor. It was hoped that this would attract customers to the venue rather than them travelling to Nottingham or Lincoln.

The basement would be a 'high energy' space with a limited number of operating hours. It would be expected of customers to be well behaved and well dressed. Mr. Clark stated that he was confident that this area could be maintained safely and without causing any issues for the Police or residents. A small external area would be provided for smokers.

It was proposed that the outdoor area consist of a Secret Gin and Herb area which would require a specific access code to gain entry. There would also be a bandstand to provide outdoor entertainment.

Mr. Clark also advised that he had carried out an online public consultation with some 600 forms completed, providing the Panel with a flavour of the responses received.

Questions to the Applicant

The Chairman queried what the hours of use of the bandstand would be. Mr. Clark advised that it was a key area for the outside of the venue but that it was likely that it would only be used during the summer months. Live music would be provided on Saturday and Sunday afternoons but flexibility was sought. Mr. Clark stated he would be happy to cease live music outside at 23:00 hours.

Councillor White queried who would get access to the Secret Gin and Herb area. Mr. Clark advised that this would be a small area with a hidden doorway e.g. in a picture frame with a hosted entry. It would trade on a Friday and Saturday and customers would be required to book in advance through an online portal.

Councillor White also queried whether Mr. Clark was proposing to set up Pastor Support. Mr. Clark advised that they were good for business and was very interested in establishing such a venture.

In noting the capacity of the basement area being 200 people, Councillor Brazier queried what plans Mr. Clark had in place to avoid all customers leaving at the same time. Mr. Clark indicated that the current licence allowed the premises to remain open until 3am. There were 3 separate entrances to the area but these were all accessed via the front door so access and egress could be easily managed. He stated that the peak time when it was anticipated that the area would be at capacity was 00:30 hours but that he believed that there would be less than 100 people in for an hour prior to leaving time. In response, Councillor Brazier commented that this was only a prediction, noting that there would likely be a large number of students at the venue. Mr. Clark advised that he had significant experience in the field and was confident of the figures, using data from other venues he managed. He added that the areas within the venue would have different closing times.

The Chairman queried as to the latest entry time proposed. Mr. Clark advised that he believed there would be in-site migration of customers but there would probably be no entry permitted after 01:30 hours but would like some degree of flexibility on this.

In relation to the proposed delivery of food and alcohol the Panel's Legal Advisor queried what controls would be put in place to stop underage drinkers ordering low cost food with a high volume of alcohol. Mr. Clark advised that the £10 minimum value of an order was as a result of a request from the Police. He stated that he would like to be able to deliver alcohol without food e.g. to a cocktail party. All necessary precautions would be taken, similar to those of a supermarket delivery. He would not carry out late-night deliveries and would also operate a Challenge 25 Scheme. The delivery driver would request sight of identification and take a photograph of what was provided. An enhanced challenge would also be operated with 2 forms of identification being requested. The driver would also be required to seize the identification if it was invalid and report the incident to the Police.

The Legal Advisor also sought clarification on how footfall to the basement area would be managed. Mr. Clark stated that it was anticipated that diners would migrate within the venue but access to the basement area was from one point only. This would mean that the diners would have to leave the premises to then gain entry to the basement from the external access.

In noting the comments in support of the venture, the Police noted that some had expressed concern about the state of the building and also with the proposed terminal hour. Mr. Clark acknowledged this to be so adding that from the 600 replied received, approximately 10-15 had expressed those concerns.

The Police noted access point to the building but that it had many exits. Mr. Clark advised that each area had its own separate fire escape exit which were all exclusive to that particular area. The Police queried whether the venue could be exited at the rear of the building. Mr. Clark stated that it was his wish that the building enhanced the area. He anticipated closing about 10.30pm with that time being dictated by the sunlight in the winter months. Exit from the area would be controlled by registered door staff.

The Police queried how the proposed delivery service would operate. Mr. Clark stated that he would have his own fleet of drivers but that this service was not a 'deal breaker'.

In relation to the stated occupancy figures, the Police commented that the premises had been closed for a number of years so they were only an estimation. Mr. Clark acknowledged that to be the case.

In relation to the proposed £400,000 Mr. Clark noted was required to refurbish the venue, the Police queried whether he considered this sufficient. Mr. Clark advised that the building was watertight and was not dilapidated. There was only little structural work required.

In noting that Mr. Clark had posted a letter to neighbouring properties late the previous night the Environmental Health Officer (EHO) stated that, if granted, the proposed 4am termination hour for the venue together with the provision of a smoking area for those customers using the basement, whether this would create noise nuisance for the nearby residents. Mr. Clark advised that there would be a presence of SIA staff whenever the basement was in use.

The EHO queried whether Mr. Clark would consider amending the hours he had applied for for the outside areas. Mr. Clark stated that he would wish to close the outside area 30 minutes before the premises closed. He added that the application was for a 04:00 hours termination throughout but would accept that the garden area not be used after 02:00 hours. The EHO queried whether Mr. Clark would consider not playing amplified music. Mr. Clark noted that regulated entertainment could be played until 23:00 hours without licence. It was noted that in the letter to his neighbours, Mr. Clark had indicated that it would only be played 4 days in any one week. Mr. Clark stated that this was an outside area and would not be utilised as frequently during the winter. The EHO also queried with Mr. Clark would be prepared to undertake some noise modelling prior to the venue opening. Mr. Clark stated that he did not wish to be a nuisance to his neighbours who resided more to the front of the venue than the rear.

Mr. Aspbury highlighted the consultation undertaken by Mr. Clark. He queried whether he considered it to be valid and met the necessary tests, given that he was relying on it for his application. The Legal Advisor advised that it was a decision for the Panel Members to consider whether the consultation was relevant to upholding the licensing objectives and that Mr. Clark had submitted the application in accordance with licensing law. Mr. Clark advised that the letter to neighbouring properties was to advise them of his contact details. He added that the digital consultation he had carried out continued to receive responses.

Mr. Aspbury noted that the door staff had no jurisdiction outside of the premises and that any issues would be the responsibility of the Police. In response Mr. Clark stated that door staff had no power of arrest either inside or outside the premises.

Mr. Power-Neads stated that he was a former member of the Fire Authority. In looking at the plans, he queried how accurate they were and whether a Fire Risk Assessor had been appointed. Mr. Clark advised that they were envisaged plans for the area drawn up by an ex-Fire Inspector but that he would be having more detailed plans drawn-up in due course.

Mr. Larter noted that the previous licence had been granted with restricted hours and queried what had changed for Mr. Clark to now believe that the venue was viable until 04:00 hours. Mr. Clark advised this it was a new and different business case and was not a nightclub. Mr. Larter commented that if some had been drinking in the establishment all day they would not be a discerning customer by the termination hour. Mr. Clark stated that this would not be permitted and again reiterated that it was a totally different proposal. He added that the proposal was for a multi-faceted venue with different areas being used for different purposes. The hours applied for were required to make the venue a viable business venture.

Presentation by Responsible Authorities

NSDC – Environmental Health Officer

The EHO commented that there was concern in relation to possible noise nuisance to neighbouring properties from amplified music as applied for and that, to-date, no noise survey had been provided. It was also of concern that the provision of late night refreshments and alcohol to the external areas of the premises would cause disturbance. In relation to the inside of the premises, he stated that he would have no concerns if the fabric of the building was effectively soundproofed to prevent noise escaping.

The EHO stated that amplified music outside was not satisfactory due to the closeness of the neighbouring properties and should terminate at 23:00 hours and that a noise survey should be submitted.

Questions to EHO

The Legal Advisor queried whether the use of a sound limiter would effectively reduce the escape of noise from the premises. The EHO advised that it was one method of mitigating this. He would expect that a qualified acoustics specialist would set the levels but he could foresee an issue if external entertainment was provided e.g. a band and they brought their own equipment and amplification. Mr. Clark advised that he would accept a condition that he have an acoustic report undertaken. He added that the outside area was for customers and not for amplified music.

The EHO stated that he did not think it appropriate for the outside area to be used past 23:00 hours unless the escape of sound was demonstrably mitigated, adding that late at night or in the early hours of the morning sound travelled more easily. Mr. Clark noted that alternative legislation to that of the Licensing Act 2003 would deal noise nuisance. The EHO advised that any resident who experienced noise nuisance should contact Newark & Sherwood District Council and this would then be investigated.

In response to whether there was any opportunity for someone who moored their barge at the nearby casual moorings to make a noise complaint the EHO advised that a noise report would be required but yes, a complaint could be made. However, it would have to be from someone who moored there frequently for it to be deemed a statutory nuisance.

Nottinghamshire Police Authority – James Armstrong-Holmes

Mr. Armstrong-Holmes stated that the Police's principle concerns were that of previous crime and disorder and public nuisance. He added that the applied for opening hours of beyond 03:00 hour would be opposed and that police resource to manage this was an issue as there was insufficient infrastructure to effectively deal with the anticipated anti-social behaviour. He suggested that there were insufficient taxis to cope with the number of people leaving the premises at the termination hour and that should anyone be arrested it would take the Police away from the area for up to one or more hours.

Questions to Police Authority

In response to a question about the number of Officers in the teams which covered the Newark town area, Mr. Armstrong-Holmes stated that the Neighbourhood Team operated from 03:00 hours onwards but did not know the number of Officers therein. The Response Team operated until 03:00 hours and had 6 Officers. Mr. Armstrong-Holmes also confirmed that these were limited resources and deployed to where senior officers deemed appropriate.

Mr. Clark commented that he had met with both the Council and the Police at the venue. The Police had indicated that it was a fresh start and that they would not be using old information in considering the application. Mr. Armstrong-Holmes stated that the Police objections were based entirely on the application and crime statistics from other premises had not been used.

In response to Mr. Clark commenting that Newark was not a small town and that it was larger by 10% than Mansfield, Mr. Armstrong-Holmes stated that it was smaller than a city. Kate Ansty of Nottinghamshire Police advised that the night time economy in Mansfield placed higher demands on Police resources. The Panel's Legal Advisor noted that there may be more Police in the Mansfield area due to crime and disorder and not because of licensing related matters.

Mr. Clark queried whether his application was at a disadvantage due to a lack of Police Officer availability after 03:00 hours. He also queried whether it would be possible to put on an extended shift to protect the public and residents and whether there was anything unique to Newark that should determine an earlier termination hour. In response Daveen Brown and Kate Ansty advised that it was due to resources and that Newark Police Station did not have a custody suite.

In response to Mr. Armstrong-Holmes comment about insufficient taxis, Mr. Clark stated that he had spoken with taxi operators who had said they would provide vehicles if there was sufficient footfall. He queried what would happen, should the licence be granted, if an incident occurred after 03:00 hours. Daveen Brown advised that resources would be sent from elsewhere and that a staggered exit from the premises would be preferred.

Presentation by Representors

Presentation by Mr. Tony Aspbury

Mr. Aspbury stated that he had lived at his property for over 40 years but for the last 20 years of that he had suffered problems because of the premises. Between 08:00 hours and 00:00 hours it was not a problem but from 00:00 hours to 04:00 hours it was. When previously opened it had attracted a 'feral' element and Mr. Aspbury believed that this would again be the case. He stated that the venue could not be separated from the clientele and that it was not about an evening economy or a café culture. If the licence was granted it would be severely detrimental to the nearby residents, adding that the Council's Town Fund Bid would also be compromised. He invited the Panel to put aside the public consultation carried out by Mr. Clark and that it be refused outright, but should it be granted that it be severely conditioned.

Questions to Mr. Aspbury

Mr. Clark acknowledged Mr. Aspbury's concerns but stated that it was a different application. He queried what the difference was between a 03:00 hours and a 04:00 hours termination hour. Mr. Aspbury stated that it would spread the behaviour. In response to how many times he had reported incidents to the Police, Mr. Aspbury advised that he had done several times and also to the premises, but that no action had been taken.

Presentation by Mr. Denis Power-Neads

Mr. Power-Neads reaffirmed his written representations adding that it was his opinion that the current fire safety report was insufficient to make the premises safe. He acknowledged that this was outside of the remit of the Licensing Act 2003.

Presentation by Mr. Mark Larter

Mr. Larter acknowledged and agreed with the comments made by Mr. Aspbury. He added that he was not against the use of the premises but he did strongly object to the hours applied for.

Presentation by Linda Reeves

Ms Reeves reaffirmed her written submission and also agreed with the comments made by Mr. Aspbury

Presentation by Millgate Conservation Society – Mrs Sue Pickles

Mrs Pickles also reaffirmed her written submission but commented that she welcomed the reuse of the building.

Presentation by Lucy Worrall

Ms Worrall spoke in support of the application. She stated that the application should not be determined by what happened previously. She added that the age demographic which she fell within welcomed the venue and would mean that they did not have to travel to enjoy a similar type of entertainment. She stated that not everyone should be tarnished with the same brush and that she believed it would be an asset to the town.

Summing Up

Nottinghamshire Police Authority

Mr. Armstrong-Holmes stated that he reiterated the earlier comments he had made and that the Police remained opposed to the granting of the licence. It was their belief that the application undermined the licensing objectives of crime and disorder and public nuisance.

Millgate Conservation Society

Mrs Pickles commented that through social media Mr. Clark had demonstrated a need/hunger for the building to be repurposed. She stated that she would be willing for that to happen but with limited opening hours but that any conditions applied would be difficult with such a multifaceted offer. She would like to see the building back in use but not the outside area after 00:00 hours.

Applicant

Mr. Clark referred to the location of the residential properties, specifically that those at the rear of the premises did not commence until after the towpath ended.

He noted that there were numerous reasons why the Panel could refuse the application but that he welcomed support to repurpose the building. The application was a new proposal and would not be viable without the hours as applied for, adding that if they could be financially viable until 03:00 hours they would not have submitted the application until 04:00 hours.

He stated that they would charge and deliver a quality product and that he would accept being conditioned about alcohol pricing. He added that he felt he had also reached a near agreement with the EHO in relation to potential noise issues.

Mr. Clark finished by stating that it was an opportune time to reopen the venue as the town was seeing other venues closing.

Decision

The decision of the Licensing Panel was to:

1. Grant the Licence but with the hours varied from that in the application (see 2 and 3 below) and with the conditions set out at 1 to 19 below applied to the licence.
2. Opening Hours and Hours of Licensable Activity as per Tables below:-

All Outdoor Activities, Including Consumption of Alcohol, to Cease at 23:00 hours		
Opening Hours for each Floor are as follows:		
• <u>Sunday to Thursday</u>		
First Floor	08:00 hours	00:00 hours
Ground Floor	08:00 hours	01:30 hours
Basement	08:00 hours	02.00 hours
• <u>Friday & Saturday</u>		
First Floor –	08:00 hours	01:00 hours
Ground Floor	08:00 hours	02:30 hours
Basement – 03:30 hours	08:00 hours	03.30 hours

3. Licensable activities shall be permitted on site at the following times:

Activity	Proposed Timings
<p>Plays (indoors)</p> <p>Outdoors</p>	<p>08:00 to 00:30 HOURS – SUNDAY TO THURSDAY 08:00 to 02:45 HOURS – FRIDAY & SATURDAY</p> <p>08:00 to 23:00-any day of the week but a maximum of 4 days per week.</p>
<p>Films (indoors)</p> <p>Outdoors</p>	<p>08:00 to 00:30 HOURS – SUNDAY TO THURSDAY 08:00 to 02:45 HOURS – FRIDAY & SATURDAY</p> <p>08:00 to 23:00 any day of the week but a maximum of 4 days per week</p>
<p>Live Music indoors</p> <p>Outdoors</p>	<p>08:00 to 00:30 HOURS – SUNDAY TO THURSDAY 08:00 to 02:45 HOURS – FRIDAY & SATURDAY (a) maximum of 4 days per week. However, this cannot be taken to include 4 hours of music from 21:00hrs - 00:00 equal to day 1 per week and continuing 00:00 – 04:00hours the following consecutive day. EG Saturday 21:00-00:00continuing to Sunday 04:00 would not be acceptable. This would apply to any 2 consecutive days.</p> <p>8:00 to 23:00 any day of the week but a maximum of 4 days per week and the condition (a) above re continuing over consecutive days applies.</p>
<p>Recorded Music (indoors)</p> <p>Outdoors</p>	<p>08:00 to 00:30 HOURS – SUNDAY TO THURSDAY 08:00 to 02:45 HOURS – FRIDAY & SATURDAY</p> <p>8:00 to 23:00 any day of the week but a maximum of 4 days per week and the condition (a) above re continuing over consecutive days applies.</p>
<p>Performance of dance (indoors)</p> <p>Outdoors</p>	<p>08:00 to 00:30 HOURS – SUNDAY TO THURSDAY 08:00 to 02:45 HOURS – FRIDAY & SATURDAY</p> <p>8:00 to 23:00 any day of the week but a maximum of 4 days per week and the condition (a) above re continuing over consecutive days applies.</p>
<p>Anything of a similar description (indoors)</p> <p>Outdoors</p>	<p>08:00 to 00:30 HOURS – SUNDAY TO THURSDAY 08:00 to 02:45 HOURS – FRIDAY & SATURDAY</p> <p>8:00 to 23:00 any day of the week but a maximum of 4 days per week and the condition (a) above re continuing over consecutive days applies.</p>
<p>Late night refreshment (indoors)</p> <p>Outdoors</p>	<p>08:00 to 02:00 HOURS – SUNDAY TO THURSDAY 08:00 to 03:30 HOURS – FRIDAY & SATURDAY</p> <p>8:00 to 23:00 any day of the week but a maximum of 4 days per week and the condition (a) above re continuing over consecutive days applies.</p>

Supply of alcohol (both on premises and off premises)	08:00 to 01:30 HOURS – SUNDAY TO THURSDAY 08:00 to 03:00 HOURS – FRIDAY & SATURDAY
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4. The mandatory conditions, which apply to licences granted under the Licensing Act 2003 and set out at Annex 1 of the committee report, shall apply to the licence.
5. The conditions specified in the applicants operating schedule set out at Annex 2 of the committee report shall apply to the licence; save for the amendments highlighted in bold at Annex 2 of this letter. These are attached at the end of this letter for ease of reference
6. There shall be no activities in the outside area to the rear of the premises including the bandstand area after 23:30 each day.
7. No food or drinks to be taken outside into the smoking area after 11pm
8. The smoking area is to be closed/no entry permitted to it 20 minutes before closure of the basement floor of the premises
9. Before the premises may open to the public, the Applicant shall commission and undertake a full sound survey and consult on noise limitation options available. Such survey results will be sent to Newark & Sherwood District Council prior to the venue being open to the public. The Applicant shall co-operate with the relevant Environmental Health Officers of the Council to ensure noise nuisance is not created by the premises.
10. Before the premises may open to the public, the Applicant shall commission and have undertaken a Fire Risk Assessment for all areas of the premises including the bandstand and rear outdoor area. The results of this assessment will be sent to Newark & Sherwood District Council prior to the venue opening to the public.
11. The appropriate capacity for patrons is to be established by the Fire Risk Assessment and then the Applicant will ensure that at all times this capacity per floor and in the total venue is not exceeded at any time.
12. No off sales of alcohol can be made unless a food order of a minimum of £10.00 is made at the same time and ordered by the same person to the same address.
13. No open or decanted containers of alcohol may be carried in a delivery vehicle nor provided to customers on any delivery
14. Any off sales deliveries including sale of alcohol must be delivered to a named person by way of delivery to a residential or commercial/business address and not to any open public place such as a park, street or wharf.

15. On delivery of any off sales of alcohol; the ID of the person accepting the delivery will be checked and confirmed they are over 18 years of age.
16. Minimum pricing to be set currently at sale of a single spirit not below £2.50 and any pint of beer, lager, cask or bottled ales, cider or perry etc not below £3.00. The Licence holder should review this rate annually and increase the minimum pricing to ensure it remains at a consistent rate above the regulated mandatory minimum pricing levels for sale of alcohol.
17. All smokers should be directed to use the designated smoking area and patrons should not be permitted to smoke outside the front of the premises.
18. No open drinks, bottles or cans to be taken from the premises by patrons or drunk outside at the front of the premises
19. The gate/access to and from the towpath to the venue to be monitored to ensure customer safety and venue capacity is not exceeded. The gate to and from the towpath to the venue to be closed either at 11pm or sundown whichever is earliest.

Recommendations but not Conditions on the Licence:

Members of the Licensing Panel would like the Applicant to ensure that:

- Appropriate signage is included in the smoking area to the effect of reminding patrons to be respectful of neighbouring homes and to keep noise to a minimum whilst in the area.
- Membership of Pubwatch is taken up by the Applicant/ Director of the business.

Meeting closed at 3.28 pm.

Chairman