

NOTTINGHAM CITY COUNCIL

LICENSING PANEL B

RECORD OF PROCEEDINGS

1. **Date of hearing** - 21 October 2014
2. **Panel**
 - Councillor Dave Smith (Chair)
 - Councillor Bill Ottewell
 - Councillor Mick Wildgust
3. **Legal advisor & Note taker**
 - Judith Irwin
 - Mark Leavesley

4. Applicant and application premises

Mr Aygun Acinik & Mr Abbas Damar *in respect of*

Hard to Find Café
186 North Sherwood Street
Nottingham
NG1 4EF

5. Nature of application - Variation of premises licence

Summary of proposals (as per the written application)

- To include late night refreshment on Sunday to Wednesday from 23.00hrs to 00.30hrs the following morning and on Thursday to Saturday from 23.00hrs to 01.30hrs the following morning. An additional hour each Friday, Saturday and Sunday of a Bank Holiday weekend.
- To extend the terminal hours for live music to midnight each day.
- To extend the hours for recorded music on Sunday to Wednesday from 10.30hrs to 24.00hrs and Thursday to Saturday from 10.30hrs to 01.30hrs the following morning. An additional hour each Friday, Saturday and Sunday of a Bank Holiday weekend.
- To extend the hours for the sale by retail of alcohol on Sunday to Wednesday from 10.30hrs to 24.00hrs and on Thursday to Saturday from 10.30hrs to 01.00hrs the following morning. An additional hour each Friday, Saturday and Sunday of a Bank Holiday weekend.
- To extend the opening hours on Thursday to Saturday from 10.30hrs to 01.30hrs the following morning and Sunday to Wednesday from 10.30hrs to 00.30hrs the following morning. An additional hour each Friday, Saturday and Sunday of a Bank Holiday weekend.

6. Parties present

(1) For the Applicant

- John Kent - Solicitor
- Aygun Acinik - Applicant and Premises Licence Holder
- Harpreet Binning - proposed future Designated Premises Supervisor

(2) Other parties

- Nick Marette - Local resident and Director of a local business, having made representations in both capacities opposing the application

Persons present refused permission to speak and reason why – None.

7. Parties not present and reason why

- (1) Laura Marette, local resident, had made a representation opposing the variation application and had confirmed she was unable to attend the hearing due to childcare commitments.
- (2) Sandra Patterson, local resident, had made a representation opposing the variation application but did not attend. She had not previously given any indication as to whether she would attend or not.

8. Applications and Decisions on ancillary issues eg requests for adjournments, determinations whether to proceed in absence, directions etc

- (a) In view of the fact that all those who had indicated that they proposed to attend the hearing did so, the Panel determined that the application should proceed in the absence of Laura Marette and Sandra Patterson under regulation 20 of The Licensing Act 2003 (Hearings) Regulations 2005.
- (b) Mr Kent's bundle of material (see 9 (iv) below) was not served within the timescale required by the Council's guidance, namely no later than the working day before the hearing. He therefore sought the agreement of Mr Marette to adduce it. That agreement was given, its late submission being noted, together with Mr Kent's explanation for it.

9. Supplementary material taken into consideration other than that which was contained within the agenda

- (i) Letter from Laura Marette dated 9 October 2014;
- (ii) Letter from Nick Marette (Director of Marette Studio Limited) dated 16 October 2014 enclosing letter of even date together with photographs A-C;
- (iii) Letter from Nick Marette local resident dated 17 October 2014;
- (iv) Letter from Mr. Kent dated 20 October 2014 enclosing proposals for amendment and additional conditions, three sample notices, a street plan and three photographs.

10. Facts/Issues in dispute

Issue 1: Whether the applicant can show exceptional circumstances why the

application should not be refused under policy 3 of the authority's Statement of Licensing Policy.

Issue 2: Whether the application promotes the prevention of public nuisance licensing objective.

11. Decision

The Panel listened to all the evidence put before it and also took into account the contents of the application and all representations and submissions made in relation to it. So far as the matters in dispute were concerned, the Panel found as follows:

(a) On behalf of the applicant, Mr Kent volunteered on presenting his client's variation application amended hours for the licensable activities and additional proposed conditions (as set out in the first enclosure to his letter of 20 October) namely:

Live music

Sunday to Thursday until 23.00hrs (as existing);
Friday and Saturday until midnight;

Recorded music

Sunday to Wednesday until midnight (as applied for);
Thursday, Friday and Saturday until 01.00hrs the following morning;

Late night refreshment

Sunday to Wednesday inclusive until midnight;
Thursday, Friday and Saturday until 01.00hrs the following morning;

Sale of alcohol (as applied for)

Sunday to Wednesday 10.30hrs until midnight;
Thursday, Friday and Saturday until 01.00hrs the following morning;

Opening Hours (as applied for)

Sunday to Wednesday 10.30hrs until 00.30hrs the following morning;
Thursday, Friday and Saturday 10.30hrs until 01.30hrs the following morning;

Proposed conditions

- (i) 'No drinks allowed outside the premises after midnight' and notices to be displayed inside and outside the premises to advise customers accordingly;
 - (ii) Notices to be displayed inside the premises reminding patrons to leave the premises promptly, quietly and without causing disturbance on their way home;
 - (iii) The licence holder and/or designated premises supervisor shall take such reasonable steps as are necessary so that music is not heard above the ambient noise levels outside the perimeter fence to the rear of the premises;
 - (iv) The licence holder and/or designated premises supervisor will provide personal telephone numbers so that they may be contacted direct by any nearby residents who wish to have direct access in the event of wishing to make a complaint regarding the management of the premises.
- (b) In relation to a preliminary request for clarification from the Panel regarding the alternate addresses for the premises (171 Mansfield Road / 186 North Sherwood

Street) Mr Kent was unable to assist with an explanation but confirmed that he did not take issue with the fact that the premises are in the Saturation Zone.

- (c) The Panel noted that no representation had been received from any Responsible Authority. The four representations which had been made related entirely to noise nuisance and disturbance arising from later hours/additional licensable activity so the absence of a Police representation was unsurprising.
- (d) The Panel noted that no representation had been received from Pollution Control in relation to noise problems and Mr Marette conceded that he had not made any complaint to the authorities about noise emanating from the premises previously, nor had he contacted the management of the application premises in connection with any particular instance of noise.
- (e) The Panel noted the recent change in the use of the land to the rear of the application premises from car park to smoking area/beer garden and the representations which had been made regarding the noise emanating from users of that facility and also from live music events occurring at the premises.

The Panel accepted that the area surrounding the premises contained a diversity of residential occupants with varying needs and lifestyles. The range of land uses, including residential, recreational, retail and leisure, within a relatively small radius meant that care needed to be taken so as not to disrupt the balance necessary for harmonious co-existence between them.

- (f) The Panel heard from Mr Acinik as to his experience in the licensed trade both in Nottingham and in other cities, and to changes he had recently made to the premises, including renovations, removal of speakers from the North Sherwood Street entrance and a switch to softer, lighter music, all modifications which would attract a more mature clientele. He emphasised that his target market was not the student population and his aim was not for the premises to become primarily a live music venue.
- (g) However, Mr Acinik and Mr Kent informed the Panel that a sale of the premises was currently being negotiated and was in fact well advanced. Mr. Binning, who was present at the hearing, had been appointed by the new owner to take over responsibility as Designated Premises Supervisor once the transfer had taken place.
- (h) The Panel heard from Mr Marette regarding the noise levels from live music events and the beer garden at the premises based on existing hours. He advised the Panel that these were audible from his home, which was 34 metres from the perimeter of the premises, and that the gable wall of the apartment block he was currently developing would be 12 metres from the perimeter of the premises.
- (i) The Panel considered carefully the conditions put forward by Mr Kent at the hearing and the conditions which had been suggested by Mr and Mrs Marette to alleviate any detrimental consequences of the additional hours and activities proposed.

It noted that no physical changes had been put forward by the applicant; Mr Kent advised that the new owner was conscious of the use of the outside area and was considering providing screening but he was not in a position to offer this as a condition at present. It noted that in the absence of any reported complaint re noise breakout or leakage, the applicant did not consider such measures were warranted.

- (j) The conditions proposed by Mr Kent could, in his submission, be implemented

easily and quickly and would include the over-arching condition requiring action on the part of the management to take action in the event of audibility of noise from the perimeter of the premises.

In addition, he submitted that the provision of direct personal telephone numbers for the management would help to ensure that problems were “nipped in the bud” rather than allowed to be repeated or to escalate. However, if problems with noise persisted in spite of these measures, he submitted that residents then always had the option of reporting the matter to the local authority’s noise nuisance team and/or seeking a review of the licence.

- (k) The Panel was mindful of paragraphs 6.30 to 6.33 and 6.36 to 6.37 of the Authority’s Statement of Licensing Policy. Policy 3 at paragraph 6.33 states that the Authority will refuse applications for premises in the City Centre Saturation Zone where representations about cumulative impact, crime and disorder, and/or nuisance are received.

The Panel was satisfied that as a variation to an existing premises licence the Policy applied to it. Paragraph 6.36 states that where representations of the types indicated above were received, the Cumulative Impact Policies would be strictly applied.

The effect of a Cumulative Impact Policy is, as the Guidance states at paragraph 13.29, to create a rebuttable presumption that applications to which it applies will normally be refused, following relevant representations, unless the applicant can demonstrate in the operating schedule that there will be no cumulative impact on one or more of the licensing objectives.

- (l) The Panel was also mindful of paragraph 13.35 of the Guidance which stated that a policy should never be absolute and should allow for the circumstances of each application to be considered properly. However, as the Licensing Policy makes clear at paragraph 6.36, whilst the Authority may depart from the Cumulative Impact Policy if it has good reason to do so, the Policies will only be overridden in genuinely exceptional cases where the applicant can demonstrate that the granting of the application will not undermine the Policy and the reasons for it.

Paragraph 6.36 further states that an application is not likely to be classed as exceptional merely on the grounds that the premises have or will be operated within the terms of its licence or that they are or will be well managed; this is to be expected of any application.

- (m) The Panel considered whether the applicant had demonstrated exceptional circumstances to justify departure from the Licensing Policy. It did not consider that the applicant had demonstrated either in the operating schedule or in the presentation to the Panel that there would be no cumulative impact on public nuisance if the licence was varied in the manner requested. The fact that local residents had not reported problems of noise emanating from the application premises either to the management or to the authorities previously did not make the circumstances exceptional.
- (n) The Panel regarded the proposed sale of the premises as an important factor. It was evident that that sale would be accompanied by a change in the management of the premises. Mr Acinik had addressed the Panel in relation to the style and intended direction of the premises as a food-driven bistro restaurant in which the atmosphere was conducive to conversation rather than loud music.

Mr Kent had indicated that the acquisition of later hours and an additional activity on the licence (if the Panel granted them) did not necessarily mean that these would inevitably be utilised. However, the Panel considered that the weight which they were able to give to such submissions was limited. The plans for the premises on the part of the future owner and management were unknown, and in any event a licence holder was entitled to operate the licence to the full extent of its terms.

- (o) The Panel next considered whether the application promoted the public nuisance licensing objective. Whilst noting that no evidence had been presented as to any recorded complaints of noise nuisance emanating from the premises in the past, the Panel was mindful of the concerns expressed by each of those who had submitted a representation.

In paragraph 1.8 of the Statement of Licensing Policy it was stated that the Policy supported the City Council Plan 2012-2015 which would...support residents' expectations that their sleep will not be unduly disturbed between the hours of 23.00hrs and 07.00hrs. The Panel was conscious of the increasing residential element in the mix of occupiers of properties around the premises.

- (p) The Panel was advised that the case of Daniel Thwaites plc v Wirral Borough Magistrates Court EWHC 838 (Admin) highlighted that decisions in licensing cases should not be based upon pure fear or speculation but upon evidence. In that regard, it noted Mr Marette's statement that he was able to hear noise from the beer garden of the premises at his home, a distance of 34 metres. The occupants of the apartments on the gable wall of his development will, according to his evidence, be 12 metres from the beer garden. The Panel accepted the argument that these future residents would be even more likely than Mr Marette was at his home to be affected by noise from the premises.
- (q) In light of this, the Panel considered that the variation, in the absence of effective measures on the part of the applicant to reduce the anticipated impact of the noise, would be liable to lead to problems for nearby residents. In those circumstances the Panel were unable to say that the application upheld the public nuisance licensing objective.

The application is therefore refused.

Signed: Councillor Dave Smith (Chair)

Dated: 04 November 2014