

SOMERSET WEST & TAUNTON COUNCIL

Decision of the Licensing Sub-Committee 29 September 2022

Application by Julian Abraham on behalf of the Lager Company Limited of Whirligig House, Church Square, Taunton for a new premises licence for 48 East Street, Taunton (“the Premises”)

The application seeks to permit the sale of alcohol, regulated entertainment and late night refreshment at the Premises as follows-

The supply of alcohol and provision of recorded music shall be permitted from
Sunday to Wednesday: 08:00am to 11.30pm
Thursday: 08:00am to 12:30am
Friday to Saturday: 08:00am to 01:30am

The provision of live music shall be permitted from
Sunday to Thursday: 08:00am to 11.30pm
Friday to Saturday: 08:00am to 12:00am

The provision of late night refreshment to be permitted up until
Sunday to Wednesday: 11.30pm
Thursday: 12:30am
Friday to Saturday: to 01:30am

The opening hours of the Premises to be as follows:
Sunday to Wednesday: 08:00am to 12:00am
Thursday: 08:00am to 01:00am
Friday to Saturday: 08:00am to 02:00am

Prior to the hearing, the Applicant and licensing representatives from Avon & Somerset Constabulary agreed a set of conditions additional to those initially offered by the Applicant. These conditions are presented by the Applicant as an amendment to his operating schedule and accepted by the Licensing Sub-Committee.

Representations to the application were received from several businesses living and operating in the vicinity of the Premises. No other responsible authority has made a representation. The objectors, who either work in premises in the vicinity, own properties from which nearby businesses are run or operate residential premises nearby all made similar representations highlighting the following concerns:

- the playing of live or loud music during office or normal daytime hours should not be permitted;
- the request to sell alcohol from 08:00am is excessive and not required;
- the request to open and provide alcohol into the late night will result in anti-social behaviour in terms of litter and fouling the local area. Previous premises being open late at night led to this kind of repeated incidents. There is no need for the premises to be open so late.

Further to the representations being received, the licensing authority facilitated a mediation session between the Other persons and the Applicant. That session has

resulted in the amended application presented to the Sub-Committee today whereby the Applicant seeks to end the sale of alcohol, provision of live and recorded music and late night refreshment one hour earlier on Fridays and Saturdays than originally applied for. The Applicant further agreed to an additional condition that alcohol sales before 11:00am would only be permitted where purchased with food. This condition is taken to be inserted into section 18 d) of the Applicant's operating schedule as set out in the Application.

The Other Persons have not confirmed to the Licensing Authority whether these concessions would enable them to withdraw their objection or whether they are looking for further restrictions. The Sub-Committee has assumed, therefore, that the objections made in writing still stand except where stated below.

At today's hearing the Sub-Committee has heard from the following people:

the Licensing Officer, Brad Fear
the Applicant, Julian Abraham
John Went on behalf of Rosalind Went, one of the Other Persons

The Sub-Committee has also taken into account written evidence from those who had sent in representations within the required time limit but did not attend the hearing. It has not considered any representations that were not received during the consultation period.

The Sub-Committee addressed:

1. The provisions of the Licensing Act 2003 which confer the powers of the Licensing Authority to deal with the application.
2. The obligation to promote the four licensing objectives.
3. The existence of other statutory provisions such as the Environmental Protection Act 1990; the Anti-Social Behaviour Act 2003 and highways legislation.
4. The relevant sections of the Council's Statement of Licensing Policy and Statutory Guidance

The Licensing Sub-Committee considered that it must carry out its functions with a view to promoting the four licensing objectives, set out in Section 4(2) of the 2003 Act. The Licensing Sub-Committee cannot take into account representations which do not relate to one or more of those licensing objectives and acknowledges that any representations which are received must be relevant and evidenced-based. The Sub-Committee is aware that it cannot impose on a new premises licence holder conditions that relate to the mis-management, negligence or possible breaches of condition which may have been carried out by a previous licence holder. Applicants are not responsible for the actions of licence holders who are no longer operating at the Premises.

The Sub-Committee notes that under the Live Music Act recorded and live music can be played at any time at certain Premises up until 11:00pm without restriction or condition except in relation to the playing of live music to more than 200 persons. The Applicant is, by virtue of this legislation, entitled to play such music at the Premises and the Sub-Committee has no power to prevent or restrict that. In the event that playing of music up until 11:00pm at the Premises does cause nuisance at some future date, Environmental Protection have powers to respond to this or a review of the licence can be requested.

The other issues raised by the Other Persons relate to nuisance both in terms of noise late at night and litter and fouling. The Sub-Committee notes that no representation has been made by Environmental Protection who are responsible for such matters.

Mr Went, on behalf of Rosalind Went, made further submissions about previous incidents of fouling in the alleyway adjacent to the Premises although he could not confirm whether such incidents were carried out by people using the Premises when it was operated under its previous arrangements. It had been assumed that it was and he did not want similar activities to start up again once the Premises had opened under a new licence. Mr Went believed that this issue was the only outstanding matter of contention for Rosalind Went.

The Applicant stated in his submission that he had offered the amendments to his application and operating schedule as he was keen to show a good relationship with his neighbours. He advised the Sub-Committee that he had met with people from the residential premises to discuss matters prior to making his application. His intention was to run a good quality establishment which was clean and well-managed. He would be happy, subject to obtaining planning permission, to install CCTV in the alleyway although he is aware that this is a public right of way, usable by anyone at any time of day or night and he cannot be responsible for everyone's use, or mis-use, of the area. He stated that, as part of the close-down procedures, staff would carry out an inspection of the external areas and if anything were found which had come from the Premises, it would be cleaned up. This was just good business practice.

On the evidence before it the Sub-Committee has no reason to believe that the grant of this Application will undermine the licensing objectives. The Applicant is willing to accept comprehensive conditions and has shown that he is keen to co-operate with other premises/persons in the vicinity. The issues raised by the Other Persons in terms of late night noise and other nuisance appear to be based either on speculation or anecdotes from when the Premises was operated under a previous licence by a previous licence holder. Decisions to restrict operating hours, or to impose conditions, can only be made where there is evidence to lead the Sub-Committee to the conclusion that such decisions are appropriate in the circumstances. In this case, there is no such evidence.

Whilst the Sub-Committee acknowledges that there may be matters of concern from late night disturbances in certain areas in and around East Street, this Applicant should not be held responsible for those activities unless there is evidence to demonstrate that they arise from licensable activities being carried out at Premises under the control of the Applicant as licence holder.

Thus, the Sub-Committee is satisfied that the application for a licence in the terms of the amended application should be granted and with the incorporation of the licence conditions agreed with Avon & Somerset Constabulary.

The Designated Premises Supervisor is Julian Abraham

Mandatory Conditions

The licence continues to be subject to the mandatory conditions of the Licensing Act 2003 (insofar as is relevant).

You are reminded that there are rights of appeal against this the Licensing Authority's decision pursuant to Section 181 of and Schedule 5 to the Licensing Act 2003. An appeal must be made to the Magistrates' Court and commenced within 21 days of notification of

the Authority's decision.

All parties are reminded of the procedures contained within the Licensing Act 2003 relating to review of the premises licence. This provision permits nearby residents, businesses or responsible authorities to apply for a review of a premises licence where problems with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. The Panel respectfully reminds all parties that for any review to go ahead, evidence would need to be collected of incidents occurring that undermine the licensing objectives.