

Somerset West and Taunton Council

Licensing Sub-Committee – 13 July 2020

Application for the grant of a Premises Licence under the Licensing Act 2003

This matter is the responsibility of Cllr Sarah Wakefield

Report Author: Brad Fear, Case Manager (Licensing)

1 Executive Summary / Purpose of the Report

- 1.1 Members are asked to consider an application for the grant of a Premises Licence under the Licensing Act 2003 for Coffee Couture, Wimbleball Lake, Brompton Regis, Dulverton TA22 9NU.

2 Recommendations

- 2.1 As relevant representations have been received by the licensing authority, the sub-committee must take such steps as it considers appropriate for the promotion of the four licensing objectives, being:

- The prevention of crime and disorder;
- The prevention of public nuisance;
- Public safety;
- The protection of children from harm.

- 2.2 The steps the sub-committee may take are to:

- grant the licence subject to the conditions identified in the applicant's operating schedule (modified to such extent as the authority considers appropriate for the promotion of the licensing objectives) and any appropriate mandatory conditions.
- exclude from the scope of the licence any of the licensable activities to which the application relates.
- to refuse to specify a person in the licence as the designated premises supervisor;
- reject the application.

3 Risk Assessment (if appropriate)

- 3.1 The matters to which this report relates does not impact on any of the issues identified within the Corporate and Function Risk Registers.

4 Background and Full details of the Report

- 4.1 The premises is a café at the Wimbleball Lake, next to the campsite and Lake activities centre. The premises is in a rural location, less than two miles from Brompton Regis. There are a couple of residential properties and farms within a one mile radius of the premises.
- 4.2 An application was received from Coffee Couture Plymouth Ltd (applicant name – Mark Streeter), for a premises licence for Coffee Couture, Wimbleball Lake, Brompton Regis, Dulverton TA22 9NU. The application was initially submitted to allow for the supply of alcohol – both for consumption on the premises and also for consumption off of the premises – between the hours of 11:00 and 23:30 Monday to Sunday.
- 4.3 Notices advertising the proposed variations to the licence (and including the end date for representations/objections) were placed up at the premises site and a copy of this was advertised in the West Somerset Free Press within ten working days, in accordance with The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005. A copy of this notice was also posted on the West Somerset West and Taunton Council website, with a function available for members of the public to make objections online through the website.
- 4.4 The proposed licensable activities and timings, as per the original application, are represented in table form in **Appendix A**.
- 4.5 Within the application, the applicant identified steps that they intend to take to promote the licensing objectives, and this is often referred to as being part of the 'operating schedule'. The licensing authority routinely modifies the content of this part of the application in order to form conditions of the licence, should it be granted; conditions which, if breached, result in an offence being committed. In this case, the applicant was given some guidance by both the licensing authority and police in relation to sensible and proportionate steps that they might need to include within the application. The conditions proposed as part of the operating schedule from the initial stages of the application are shown in Appendix B.

Representations

- 4.6 Representations against the application have been received from interested parties within the 28-day consultation period. These are shown in **Appendix C**. The primary areas of concern surround existing and ongoing problems at the campsite involving social disturbance and anti-social behaviour – including 'intimidation of local residents', unsafe parking/use of the roads, excessive littering, vandalism and trespassing - caused by young visitors. There is a concern that existing problems at the campsite will be exacerbated by the more accessible supply of alcohol from the Coffee Couture premises.
- 4.7 The representations also include mentions of potential safety hazards for intoxicated campsite visitors. The café is close to the lake and it has been noted that young visitors already congregate at the Bessom Bridge side of the reservoir and have been

observed jumping in to the water from the bridge. The lake is also used for watersports activities and there are concerns that it would be unsafe for people to engage in such activities around and in the lake if intoxicated.

- 4.8 Representations note concerns that the sale of alcohol will, in attracting revellers and anti-social behaviour, undermine both the site's standing as being 'family friendly' and also its tranquil reputation.

Representations from Responsible Authorities

- 4.9 No formal objections/representations were raised by responsible authorities during the 28 day consultation period.

Mediation

- 4.10 The licensing authority facilitated a mediation between the applicant and interested parties via a virtual Zoom meeting on Tuesday 30th June. The chair of the meeting/mediator was Brad Fear, Licensing Case Manager on behalf of Somerset West and Taunton Council. A number of the interested parties that had made representations attended - six of the sixteen invited, along with a representative on behalf of the applicant (Ausra Bulovaite) and representatives from Avon & Somerset Police. Key concerns reiterated by interested parties included: the recent rise of alcohol-induced anti-social behaviour at Wimbleball Lake and how off-sales of alcohol on the site may exacerbate this (particularly in a secluded area where this may be harder to enforce); issues of public nuisance potentially caused by late night sales of alcohol (including light and noise pollution); health and safety in relation to intoxicated individuals around deep bodies of water late at night. In discussions that followed, the applicants were prepared to agree amendments to proposed timings and activities – including the removal of off-sales from the application (thereby leaving only on-sales) and the reduction of the licensable times to 11am – 4pm daily. Furthermore, they were prepared to introduce an extra condition that restricted the sale of alcohol to purchases of food made for consumption on the premises. For a list of the proposed amendments, see **Appendix E**. Interested parties present at the mediation welcomed the proposals and did not voice any opposition to these.
- 4.11 Following mediation, an e-mail was sent out on 1st July to Ausra Bulovaite and the applicant – Mark Streeter – to confirm that they agreed to amendments proposed at mediation (in particular, to agree the wording of the additional condition – see **Appendix E**) and this was confirmed by return e-mail on 2nd July. E-mails were then sent out to all interested parties that had submitted representations (this was sent on 2nd July), including those not present at the mediation meeting, outlining the proposed amendments. This was to determine how many interested parties would – should the proposed amendments be made – be satisfied that their concerns had been addressed and, where appropriate, withdraw their representation.
- 4.12 Interested parties who have – at the time of writing this report - withdrawn their representations, based on amendments agreed at the mediation meeting, can be found under **Appendix F**.

Responses to notice of hearing

- 4.13 Notices of hearing were sent out to interested parties by post and also by e-mail on Monday 22nd June 2020. The responses we have received to this notice of hearing are shown as **Appendix D**.

Relevant Licensing Policy considerations

- 4.14 Section 1.2 of the Authority's Licensing Policy states: "The Act requires the Licensing

Authority to carry out its various licensing functions so as to promote the four licensing objectives". "These four objectives will be the paramount considerations when determining a course of action in relation to the Licensing Authority's licensing functions. Each objective will be given equal importance". The four objectives are: the prevention of crime and disorder, public safety, prevention of children from harm and prevention of public nuisance.

Conditions

- 4.15 Section 1.5.2 of the Policy states "The Licensing Authority may only impose conditions on a premises licence if they are consistent with the operating schedule or after receiving relevant representations. Any conditions attached to the licence must relate to the promotion of the Licensing Objectives".
- 4.16 The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned.
- 4.17 The guidance issued under Section 182 of the Licensing Act 2003 states: "(9.38) *All licensing determinations should be considered on a case by case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be. (9.39) The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. (9.40) Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters.*"

5 Links to Corporate Aims / Priorities

- 5.1 The granting of this application would support an existing business within the district, creating an additional source of income. However, considerations must also be made, where necessary, to the Corporate Strategy's commitment (under 'Homes and Communities, point 3) to 'Reduce anti-social behaviour, through working with residents and our partners' and weigh any probable outcomes from granting of this application accordingly.

6 Finance / Resource Implications

- 6.1 None.

7 Legal Implications

- 7.1 The Licensing Sub Committee, when determining this application, must comply with the Licensing Act 2003. It should also have due regard to the Home Office Guidance and the Council's Licensing Policy.
- 7.2 In determining an application for a Premises Licence, any Responsible Authority or other party can make representations in relation to the application.

- 7.3 The Licensing Act 2003 created four licensing objectives and in determining this application, only factors that relate to the licensing objectives can be taken into account. Any representation must relate to the licensing objectives and any conditions added by the Licensing Sub Committee must relate to the promotion of the licensing objectives.

Human Rights Act 1998

- 7.4 The sub-committee must also have regard to the provisions of the Human Rights Act 1998 when determining this application. The 1998 Act made the European Convention of Human Rights directly enforceable in British courts. The relevant provisions are Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 11 (freedom of association) and Article 1 of the First Protocol (right to peaceful enjoyment of one's possessions). These provisions require the sub-committee to identify correctly the competing interests, give each appropriate weight in the circumstances of the case, and balance them against each other in order to arrive at a fair and reasonable decision.

Appeals

- 7.5 If the sub-committee modifies conditions or rejects the application, the applicant may appeal within 21 days of notification of the decision to the Magistrates' Court. Those making relevant representations may appeal if they believe that the licence should not have been granted, or that, when granting the licence, the Licensing Authority ought to have imposed different or additional conditions or excluded a licensable activity. The Magistrates' Court may dismiss the appeal, or substitute its own decision, or send back the case to the Licensing Authority with directions as to how the case is to be dealt with. The Magistrates' Court may make any costs order it thinks fit.

8 Environmental Impact Implications (if any)

- 8.1 If the concerns raised by the interested parties are realised, there is a potential for a detrimental impact on the environment. This could also have implications for Exmoor National Park, as well as residents. The National Park, however, would not be a primary consideration when determining this application.

9 Safeguarding and/or Community Safety Implications (if any)

- 9.1 If the concerns raised by the interested parties are realised, there is a potential for a detrimental impact on community safety.

10 Equality and Diversity Implications (if any)

- 10.1 None identified.

11 Social Value Implications (if any)

- 12 No social value implications were identified.

13 Partnership Implications (if any)

- 14 No partnership implications were identified.

15 Health and Wellbeing Implications (if any)

15.1 Through effective regulation, confidence in licensed premises and activities can be maintained, helping communities to thrive.

16 Asset Management Implications (if any)

16.1 No asset management implications have been identified.

17 Consultation Implications (if any)

17.1 None identified.

18 Scrutiny Comments / Recommendation(s) (if any)

18.1 Not applicable.

Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Cabinet/Executive – No**
- **Full Council – No**

Reporting Frequency : ☒ **Once only** ☐ **Ad-hoc** ☐ **Quarterly**

☐ **Twice-yearly** ☐ **Annually**

List of Appendices

Appendix A	Proposed licence activities and timings (as per application)
Appendix B	Conditions proposed under the operating schedule and by responsible authorities
Appendix C	Representations from interested parties
Appendix D	Responses to Notice of Hearing
Appendix E	Proposed Amendments to Application, following Mediation Meeting
Appendix F	Representation withdrawals following mediation and proposed changes

Contact Officers

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