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GATESHEAD METROPOLITAN BOROUGH COUNCIL

LICENSING SUB COMMITTEE MEETING

Tuesday, 30 November 2021

PRESENT: Councillor W Dick
Councillor(s): H Kelly and M Ord

LSC7 APPLICATION FOR A PREMISES LICENCE

RESOLVED - that the decision of the Sub-Committee as per the attached summary of decision be approved.

Chair.....

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**GATESHEAD COUNCIL
LICENSING AUTHORITY****SUMMARY OF DECISION OF LICENSING SUB-COMMITTEE**

Address : 490 Durham Road Low Fell Gateshead NE9 4HU
Applicant : Ms Hayley Kell
Date of Hearing : 30 November 2021
Type of Hearing : Application for the grant of a new Premises Licence

The Sub Committee has decided as follows:

To grant the licence.

Reasons

The application was brought Ms Kell. Relevant representations were made (and not withdrawn) by two people who wished to remain anonymous.

The Sub Committee had regard to the Licensing Officer's report, and the verbal representations made at the hearing.

It was noted that some of the people who had made relevant representations had subsequently withdrawn following mediation.

In considering the application, the Sub-Committee heard from Ms Kell and her business partner (who wished to remain anonymous) as follows –

- Ms Kell already owns two cafes in the Borough, trading as “JJ’s Kitchen” so has some knowledge and experience relevant to the application
- Ms Kell lives in Low Fell, so is familiar with the vicinity of these premises and in particular with some of the problems that can be caused to residents from excessive alcohol consumption
- Ms Kell is financing these premises with her anonymous business partner, who also is familiar with the area
- Ms Kell intends these premises to provide a different ‘offer’ to what Low Fell currently has
- Ms Kell would be aiming the business at an over 30’s customer base

- Ms Kell intends to use the grounds floor area as a restaurant, and the basement as a community room. Ms Kell provided photographs and layout plans following agreement from the anonymous interested parties
- Ms Kell understands the concerns of the anonymous interested parties in not wishing to be overlooked by customers using the restaurant space; and proposes to partially obscure the glass in the bay window at the rear of the premises with film so that customers would not see out but it would still let natural light into the restaurant
- Ms Kell intends to place a table with seats close to the bay window, which would mean the area is not used for vertical drinking
- Ms Kell does not intend to have music playing in the yard to the rear of the premises; and intends for it to be closed by 9pm each evening. Ms Kell anticipates using the yard as a bin / barrel store and access point for deliveries as well as a small area for customers. Ms Kell's anonymous business partner intends to have plants in the yard. It will also be covered by CCTV
- It is not Ms Kell's intention to have televisions at the premises
- Ms Kell's lease does not permit the sale of alcohol without it accompanying food; and
- Ms Kell intends to continue engaging with local residents to understand and address any concerns they may have.

When questioned, Ms Kell said –

- That customers would be able to use the rear yard to smoke until 9pm and would then need to go onto the front street; and
- That consideration had been given to applying for a permit to enable use of the pavement area on the front street for customer seating and dining; however it is not anticipated that this would be feasible given the limited capacity it could offer and the proximity to other street furniture.

The Sub-Committee then heard from the anonymous interested parties as follows –

- That whilst they welcomed the premises being brought back into use, and indeed had no objection to its use as a restaurant, they were concerned that the granting of a premises licence could enable other operating models in the future that could potentially be more intrusive and disturbing to residents
- That their concerns regarding privacy have been assuaged by discussions with the applicant and the commitment to place opaque film on the bay window; however they remain concerned as to be potential for customer use of the yard to the rear of the premises
- That the yard is surrounded by residential premises; and that whilst the premises face out onto an area of night-time activity, the yard does not; and

- That they believed it would be appropriate for conditions to be imposed on the licence preventing customer use of the yard other than for access / egress; and preventing patrons from leaving the building itself with any drinking vessels (i.e. limiting use of the yard)

Ms Kell stated that whilst she understood the anonymous interested parties' concerns, it remained her intention that the yard be open for the use of customers; and gave an example of wanting to accommodate a wheelchair user who wished to be seated outside to drink a glass of wine, where this would not be possible if the conditions sought by the anonymous interested parties were to be imposed.

The Sub-Committee received legal advice in open session so that all parties were aware of the advice given.

The Sub-Committee were advised that in choosing which course of action to take, they should have regard to the Act, the Home Office Guidance, the Licensing Authority's own Statement of Licensing Policy and the individual facts.

The Sub-Committee were reminded of their duty under the Act is to carry out the Licensing Authority's functions with a view to promoting the Licensing Objectives; and that the Home Office Guidance states that they should do so with regard to the overall interests of the local community.

The Sub-Committee noted that paragraph 6.2 of Gateshead Council's Statement of Licensing Policy states that –

“The Licensing Authority considers:

- the effective and responsible management of premises
- instruction, training and supervision of staff, and
- the adoption of best practice

to be amongst the most important control measures for the achievement of all the licensing objectives”.

The Sub-Committee were reminded of the Judgment in the case of R (on the application of Hope & Glory Public House Ltd) v (1) City of Westminster Magistrates' Court & Ors [2011] EWCA Civ 31 in which Lord Toulson stated, “Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on... They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location.”

The Sub-Committee were reminded of the Judgment in the case of R (on application of Daniel Thwaites plc) v Wirral Magistrates' Court and Others (2008) EWHC 838 (Admin), in which the Honourable Mrs Justice Black said:

“[D]rawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act's approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my

judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence presented will require them to adjust their own impression. This is particularly likely to be so where it is given by a Responsible Authority such as the police.”

The Sub-Committee were reminded of the Judgment of Mr Justice Jay in the case of East Lindsey District Council v Hanif (t/a Zara’s) (2016) EWHC 1265 (Admin) with regard to the approach to be taken to determining the appropriate and proportionate action in light of the salient Licensing Objectives; and in particular their approach should involve –

- consideration of the antecedent facts; and
- a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.

The Sub-Committee were reminded that any conditions or restrictions they sought to place on the licence must be appropriate for the promotion of the Licensing Objectives; and that they should consider –

- the harm they were seeking to prevent
- what weight to attach to the concerns they had, and
- what would be a proportionate measure to prevent that harm.

The Sub-Committee noted that there were no relevant representations in respect of the sale of alcohol; and that consequently the performance of live and recorded music would not be a regulated activity for the majority of the times when the premises would be in operation.

The Sub-Committee were encouraged by the understanding that the Applicant had of the local area, and her connection to it.

The Sub-Committee noted that the yard space was relatively small, and with use as a bin / barrel store and access route there would be very little room for customers to congregate. The Sub-Committee also noted that the Applicant had confirmed that there would be no music played in that area. The Sub-Committee found that these factors militated against their concerns about noise disturbance to nearby properties.

The Sub-Committee considered imposing conditions on the use of the yard area but was not persuaded that this was appropriate in all the circumstances as above.

The Sub-Committee also noted that the Applicant had engaged with residents and expressed a willingness to listen to their concerns and work with them going forward. The Sub-Committee noted that were this not to happen in an effective manner, interested parties would be able to bring a review of the premises licence where any such issues could be addressed.

Rights of appeal

The anonymous parties have a right to appeal the Sub-Committee's decision pursuant to section 181 and Schedule 5 of the Licensing Act 2003, such appeal to be made to the Gateshead Magistrates' Court and within 21 days of the date of service of this notice of decision.

In reaching these decisions the Sub Committee has been persuaded by the individual circumstances of this Application and does not intend to create a general exception to its Policy or to create a precedent.

Dated : 13 December 2021

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