

DECISION NOTICE

Somerset West and Taunton Council

Licensing Sub-Committee

Date of Hearing – 17 August 2022 at 10:30

Virtual Meeting via Live Stream

Members of the Licensing Sub-Committee

Cllr. Janet Lloyd (Chair)
Cllr. Simon Coles
Cllr. Brenda Weston

Also in attendance:

Lesley Dolan	Principal Lawyer Mendip District Council	Legal Advisor to the Sub-Committee
Tracy Meadows	Governance and Democracy Specialist	Somerset West and Taunton Council
Brad Fear	Licensing Officer	Somerset West and Taunton Council
George Pendarves	Applicant	TII Aquaculture Limited
Cindy Siu	Other Person	Local Resident

The Licensing Officer advised that the Applicant sought a premises licence for the premises known as “Porlock Bay Oysters”, the Oyster Shed, Ship Stables, Porlock Weir, Minehead TA24 8PB.

The Applicant is looking to be licenced to sell alcohol for consumption on and off the premises between the hours of 11:00 – 23:00 Monday to Sunday. This is to enable the sale of alcohol with oyster gift boxes, but also to allow purchased alcohol to be consumed with food both inside the premises and outside in the outdoor seating area.

The Applicant and the Avon and Somerset Constabulary have had dialogue during the consultation period and have been able to agree a position on conditions. These are set out in Appendix B of the Licensing Officer’s Report.

One representation against the Application has been received from a local resident, Ms Cindy Siu who is the owner and proprietor of the hotel *Locandra on the Weir* situated adjacent to the Applicant’s outside courtyard. Her main areas of concern are potential noise nuisance and light pollution that will emanate from the Applicant’s use of the outside areas in what is a designated dark sky area.

The Licensing Officer advised that a mediation meeting between the parties had taken place at the Applicant's premises on the 28 July where discussion about a possible terminal hour for the use of the outside area at the Applicant's premises had been discussed but no consensus had been reached between the parties.

The Licensing Officer confirmed that there had been no objection to the application from any Responsible Authority.

The Licensing Officer concluded his report by advising the Sub-Committee that the following options were available to it -

- Grant the premises licence subject to conditions identified in the Applicant's operating schedule/agreed position (modified to such extent as the Sub-Committee think appropriate for the promotion of the licensing objectives) and any appropriate mandatory conditions.
- Grant the premises licence subject to variations to the licensable activities and or timings proposed in the application, or to propose additional conditions relevant to the four licensable objectives.
- Reject the application.

The Sub-Committee heard from one Other Party – Ms Cindy Siu who advised the Sub-Committee that the Applicant's use of the outside area would impact directly on her hotel business which she had opened some 5 years ago and where she had spent considerable time and effort building it up. Noise nuisance would affect her clientele, many of whom were elderly and retired early. Light pollution in the dark sky area would impact negatively on 3 out of 4 bedrooms and her own living accommodation within the premises.

Additionally there are no toilet facilities within the Applicant's premises with the nearest public conveniences being located in the main car park at the end of the lane. Her concern here is that her garden which is ungated and her car park behind her premises could be used as a toilet.

She confirmed that she did not want an alcohol licence for the Applicant's outside court yard but that she would be prepared to compromise so that the Applicant could use the inside of the premises for the hours stated but the use of the outside court yard to be limited to 18:30.

The Applicant advised the Sub-Committee that his business is well known within the locality and there are a lot of visitors to Porlock Weir, and his company has invested considerably in the business having acquired it out of administration in 2019. The business, in order to remain viable over the longer term is reliant on becoming a strong, high margin retail focussed outlet. There is no intention to remain open until 23:00 every day, the request for this time is simply to provide flexibility for the business and customers as there is considerable interest in the oyster tasting events,

There was no intention on the part of the Applicant to become a drinking establishment and its' clientele is not such that it is going to spill out and use the Other Party's garden for toilet facilities.

It has been suggested that an alcohol licence be limited to 1 day per week. This will not give the business the flexibility it needs to remain viable.

The business currently operates with 3 FTEs who work all year round. Not all work on the hosted events, some work on the beach with the oyster beds. A local chef is assisting with the menu.

The business will close down in the winter months, but they are planning events at Christmas. It is unlikely that customers will want to sit outside in the winter months.

The Applicant confirmed that there are no toilet facilities within the premises and guests and employees use the public conveniences located in the public car park a short walk from the premises.

In summing up the Licensing Officer summarised matters contained within his report confirming that the decision of the Licensing Committee had to be based on the four licensing objectives and that there were enforcement powers available.

In her summing up, Ms Siu confirmed her objection to a licence being granted for the outside courtyard at all. That entrance points to her car park and garden. The Applicant has potential for 24 customers outside. The public convenience is some distance away. Light pollution and noise nuisance will be extreme and impact severely on her hotel business.

The Applicant confirmed the application was to enable to serving of alcohol at hosted oyster tasting events. Clientele was not the sort that would be using the garden and car park of the hotel opposite as a toilet. However he was prepared to limit the use of the outside court yard until 21:30 every day.

The Decision

The Licensing Sub-Committee must carry out its' functions with a view to promoting the four licensing objectives -

- The prevention of Crime and Disorder;
- Public Safety;
- The prevention of public nuisance; and
- The protection of children from harm.

The Licensing Sub-committee must focus its' decision making on the likely effect of the grant of the application on the promotion of those four objectives.

In its' promotion of those objectives the Licensing Sub-Committee has had to balance the interests and concerns of the Other Party against the business interests of the Applicant.

In coming to its' decision, the Licensing Sub-Committee has considered the following:

1. The Licensing Act 2003 as amended by the Police Reform and Social Responsibility Act 2011.
2. The Statutory Guidance issued under section 182 of the Licensing Act 2003 (re-issued in April 2018).
3. The powers of the Licensing Authority to deal with this application contained within section 35 of the Licensing Act 2003.
4. The obligation to promote the four licensing objectives as set out in Section 4(2) of the 2003 Act.
5. The Council's Statement of Licensing Policy referred to in the Licensing Officer's report.
6. The Applicant's written summary of key points submitted to the Licensing Authority and the Other Party prior to the hearing today.

The Sub-Committee has carefully considered everything that it has had heard today and its' decision is set out below.

Having considered the matter in detail the Sub-Committee has agreed to grant the Premises Licence to the Applicant for the premises known as "Porlock Bay Oysters", the Oyster Shed, Ship Stables, Porlock Weir, Minehead TA24 8PB, subject to:

1. The conditions agreed with the Police as set out at Appendix B of the Licensing Officer's Report.
2. The following conditions to be added as a result of the hearing.
 - a. The use of the outside court yard to terminate at 21:30 Monday to Sunday. The terminal hour for inside the premises will be 23:00. Monday to Sunday.
 - b. The Applicant to erect signage at the premises
 - i. requesting patrons to leave the premises in an orderly fashion on the basis that they are in a residential area;
 - ii. Advising that the closest toilet facilities are located in the public car park and are open on a 24-hour basis.

3. The licence will also be subject to the mandatory conditions required by the Licensing Act 2003.

ADVISORY

Whilst the Exmoor National Park have not objected to this Application, the Licensing Sub-Committee being cognisant of the important dark sky designation of the area, urge the Applicant to explore the possibility of reducing the level of lumens emitted from the outside area of the premises, when British Summer Time ends, and we return to Greenwich Mean Time on the 30 October 2022 at 02:00 hours and in subsequent years when the clocks go back.

All parties are reminded that: -

1. Any party may apply to the Licensing Authority for a Review of a Premises Licence.
2. Other Parties are reminded that concerns/complaints should be notified to Applicant but may also be raised directly with the Licensing Authority.
2. There are rights of appeal against this decision of the Licensing Authority 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. Appeals should be sent to Taunton Magistrates' Court, St. John's Road, Taunton TA1 4AX.