

Licensing Act 2003

Notification of determination



Hearing under Sections 17 and 18 of the Act, and the Licensing Act 2003 (Hearings) Regulations 2005 In respect of an application made to the Oxford City Council for a Premises Licence

Date of hearing: **9th January 2017**

Place: **Town Hall, Oxford**

Case No: **16/05550/PREM**

Applicant: **Oxspheric Ltd**

Premises: **The Bullingdon**

Premises address: **162 Cowley Road, Oxford, OX4 1UE**

Licensing Sub-committee Councillors: **Colin Cook (Chair), Nigel Chapman, Liz Wade**

Legal Advisor: **Daniel Smith**

Licensing Officer: **Emma Thompson**

Clerk: **Richard Masters**

Daniel Smith notified the Sub-committee that additional material had been presented by an interested party in the form of a petition. Mr Smith asked if anyone objected to the inclusion of this petition as part of the hearing report and the applicant's solicitor, Mr Jon Payne, objected to this as a matter of principle. This additional material therefore was not considered.

The Sub-committee heard representations from the following:-

Licensing Authority: Emma Thompson (Licensing Compliance Officer)

Mrs Thompson presented the Licensing Authority's report, stating that the application had attracted representations from Thames Valley Police (TVP), the Licensing Authority and 8 Interested Parties as well as 30 representations in support of the application.

Applicant: Mr Paul Williams, Jon Payne (solicitor)

Mr Payne stated that his client wished to amend the application to reduce the hour sought for the end of licensable activities to: 02.00 Monday – Thursday; 03.00 Friday – Saturday and 00.00 Sunday.

To help alleviate the concerns raised by an interested party, My Payne also amended the plan submitted as part of the application so that the outside area at the rear of the premises would not be used for any licensable activity.

The application remained otherwise unchanged. The Sub-Committee noted the amendments.

Mr Payne indicated that the application had been made following pre-consultation with the local community by way of a letter to 500 residents and meetings held with the Licensing Manager at the time and representatives from TVP where a number of conditions were offered which were deemed to uphold the licensing objectives. As this application was for a new Premises licence and the premises already holds a licence, it was stated that the original licence maybe surrendered if the new licence was granted or that, if granted, both licences could be held simultaneously.

Mr Paul Williams confirmed that he had run the premises for the last two years and it had undergone a remodel and was now a community venue which was utilised by various groups including schools and Oxford Brookes University for a number of activities. The venue offered live music nights, comedy nights etc.

Mr Payne acknowledged that the premises fell in the East Oxford Special Saturation Policy (SSP) area hence the pre-consultation was conducted with the local residents. He informed the Sub-committee that the premises had used their permitted extensions on their current licence, as well as Temporary Event Notices, on 31 occasions last year which resulted in no complaints being received and this showed that the premises could trade responsibly to extended hours without impacting on the licensing objectives and affecting the local residents. This showed that the presumption to refuse the licence under the grounds of the SSP could be rebutted.

Mr Payne also stated that the premises was not mainly alcohol led like a number of venues in the vicinity and it was a different type of premises that offered live music and which would hold 'dry' events where alcohol would not be sold.

He said that the premises is run by a good management team and that the additional conditions offered as part of the application would be sufficient to uphold the licensing objectives.

When question what additional measures had been implemented to ensure that this was the case, Mr Payne and Mr Williams confirmed the premises benefitted from sound insulation so there would be no noise breakout and that staff patrolled outside the premises to ensure patrons leaving the venue were not creating a disturbance. They also detailed a recent event that included persons under the age of 18 where all customers were asked for identification when ordering an alcoholic drink.

There would also be a condition attached to any licence granted whereby admission to the premises would not be granted after one hour before the cessation of the last licensable activity, which would discourage already intoxicated drinkers moving on from other premises.

The premises had not received any complaints regarding noise. Emma Thompson confirmed the Licensing Authority had no record of complaints.

Mr Williams, when asked how an extension would affect the business, confirmed that he would be able to increase the quality of performers and be able to book International acts who normally only perform at venues that close later. He stated that bands perform until 10pm and then DJ from 11pm.

After discussion the Applicant offered to remove off sales of alcohol from the licence application and also amended proposed condition 19. to read '...up to midnight' rather than 'after' which was a clerical error.

Responsible Authorities: Licensing Authority (Richard Adams), Alex Bloomfield and Sgt Neil Bouse (Thames Valley Police)

Mr Adams stated that the operational policies suggested in the Licensing Authority's representation had not been provided and concerns about the proposed 12 additional occasion for extended hours remained. He also clarified that the Licensing Authority's representation had been made prior to TVP submitting their objection.

Mr Bloomfield welcomed the amendments to the application and suggested that the planned under age 'dry' events at the venue were a result of consultation with TVP following an incident during an event where an underage person was intoxicated.

Mr Bloomfield agreed that TVP had a good working relationship with the management of the premises and had had meetings prior to the application being submitted where an increase of hours was discussed, these being the amended hours for this application.

The TVP objection was made for reasons of preventing crime and disorder and public nuisance raised because of the high levels of these identified in the SSP evidence. East Oxford is a thriving night time economy that was not just limited to the weekends but throughout the week. Oxford has a student populous and there is a high demand for late night venues in the area.

East Oxford has a lot of antisocial behaviour associated with intoxicated persons on Cowley Road and residents are suffering from acts of crime and disorder.

Mr Bloomfield noted that there has to be a balance between the business needs of the premises and the right of the residents to a tranquil night.

TVP did not agree with the Applicant's claim that the venue is 'music' rather than 'alcohol led'.

Mr Bloomfield stated that the City Centre SSP had helped to improve matters in George Street, Oxford toward a more pleasant area for the general public and a similar case was hoped for on the Cowley Road.

Sgt Bouse said that he policed East Oxford and that it was difficult to attribute incidents of crime and disorder or antisocial behaviour to specific venues. Their operation Nightsafe targeted the night time economy and is a tricky operation as each weekend is different to the next. Their resources are stretched as the focus is in the City Centre but with similar 'kick out' times on the Cowley Road it is difficult to Police both areas.

TVP attend the East Oxford Neighbourhood Action Group and has a good relationship with residents. Figures show a 31% increase in the number of reports in antisocial behaviour related to alcohol in the last 12 months, with a 23% increase in reports of violent crime.

These statistics would undoubtedly increase with any extension of hours where alcohol is to be sold.

Sgt Bouse stated that Oxford Brookes University used their own reporting tool that showed a 180% increase in antisocial behaviour. Cllr Cook queried the figures in the Police representation as it only covered the period 2012-2014. It was confirmed that the figures for 2016 would also show an increase yet the number of Police resources had not increased in that period but the Police had amended the way they classify crimes.

Mr Bloomfield, when asked, provided further information regarding the incident of the underage person found intoxicated at the premises and Mr Williams (Applicant) gave his account of the incident as he was present at the time. Mr Bloomfield also confirmed that there was no known issue with their queuing policy and that there had been no other significant issues at the premises in the last 2 years.

Interested Parties: Cllr Dick Wolff, Cllr Williams (on behalf of Cllr Simmons), Cllr Jamila Azad, Clare Ridley (on behalf of David Colbeck)

Cllr Wolff stated that this application involved the integrity of the SSP, which was needed more than ever before. He stated that the area was changing and becoming more residential with a number of families living in the vicinity of the premises.

Cllr Wolff said that the increase in hours in which alcohol is available will have a direct link to the increase in antisocial behaviour, which the Police will have to pick up and the residents will have to continue to suffer.

Cllr Williams stated that he appreciated that the management was doing well and that the venue offered a wide range of entertainment for the community and that its reputation had improved in recent years but the simple fact was that the longer hours the premises could trade, the more alcohol someone could consume and the less socially aware they become upon leaving the premises thus possibly resulting in antisocial behaviour or crime and disorder.

Cllr Azad said she had received numerous letters from residents complaining about drunken behaviour including people shouting and cars being damaged and drug dealing and other incidents of antisocial behaviour and crime and disorder.

Clare Ridley stated that the Residents Associations work closely with Oxford Brookes for a harmonious co-existence between the students and residents. There has been a 180% increase in complaints on Wednesday and Thursdays in relation to antisocial behaviour.

Ms Ridley stated that when a premises ejects a person from a venue their problem then becomes the resident's concern as they make their way up the road. She said that the residents were at breaking point and that the SSP was invaluable to them to ensure that the issues didn't increase further. There had been an increase in footfall and a high proportion of the additional numbers were students.

Mr Payne answered the concerns of the residents by stating that the reports of antisocial behaviour could not be directly attributed to their premises.

He stated that the premises was not 'alcohol led' but music led and that policy GN23 (live music) of Oxford City Council's Statement of Licensing Policy encouraged live music.

He referred to comments made by the objectors that the premises was 'doing quite well' and that they had a good relationship with TVP. He stated that it was not his client's policy to throw out intoxicated persons. They would sit them down and give them water and a place to calm down before being released and would call assistance if required.

He reiterated the fact that this was a community premises that was doing a lot for the area that offered something different to other venues and dealt with patrons in a responsible way.

Mr Payne again mentioned that they had applied for this licence in the correct way by notifying residents in advance, which resulted in 2 positive comments, and having pre-consultation meetings with the Licensing Authority and TVP. With the conditions offered

and reduced hours requested he suggested this would be adequate to rebut the presumption of refusal.

Mr Payne also referred to Policies LH1(Zoning) and LH3 (Licensing hours) of the Statement of Licensing Policy and that each case shall be heard on its individual merits. There was no evidence to link this premises directly with the problems suffered by residents on Cowley Road and its side roads.

Cllr Wolff was concerned that if the licence were to be granted then other premises would follow suit will applications to extend hours and it would set a precedent.

Decision and Reasons of the Sub-Committee

1. The Sub-Committee considered all submissions, both written and oral. It also had regard to the relevant Home Office Guidance and the Council's Statement of Licensing Policy, in particular policy GN19 (Special Saturation Policy)(SSP) .
2. Due to the location of the premises the East Oxford SSP was engaged. The SSP clearly provides that applications for new premises licences should be refused unless the applicant can show that granting the application is unlikely to add significantly to the cumulative impact of crime and disorder, and public nuisance.
3. Having heard the evidence of Thames Valley Police and the Interested Parties and also considering the background evidence to the SSP it was clear to the Sub-Committee that the cumulative problems of alcohol related crime & disorder and nuisance remain high in the vicinity of the Premises.
4. The Police evidence to the hearing was that crime and antisocial behaviour had in fact increased over the past year relative to the older figures provided in Appendix 3. The Sub-Committee gave weight to Police representation and was mindful that the Home Office Guidance was that police representations should be accepted unless there was good reason not to.
5. The Sub-Committee acknowledged that the problems are general and there was no evidence to link them directly to The Bullingdon. However, controlling the general cumulative impact is the purpose of the SSP and the Sub-Committee found that the extended hours applied for were likely to aggravate the situation by:
 - i. Significantly increasing the time available for the consumption of alcohol at a busy high volume venue with a consequent increased risk of crime and disorder.
 - ii. Attracting customers from other venues at a later hour and thereby hindering dispersal.
 - iii. Dispersal of customers from the venue into residential areas at a later and more noise sensitive hour with an increased risk of nuisance to residents.
6. The Sub-Committee considered the merits of the application and the arguments made by the Applicant but found that the additional conditions proposed were not sufficient to address the risks and were not significantly different to those already attached to the existing licence for the premises.
7. The fact that a number of late TEN's events had been held without apparent problems was encouraging but not enough to satisfy the Sub-Committee that late operation should be allowed on a permanent basis.

8. Considering all these factors The Sub-Committee were not satisfied the application could be granted without significantly adding to cumulative impact problems. Therefore the presumption against granting the application had not been rebutted and the SSP should not be set aside.
9. The Sub-Committee agreed that where possible a reasonable balance must be struck between the Applicant's wishes and the needs of the residents but promoting the licensing objectives and following the Council's adopted policy was paramount.

The Application was therefore **REFUSED** for the reasons that:

- It would add significantly to the problems of crime & disorder and public nuisance.
- It is contrary to policy GN19 (Special Saturation Policy of the Council's Statement of Licensing Policy)

Signed:

A handwritten signature in black ink, appearing to read 'Alan Cook', is written over a horizontal line.

Chair of Licensing Sub-committee

Notes:

- A. The applicant, and any responsible authority or interested party that has made representations upon the application has a right of appeal to the Magistrates' Court against this decision. If you wish to appeal you must do so within 21 days of being notified of the decision.