

Licensing Act 2003



## Licensing Sub-Committee

### Notification of determination

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

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Date of hearing:	<b>26<sup>th</sup> January 2021</b>
Place:	<b>Remote hearing via 'Zoom'</b>
Case No.	<b>20/04101/PREM</b>
Applicant	<b>AGD Four Ltd</b>
Premises:	<b>Boom Battle Bar</b>
Premises address:	<b>41 Oxford Castle, New Road, Oxford, OX1 1AY</b>
Licensing Sub-Committee Councillors:	<b>Cllr John Tanner (Chair), Cllr Mike Gotch, Cllr Liz Wade</b>
Legal Advisor:	<b>Daniel Smith</b>
Licensing Officer:	<b>Joshua Curnow</b>
Clerk:	<b>Katie Thorp</b>

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The Sub-Committee heard representations from the following:

**Licensing Authority:** Joshua Curnow (Senior Licensing Compliance Officer)

Joshua Curnow (**JC**) presented the Licensing Authority's report, stating that the application had attracted a representation from Thames Valley Police (TVP).

**JC** stated that TVP had submitted further documents which included more recent city centre night time economy data, these documents had been circulated to all parties prior to the hearing. He also stated that the applicant had submitted written submissions, which were also circulated to all parties prior to the hearing. The applicant's written submissions referred to two existing premises licenses, already in the proposed location, however both premises licenses currently have outstanding annual fees, one of which having been suspended due to the non-payment.

**JC** stated that the first location is at 41 Oxford Castle, the licence was first applied for in 2005 as a restaurant, and it was transferred to the most recent licence holder in 2010. The licence allows for the sale of alcohol for on sales only, from 9:00am until midnight Sunday to Saturday. The Licence was suspended for non-payment of annual fees in 2015.

He also stated that the second licence is located at 42 Oxford Castle. The licence was also applied for in 2005. The licence has gone through four transfers since the original application, the latest being in 2019. This licence allows for the sale of alcohol for on and off sales between 8:00am and midnight Monday to Saturday, and 11:00am to 11:30pm on Sundays. This licence also allows for late night refreshment between 11:00pm and midnight Monday to Saturday. **JC** stated this licence has two years of unpaid annual fees and is due to be formally suspended.

**JC** noted that out of the 30 conditions proposed by TVP, the applicant has stated in their written submissions that they have agreed to 25 of the conditions, and are prepared to speak on the remaining 5 conditions.

Daniel Smith (**DS**) asked of **JC**, in relation to the two existing licenses, whether he has any record of when they were first granted and whether they were granted at a hearing. **DS** requested clarity on when those two licenses were last operated and whether the Licensing Authority have received any application to transfer the two licenses. **JC** stated although the licenses have conditions attached on the page of conditions applied at a hearing, there does not appear to be any record of a hearing taking place. **JC** advised **DS** that in 2010 the licence at 41 Oxford Castle was varied and it wasn't until 2014 that the licence holder stopped paying the annual fees. The licence at 42 Oxford Castle was recently transferred in 2019, immediately after that transfer the annual fees stopped being paid. **JC** also confirmed with **DS** that there are currently no transfer applications in place for these premises.

Councillor Mike Gotch (**CMG**) asked **JC** whether the transfer of the licenses happens automatically if someone else pays the outstanding annual fees. **JC** responded by explaining that payment of the outstanding annual fees is required before a transfer can take place and that a transfer application goes out for consultation allowing TVP to comment, however they would respond differently looking at whether the upholding of Crime and Disorder is appropriate for the transfer of one company or person to another.

**Applicant:** AGD Four Ltd Elliott Shuttleworth, Allan Cook and Steve Young. Marcus Lavell, representative of the applicant.

Marcus Lavell (**ML**) began with a comment on the transfer application process, stating that the limited consultation process is primarily to prevent licenses being transferred to criminals or people with criminal associates. **ML** confirms that through agreement with the prospective Landlord, the applicant will be making two transfer applications. **ML** states that the applicant would rather apply for a new licence which includes new appropriate conditions, of which the majority have already been agreed with TVP. **ML** states that the grant of the new premises licence does not create a new licensed premises in the Special Saturation Zone, but it grants a licence with considerably restricted terms from what is already permitted on the two existing licenses, i.e. shorter hours, and also includes better conditions.

Cllr Liz Wade (**CLW**) asks for a comparison of the Oxford location and the current locations in Norwich and Cardiff, specifically problems with the Police, size of the premises.

Elliott Shuttleworth (**ES**) states that Cardiff and Norwich are similar sizes to Oxford premises.

**CLW** goes on to ask about special saturation zones, whether the other locations of the business are also located in these areas.

**ES** confirms they recently opened a venue in Eastbourne, and this fell into a cumulative impact zone, along with Norwich and Liverpool, they didn't receive any objections for these locations, he believes due to the sale of alcohol accumulating to less than 15% of their business. He thinks their business was seen as an exception and not seen as a bar.

Cllr Mike Gotch (**CMG**) asks about the hours the security staff will be present and requests clarification. **CMG**'s second question relates to the plans of the premises and the licensed areas marked out, when TVP insist alcohol is not taken anywhere near axe throwing, why is the whole premises a licensed area, including the location of axe throwing.

**ML** responds by stating the whole premises is marked as a licensed area to allow for the entire area to be conditioned and controlled through the conditions on the licence.

**ES** states that typically the business hasn't had a condition on their licence in relation to axe throwing, as this is already included in their standard operating schedule. He also advises that axe throwing is supervised at all times, ensuring no axes are removed from the location.

**DS** mentions that the Council's Saturation Policy is specifically designed to prevent the proliferation of pubs and bars in the city centre and that the councillors need to consider carefully whether this premises is primarily a games venue where alcohol is available or is really a bar where games can also be played. **DS** states that he understands a draft condition has been agreed in relation to alcohol being an 'ancillary' to playing games, and questions how the business will ensure compliance with that.

**ML** responds by mentioning the agreed draft condition and that sales figures can be obtained to prove alcohol sales are an ancillary of what they do.

Alexander Bloomfield (**AB**) states he had spoken to Licensing Officers in Norfolk and Cardiff and asks of the applicant to confirm that the site in Norwich does fall into a cumulative impact zone as **AB** has evidence of the contrary from his counter-part.

**ES** states he thought the Norwich site was and that was included in their application but he may have been mistaken.

**CLW** asks in relation to the axe throwing, whether the security guards are in a position to say that someone who wishes to partake, has not had a drink at all

**ES** confirms if someone has had a drink they can't participate in axe throwing.

**DS** asks whether the business has any locations that are just games venues without an alcohol license, as the majority of their business does not require a licence.

Allan Cook (**AC**) confirms all venues have an alcohol licence.

**Responsible Authorities:** Alexander Bloomfield Licensing Officer & Inspector James Sullivan (Thames Valley Police)

Inspector James Sullivan (**IJS**) confirms their main objection is primarily around the saturation policy issue. Another venue will bring in more patrons, increasing the availability to the sale of

alcohol. **IJS** believes this particular venue will also attract large groups which increases the opportunity for alcohol related crime and disorder in the area.

Cllr John Tanner (**CJT**) asks whether there is any information or evidence available to suggest that having this premises in place would be any more damaging than the two previous licence holder venues were in the past.

**IJS** states he does not have any statistics on the previous venues and therefore cannot answer the question effectively.

**AB** states the following draft conditions that the applicant wasn't in agreement with. TVP6 the need for high visibility fluorescent yellow jackets the reason for this is from a health and safety aspect. TVP7, TVP14 some disagreement about the wording and he believes TVP are happy to agree with the alternative wording of the condition. TVP23, TVP27 which TVP again agreed with the alternative wording of the condition brought by **ML**.

**DS** asks whether TVP are still maintaining an absolute objection as the representation in the agenda was prior to any discussions about existing licenses and knowing that refusal may result in a worse situation than granting with appropriate conditions

**AB** confirms that is still the case as TVP are concerned this will set a precedent.

In summing up, **ML** brings up the five draft conditions from TVP that he wishes to address along with the applicant, firstly being TVP6. **ES** states he feels that door staff wearing fluorescent jackets or tabards would give off a wrong impression of the premises.

**CJT** asks what the objection is to the last entry 2 hours before the last licensable activity takes place. **ES** explains having the last entry at 9:00pm, the majority of their games are pre booked online, which means bookings would be shut off at 9:00pm which would be commercially very difficult.

**CJT** asks what the objection is to the condition involving body worn cameras. **ML** states it is an added expense to the operation and unnecessary on a premises that has no history of crime and disorder taking place there or at any other locations the business has.

**CJT** asks would the applicant agree to all draft conditions from TVP if it resulted in a grant of the licence. **ML** states that TVP7 condition removes 1 hour out of the operating day. **ES** also confirms last entry at 9:00pm would make the operation commercially non-viable.

## **Decision and Reasons of the Sub-Committee**

1. The Sub-Committee considered all submissions both written and oral, including the supplements to the report circulated prior to the hearing. It also had regard to the relevant Home Office Guidance, in particular 8.99 – 8.102 (Transfer of licences), and the Council's Statement of Licensing Policy, in particular policy GN19 (Special Saturation Policy)(SSP).
2. The Sub-Committee noted that the application was for a new premises licence within the City Centre Special Saturation policy (SSP) area. The burden was therefore on the Applicant to show that a new licence could be granted in this location without adding significantly to cumulative impact problems.

3. It was also noted that the nature of the proposed premises is primarily a games venue with 'ancillary' alcohol sales until 23.00 only.
4. The Sub-Committee was told that the premises already benefits from two existing but dormant licences which the Applicant has arrangements in place to transfer to it and rely on should it be unsuccessful in this application. Those licences include the supply of alcohol until 00.00 but are without conditions appropriate to what is now applied for.
5. The Sub-Committee gave weight to the concerns raised by Thames Valley Police but found that, given the particular circumstances of this application, a new premises licence at this location, with appropriate conditions attached, was not likely to add significantly to cumulative impact problems.
6. In reaching this conclusion the Sub-Committee understood that the transfer of existing licences could in any event lead to the proposed operation going ahead and the licensing objectives were better promoted by ensuring that the operation would be properly controlled by appropriate conditions.
7. The Sub-Committee noted that both the Applicant and Thames Valley Police (TVP) had agreed on twenty seven of the conditions proposed by TVP (found at **Appendix Two** of the report) with the following changes:
  - **TVP 14** *With the exception of wine (including sparkling wine) supplied in a bottle 70cl or larger, all bottled alcoholic drinks will be decanted into a non-glassware drinking vessels. (e.g. polycarbonate plastic, toughened safety glass or other such material).*
  - **TVP 16** *In order to promote the prevention of crime and disorder objective, the maximum number of persons (including staff and entertainers) allowed at the premises shall not exceed 250 persons for the whole premises. The door supervisors or staff on duty will operate a means of counting customers in and out so the capacity limit is not exceeded at any point.*
  - **TVP 27** *There will be no games where alcohol is an integral part of play.*

The Sub-Committee agreed with the inclusion on the licence of all those agreed conditions and other measures set out on the operating schedule.

8. The Sub-Committee considered the representations from both the Applicant and TVP regarding the remaining conditions proposed in **Appendix Two** and decided that it was appropriate in order to promote the licensing objectives of *Prevention of Crime and Disorder* and *The Promotion of Public Safety*, that conditions **TVP 6** (high visibility clothing) and **TVP 23** (body worn cameras) be attached to the licence. For the same reasons it was

also appropriate to attach **TVP 7** (last entry time) with the following amendment:

- **TVP 7** Last entry to the premises will be one hour before the cessation of the last licensable activity.

The application is **GRANTED** subject to the conditions as set out above.

The Sub-Committee also wished to make clear that this decision in no way indicates any relaxation of the City Centre Special Saturation Policy (SSP). There were exceptional circumstances in this case which allowed the grant of a new licence despite the SSP and Police concerns. If problems do result from operation of the premises the licence could be subject to review.

**Signed:** *John Tanner*

**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.