



LICENSING SUB-COMMITTEE

- MEETING** : Tuesday, 12th July 2016
- PRESENT** : Cllrs. Lugg (Chair), Gravells and D. Brown

Officers

Vikki Fennell, Solicitor from One Legal
Lisa Jones, Food, Licensing and Markets Manager
Richard Barnett, Licensing and Enforcement Officer
Atika Tarajiya, Democratic Services Officer

Also in Attendance

Justin Hudson, Applicant
Mark Smith, Agent, Butlers Venue Bar
Michael Griffiths, Counsel, Gloucestershire Constabulary
Steven Wood, Inspector, Gloucestershire Constabulary
Mark Mansfield, PC Licensing Officer, Gloucestershire Constabulary

1. ELECTION OF CHAIR

Councillor Lugg was appointed as Chair.

2. INTRODUCTIONS AND PROCEDURES

The Chair, Members and Officers introduced themselves and the Chair outlined the procedure to be followed.

3. DECLARATIONS OF INTEREST

No declarations were made on this occasion.

4. APPLICATION UNDER SECTION 34 OF THE LICENSING ACT 2003 BY JUSTIN HUDSON TO VARY AN EXISTING PREMISES LICENCE FOR BUTLERS VENUE BAR, 99-101 EASTGATE STREET, GLOUCESTER, GL1 1PY

Report of the Licensing Officer

The Licensing Enforcement Officer presented the report which invited the Sub-Committee to consider an application by Mr Justin Hudson for a variation to an existing Premises Licence in respect of Butlers Venue Bar, 99-101 Eastgate Street, Gloucester, GL1 1PY.

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He referred Members to the application at Appendix 1 and paragraph 3.5 of the covering report which outlined the requested variation to the opening hours. He circulated a summary of weekend opening times, and capacity for the venues within the Cumulative Impact Zone (CIL) to all parties. The Licensing Officer confirmed that the applicant had agreed two additional conditions to the application as outlined on page 26 of the agenda pack.

He drew Members' attention to representations received from the Gloucestershire Constabulary at Appendix 3 of the report, in addition to the late material submitted as an addendum and circulated to all parties.

He referred to the representation received from a local resident at appendix 4 of the report and advised Members that a late item, submitted by Councillor Dallimore in support of the application, had been published as an addendum and circulated to all parties.

There were no questions of the Officer from Members or the Applicant.

Presentation by the Applicant's Representative

Mr Mike Smith, Mr Hudson's representative, informed the Committee that Mr Hudson was seeking to extend the licensable activities of Butlers Venue Bar for an extra 30 minutes between Sunday to Thursday and an extra 60 minutes on Friday and Saturday. He advised the Committee that Mr Hudson was an experienced licensee, who had been in the trade for a substantial period, having received his original license aged just 19 years old.

He noted that Mr Hudson was Chair of the Licensed Victuallers Association, Director of the CitySafe and actively campaigned for the closure of Eastgate Street, all of which he carried out in his own time and at his own expense.

Mr Smith advised that Mr Hudson had delayed his application for a variation of his Premises License for upto 12 months to consider the impact of significant changes occurring in the City Centre, such as the development of Gloucester Quays. He reported that the continuing decline in trade within the City Centre meant that Butlers Venue Bar was experiencing a loss in trade and this application was intended to future proof the business and cater for the need for later night refreshment.

Mr Smith reported that on a typical day's trading, the 18-25 age group would visit the venue before moving on to venues such as Liquid, at approximately 12am, thereafter the more affluent and older age group would frequent the venue and remain until closing time. Mr Smith noted that Butlers Venue Bar were now stocking premium alcohol and spirits to cater for such customers.

Mr Smith commented that the decrease in the number of establishments trading within the CIL, which would indicate a reduction in the crime figures from 2005 onwards, as these venues no longer caused Gloucestershire Constabulary any issues.

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Mr Smith advised the Committee, that as part of Mr Hudson's plan for the future, he intended to buy the now vacant property, known as Zest, which adjoined Butlers Venue Bar. He noted that this would create additional 6-8 new jobs.

Mr Smith reported that Butlers Venue Bar had been awarded the Best Independent Bar in the Best Bar None Awards 2015, which had been due to Mr Hudson's efforts in making the City's night time economy safe and viable. He acknowledged that Mr Hudson was actively working to help the City achieve Purple Flag Status and had been prepared to attend a meeting with Gloucestershire Constabulary, as the responsible authority, to accept additional conditions to the licence. He reported that this meeting had not taken place as Gloucestershire Constabulary had advised Mr Hudson that they would be objecting to the application in any circumstance due to the special policy.

Mr Smith advised the Committee that a variation of the license would not impact on the venue's capacity which remained fixed. He reported that the rationale behind applying for an extension to the opening hours was to retain existing customers who were currently having to leave Butlers Venue Bar at the current closing time and most likely to take their custom to another venue within the area.

Mr Smith reported that Mr Hudson had agreed to two conditions on the application which included

- a) No entry or re-entry into the venue would be admitted after 3am on Fridays and Saturdays.
- b) Door staff would co-ordinate the dispersal of customers from the venue for approximately 30 minutes or until all customers had left, whichever was sooner.

He stated that Gloucestershire Constabulary had not objected to any of the temporary event notices (TENs) that had been granted recently, reporting that there had been no adverse impact during the periods in which the TENs were in place. He acknowledged that Bar Fever, who had an application to extend their opening hours accepted, had not experienced any adverse impact as a result. He concluded that Butlers Venue Bar would not be the latest premises to close and that the extended hours would have no impact on the licensing objectives.

Representation from Responsible Authority (Gloucestershire Constabulary)

Michael Griffiths, Counsel for Gloucestershire Constabulary confirmed that the venue had a capacity to hold 400 people and queried whether the applicant agreed that an extension of opening hours would result in an increase in the amount of alcohol consumed. Mr Smith agreed with this statement, commenting customers would either visit another venue or make their way home after leaving Butlers Venue Bar.

Mr Griffiths confirmed that Mr Hudson had no evidence of where customers went after leaving his venue.

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In response to Mr Griffiths' query regarding the impact on no-re admittance into the venue after 3am on reducing crime and prevention in the CIL, Mr Smith responded that it would prevent customers from entering another venue to continue drinking.

Mr Griffiths suggested that extended opening hours would result in customers migrating throughout the zone later in the night. Mr Smith responded that the extended hours would mean that customers were less likely to move to another venue and remain in Butlers Venue Bar during the duration of their visit.

Mr Griffiths reported that the door staff remaining outside to see customers safely from the venue, as outlined in the 2nd condition of the licence, did not prevent problems occurring within the CIL. Mr Smith advised that Mr Hudson could not prevent problems occurring within the CIL, but aimed to ensure that customers left Butlers Venue Bar safely.

Mr Smith confirmed that no reference to temporary event notices (TENs) had been made in Mr Hudson's application but noted that Gloucestershire Constabulary had been aware of these during the initial application for such a notice. Mr Griffiths stated that the only reference to TENs had been made at tonight's Committee.

Mr Smith agreed that the application to vary the premises licence amounted to a significant extension of a period in which customers could consume alcohol and confirmed that he was aware that the burden of demonstrating no significant impact fell on his client, Mr Hudson.

In response to Mr Griffiths' suggestion that there was no evidence in Mr Hudson's application that could demonstrate no significant impact on the CIL, Mr Smith advised that the proposed conditions on the licence, successful application of TENs and Butlers Venue Bar's dispersal policy all demonstrated the steps taken by Mr Hudson to minimise any adverse impact with the CIL.

Mr Griffiths advised Mr Smith that a request for information on crime and disorder during the period covered by the TENs could have been made to Gloucestershire Constabulary to support the application. Mr Smith responded by noting that had there been any incidents during the TENs, Gloucestershire Constabulary would have included this as part of their submitted evidence.

Mr Griffiths noted that most incidents occurred at approximately 3am commenting that an extension to Butlers Venue Bar's opening times would compound the issues faced by Gloucestershire Police. Mr Smith referencing Bar Fever, noted that no additional issues had been experienced since the venue's extended opening hours.

Mr Smith advised, in response to Mr Griffiths' query that there was no offer to reduce the capacity within the venue during the extended opening times as this is was not something he had been instructed on.

Mr Griffiths noted the letter in support from application from Councillor Dallimore and reminded the Committee that as per case law, representation from Gloucestershire Constabulary (as the responsible authority) weighed heavily and that their views on crime and disorder should be taken seriously.

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Representation from local resident

Mr Withers, a local resident living at Kiln Close, advised the Committee that he had written to the Licensing Team outlining his views regarding the application. He reported the Committee that he had never visited Butlers Venue Bar personally and was aware of Mr Hudson's commendable efforts in raising the standards of the night economy. He stated that though his residence was not in the direct vicinity of Eastgate Street and was approximately two streets away, he was able to hear the shouts and laughter of late night revellers, and had been on occasion woken up during the night because of this. Mr Withers suggested that these issues were as a result of problems with dispersal of customers from the various venues on Eastgate Street. He expressed his frustration that this was a regular occurrence which residents had to cope with. He expressed hope that the Committee would consider the impact on local residents as part of their decision making process.

Question from Members to the Applicant

In response to Councillor Gravells' query regarding Butlers' Venue Bar not recording incidents correctly or calling the Police appropriately, Mr Smith refuted the statement from the Police.

In response to Councillor Brown's query regarding the impact of dispersal following the extended opening hours on the CIL, Mr Smith advised that Butlers' dispersal policy would assist with dispersal of customers regardless of the time.

Councillor Brown questioned whether the applicant considered two venues closing at the same time would cause additional issues. Mr Smith explained that the extended opening hours would mean that Butlers Venue Bar would close at 4:30, noting that no other venue currently closed at that time. He acknowledged that the extended opening hours would reduce migration as there would be no admittance to another venue after 3am.

Councillor Brown suggested that the issues with dispersal would be compounded as a greater number of people would be leaving the venue at the same time. Mr Smith advised the Butlers Venue Bar's dispersal policy aimed for a gradual dispersal over a one hour period to counter this issue.

The Chair queried the number of customers at closing time, noting that there was migration from the Quays and Docks area, as most of the venues there closed by 12am. Mr Hudson explained that currently last customer orders were taken at 2am which then gave customers an hour in which to leave. He reported that the venue was never at capacity during the final hour of business. He advised that the same approach would be taken with the extended opening hours.

Mr Hudson stated that the shift in the night economy meant that 2am was too early for most customers. He informed the Committee that he was open to compromise and would agree for a 3am closing time for the sale of alcohol, rather than 3:30am as in the original application.

Questions from Members to the Responsible Authority (Gloucestershire Constabulary)

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Inspector Wood reported that Eastgate Street was one of the main hotspots for anti-social behaviour. He advised that Officers were on site between 21:00 and 05:00, noting that Officer presence early on in the evening acted as a good preventative for anti-social behaviour. He warned that budgets cuts would mean that shift patterns would need to be amended to cover the later part of the morning and therefore the early preventative measures would be less successful.

The Food Safety & Licensing Service Manager advised the Committee that the Cumulative Impact Policy, adopted in 2004, was developed in conjunction with Gloucestershire Constabulary.

PC Mansfield reported that the incidents were directly linked to increased alcohol consumption, noting that most incidents occurred during the early hours of the morning, at approximately 4:00am. He commented that Officers were having to resort to using pepper gas to keep people at bay and were even being attacked when removing the safety barriers to allow access to the street.

The Committee watched CCTV footage of an incident in Eastgate Street provided by Gloucestershire Constabulary.

PC Mansfield that the incident had taken place approximately 1 year ago, outside Liquid. He advised that the 6 Officers had been unable to contain the crowds, with resources from all neighbouring authorities all redirected to help manage the situation. He reported that the incident occurred between 3:00-4:00am and when questioned reported that an incident like this had a probability of 1 in 10 of occurring.

In response to Councillor Gravells' query PC Mansfield replied that venues were encouraged to contact him regarding any events they were holding to help resource such occasions.

In response to the CCTV footage, Mr Hudson reported that Butlers Venue Bar had no involvement with this incident.

Mr Smith advised that the CCTV footage was not indicative of a typical weekend. He commented that the incident captured on the CCTV footage was as a result of gangs from Birmingham and Bristol convening together and compounded by the lack of a dispersal policy at Liquid. He expressed his disappointment that the CCTV footage had been used as evidence as it was misleading and did not reflect the true reality of an average night. Mr Smith, referring to the Incidence Remarks Search submitted by Gloucestershire Constabulary noted that only 3 of the incidents linked directly to Butlers Venue Bar.

Councillor Gravells queried why incidents in Gloucester meant that resources from other constabularies needed to be diverted. Inspector Wood advised the Committee that was no specific evidence but based on experience, the high concentration of venues and takeaways in a small geographical area was a significant factor. Councillor Gravells noted that other national cities had a similar setup and did not encounter similar issues and acknowledged that a smaller geographical area would be easier to police.

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Councillor Gravells noted that based on the graph on page 34 of the agenda pack, Butlers Venue Bar had the lowest level of incidents from all the venues of the Eastgate Street. Mr Griffiths noted that the peaks of the incidents were around 3am and suggested that proposed closing times would exacerbate this issue. Councillor Gravells advised that this was speculative, acknowledging that Butlers Venue Bar had a proven track record for supporting the Constabulary.

In response to Councillor Gravells' query regarding Butlers Venue Bar staff not calling Gloucestershire Constabulary when appropriate, PC Mansfield advised that this was in relation to an incident when door staff accidentally contacted the CCTV Control Room.

Mr Griffiths confirmed that Gloucestershire Constabulary were not relying on this evidence.

Councillor Brown expressed disappointment that budgets cuts were being cited a reason for refusal of an application.

Mr Griffiths explained that the CCTV footage had been played to demonstrate the potential for a normal situation to deteriorate. He reported that the impact on the CIL as a whole needed to be considered when considering this application. Mr Griffiths agreed that Butlers Venue Bar was well run and that Mr Hudson was a good licensee but that the premises was within the CIL and therefore Gloucestershire Constabulary had no choice but to object to the application.

The Solicitor queried whether Gloucestershire Constabulary were prepared to accept a revised closing time of 3am for the sale of alcohol instead of 3:30am as in the original application.

Mr Griffiths confirmed that Gloucestershire Constabulary were not prepared to accept the revision, as they did not feel that this would have a significant impact.

In response to the Food Safety & Licensing Service Manager's query, Mr Hudson informed the Committee that Butlers Venue Bar was considered a feeder bar, with the final destination a larger venue, such as Liquid. He explained that more affluent customers visited later in the evening and purchased premium alcohol at the higher price range. He commented that he had actively worked with the LVA to establish a minimum price of alcohol to help encourage responsible drinking. He concluded by reporting that Butlers Venue Bar were currently not ready to implement the proposed closing times and this would be phased in gradually if licence were to be granted.

Summing Up – Gloucestershire Constabulary

Mr Griffiths stated that the CIL was the starting point and that the rebuttable presumption applied advising that the application should be refused unless the applicant could prove that there would be no increase in crime and disorder.

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He accepted that the premises operated well and that Mr Hudson took appropriate steps to maintain a safe environment stating that this was not a determining factor.

He went on to say that the potential increase in hours was a significant change and any significant change would contribute in part to attraction to the area as a honey pot noting that a single street with a significant number of premises added to the cumulative problems in the area.

He did not accept the argument that the increase in hours would spread dispersal of patrons in the area and noted that local residents would continue to be impacted by the anti-social behaviour in Eastgate Street.

He stated that there had been no offer to reduce the capacity at the premises and that the two extra conditions identified did not address crime and disorder away from the premises.

Referring to the Home Office Guidance paragraph 2.1 which stated that the main source of advice should come from the Police he noted that the Committee had heard evidence from the Inspector and the Constable.

Referring to the case of Thwaites which stated that the views of the Police should weigh heavily and that work to prove otherwise falls on the applicant, Mr Griffiths advised that Mr Hudson had failed to specifically deal with migration away from the Premises. He went on to say that the burden on the applicant in this case was significant and more extensive than on a regular application. He concluded by acknowledging that whilst TEN's were relevant, the CIL has legal effect and which Mr Hudson had not rebutted commenting that an assertion was not enough.

Summing Up - Applicant

Mr Smith stated that this was not a court hearing but accepted that the burden of proof lay on Mr Hudson. He stated that on the balance of probabilities the application would not add significantly to the cumulative impact on the licensing objectives.

His evidence of the bar being a well operated premises was provided by the Best Bar None accreditation.

He stated that Mr Hudson had operated TENs without causing problems and which had never been objected to by Gloucestershire Constabulary.

He reiterated that the Butlers Venue Bar had an established dispersal policy and comprehensive conditions on its existing license.

In conclusion, Butlers Venue Bar served an affluent and older age group who wished to stay longer so the Applicant had requested an additional 30 minutes drinking time from Sunday to Thursday and an additional 60 minutes drinking time on Friday and Saturday.

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The Chair and Members of the Sub-Committee withdrew to determine the application. Upon their return, the Chair read the Sub-Committee decision as follows:-

The Sub-Committee has considered very carefully the application for variation of a premises licence at Butlers Venue Bar (99-101 Eastgate Street, Gloucester) It has given due regard to the Licensing Act 2003, the Licensing Objectives, statutory guidance and the adopted statement of Licensing Policy. Human Rights legislation was borne in mind whilst making the decision.

The Sub-Committee considered representations, both written and given orally today.

The Sub-Committee noted that the premises are located within an area identified as suffering from high levels of crime and disorder and labelled as a Cumulative Impact Zone. The Sub-Committee considered the Cumulative Impact Policy and particularly pages 12-14 of the Council's Licensing Policy and whether the application was a "substantial" variation. Having considered all the facts the Sub-Committee determined that the application did amount to a substantial variation and that the rebuttable presumption would apply in this case. The decision was based on the fact that this licence would be amended to increase hours.

The Committee noted in particular that:-

- I. One effect of the CIP is that a rebuttable presumption applies to applications for premises licences.
- II. The rebuttable presumption is that such applications shall ordinarily be refused.
- III. Licensing Policy 4.18 provides that the onus is upon applicants to demonstrate through their Operating Schedule and where appropriate supporting evidence that the operation of the premises will not add to the cumulative impact already being experienced.

Having considered all of the above the Sub-Committee is minded to grant the application as applied for, with the addition of the conditions offered by the applicant on page 26 of the covering report.

Reasons for decision

The Sub-Committee considered very carefully the application and all the representations, particularly those of the Police. It was noted that the Police's objection raised general concerns in relation to crime and disorder experienced in the area. Indeed, the evidence shown is the very reason behind the specific policy adopted. The Sub-Committee heard evidence from the applicant that the premises has in recent weeks operated under a number of temporary event notices, none of

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which were objected to by the Police and there were no reported incidents of anti-social behaviour as a result.

Having applied the policy, the Sub-Committee noted that the applicant was required to establish that the application would not add to or increase issues already experienced in the area. The Sub-Committee considered this point very carefully and has determined that on evidence presented by the Police by way of a graph, Butlers has a very low number of incidents of anti-social behaviour in comparison to other venues within the Cumulative Impact Zone. The venue has an established dispersal policy operating over 60 minute period which will remain in place for the extended opening hours.

The Sub-Committee is bound to take into consideration the statutory guidance which stresses at paragraph 2.1 that licensing authorities “should look to the Police as the main source of advice on crime and disorder”

The Sub-Committee was reassured by the evidence given by the Premises Licence Holder including details of negotiation with responsible authorities, the level of experience generally and willingness to engage. In particular the Sub-Committee noted that the Police on their own admissions have stated that the premises is well run and the licence holder is a good licensee. The Premises was the winner of the Best Independent Bar None 2015 and the licensee is heavily involved in delivered a number of improvements to safety and standards to the night time economy.

The Sub-Committee would also stress that there is a review process which can be initiated by residents as well as responsible authorities if appropriate evidence, linked to the premises, is produced.

The interested parties are reminded that there is a right of appeal to the local Magistrates Court within 21 days of the decision

Time of commencement: 6.15 pm hours
Time of conclusion: 8.53 pm hours

Chair