

NOTICE OF DETERMINATION

EXETER CITY COUNCIL (Licensing Authority)

LICENSING ACT 2003

Date of Hearing:	22 April 2016
Application:	New Premises Licence
Name of Premises:	Camper Coffee
Address:	22 McCoy's Arcade, Fore Street, Exeter
Licensing Sub-Committee:	Cllr G Sheldon (Chair) (GS) Cllr D Henson (DH) Cllr P Holland (PH)
Committee Legal Advisor:	Matthew Hall (MH)
Licensing Officer:	Phillippa Lane (PL)
Member Services Officer:	Howard Bassett
The Applicant:	Gary Williams (GW)
Interested Parties:	Jane Legowski of Spectrum Housing Association (JL) Jacob Burnett-Hitchcock South West Land Limited (JB) Claire Mulgrave Environmental Health Officer (CM)
Hearing Duration:	10:48hrs to 11:55hrs

INTRODUCTION:

The Chair introduced the members of the Sub-Committee together with the Legal Advisor, the Licensing Officer and the Member Services Officer and invited the other people present in the room to introduce themselves.

MH set out the hearing procedure and the parties agreed that the procedure was understood. MH asked if there were any objections to CM the Council's Environmental Health Officer speaking at the Sub-Committee and no objections were made.

MH confirmed that the Premises is located in the Cumulative Impact Zone. MH advised the Sub-Committee that the burden is on the Applicant to show that the application as applied for will not add to the cumulative impact of alcohol related crime and disorder within the Cumulative Impact Zone.

PL presented the application received from the Applicant for a new premises licence for a cocktail bar located in the McCoy's Arcade in Fore Street, Exeter. The Applicant had applied for the sale of alcohol (on and off sales) from 07:00 hours to 23:00 hours Monday to Sunday inclusive and for live and recorded music 16:00 hours to 23:00

hours Monday to Saturday inclusive (indoors only). The application and plans were attached.

Two objections had been received. One from Mansons Guitar Shop located in McCoy's Arcade and the other from Spectrum Housing Association the landlord of residential properties adjacent to the Premises. The objections raised concerns regarding possible noise, public nuisance and crime and disorder. Nine positive representations had been received from local businesses and other interested parties in the area.

As a result of the objections, GW had met with CM, the Council's Environmental Health Officer, to discuss the concerns especially regarding live and recorded music continuing until 23:00 hours and the impact on residential properties in the vicinity. GW had been very co-operative and agreed conditions to be attached to the licence to address the possible issues of noise and nuisance. He had agreed that there would be no music or amplified sound after 21:30 hours and that live music would be restricted to two evenings a week. Further conditions agreed related to glass bottles being deposited in skips and bins after 08:00 and before 20:00 hours only and for a telephone number to be provided of the operator and a responsible nominated person in order for any complaints to be investigated.

MH advised the Sub-Committee that the Live Music Act 2012 provided that the playing of live and recorded music between 08:00 hours and 23:00 hours to an audience of fewer than 500 people at premises with a licence to sell alcohol during those times does not require a Licence. Any conditions to restrict activities under these circumstances would not be effective unless imposed at a review hearing following a premises licence review.

THE APPLICANT

GW responded to issues raised by the two objectors.

Spectrum Housing Association

GW stated that the reference to building work by the Applicant related to refurbishment of the whole McCoy's Arcade and that the Applicant had nothing to do with its planning, execution and payment.

MH advised that the building work was not an issue material to the determination of this application.

GW advised that the communal access referred to in JL's letter of objection was used by the residential tenants themselves who deposited rubbish bags in bins, sometimes leaving them overflowing as well as dumping children's car seats, freezers etc. Further, the two abandoned cars left in the car park owned by Bartholomew House, had no connection to the Applicant.

Mansons Guitar Shop

GW stated that the locks on the toilet doors which Mansons, in their letter, had claimed to have installed, had been installed by the Landlord South West Land Ltd. With regard to the statement in the letter relating to drug use and the legal high shop, the latter has now closed and the Applicant had installed four CCTV cameras, one in the toilets, two within the bar and one covering the outside of the Premises. The Applicant had also engaged a security company to cover any late night events at a

cost of £10,290 a year. Responding to MH, he advised that the security staff would be positioned at the entrance of McCoy's Arcade on Fore Street.

GW was only aware of one complaint that had been made regarding music by a tenant of Spectrum Housing and that this had been to a previous owner of the Premises regarding music being played beyond 12 midnight. It had resulted in the music being stopped.

Referring to the decision not to play music beyond 21:30 hours, GW confirmed that he was prepared to work with Spectrum Housing Association. He believed that the bar was likely to attract a particular clientele who would not cause problems for the area. Similarly, there had been no problems during recent events over the previous four weeks held under a Temporary Event Notices.

Responding to MH, GW advised that it was the intention for the Premises to open from 08:00 hours to 17:00 hours Monday to Wednesday and from 08:00 hours to 23:00 hours Thursdays to Saturdays. Security staff would be on site between 18:00/19:00 hours to 23:00 hours Thursdays to Saturdays. Although a previous event authorised by a Temporary Event Notice had occurred on a Sunday night the regular Sunday opening hours would be 08:00 hours to 16:00 hours. Responding to MH regarding what steps were to be taken to avoid public nuisance, GW stated that he had spoken to John Bean, the Police Licensing Officer, who had provided general advice regarding limiting noise, disturbance and anti-social behaviour. Notices would be displayed advising customers to be mindful of residents and to leave quietly, CCTV cameras were already in situ and security staff would be engaged when necessary. Further, no bottles would be deposited outside the premises after 20:00 hours. Consideration was being given to a direct link with a local taxi firm for the benefit of customers.

GW assured the Sub-Committee that the Premises would be professionally operated and that the timings agreed with Environmental Health would be adhered to. GW advised that he and his partner already operated a Coffee Shop in Crediton with outlets at Exeter and Plymouth Universities and a contract with Exeter Chiefs. They also operated two mobile coffee vans.

Responding to PH, he stated that he had not contacted local residents in advance to advise them of the proposals and conceded that this would have been helpful.

GW stated that he had contacted JL who had left a telephone message with him but he had only been able to leave a message with her. It was noted that there had been no direct representations from residents in response to this application.

Responding to DH, GW advised that no event would exceed a capacity of 70 clientele and that any private party, such as birthday celebrations or "high tea", would not exceed 23:00 hours. If such an event should be sought, security would be engaged commencing at approximately 18:00/19:00 hours.

Also in response to DH, GW advised that one of the owners of Mansons had initially introduced himself in September but had not been enthusiastic regarding the business proposed and that, at a meeting with the Arcade Landlord to advise of the refurbishment plans, this owner had stated that he had been completely unaware of the cocktail bar proposals and had left the meeting in a disgruntled manner. The other owner, however, had proved more amenable. A rumour relating to a nightclub open until 02:00 hours had circulated at one stage. He stated that there had been a lot of support for this application from local businesses.

Responding to DH, JL advised that Spectrum rented out 12, two bedroom maisonettes. JL also stated that, whilst appreciating business imperatives and recognising that the applicant possessed a good business model, as a tenant representative, she felt that operations were likely to be disruptive to young children and workers in Spectrum Hosing Association flats.

Advising the Sub Committee in response to a question from GS, MH stated that a provided the premises had a licence to sell alcohol the applicant's proposals for live and recorded music did not need a licence. .

OBJECTORS:

Spectrum Housing Association.

JL stated that her main concern was that of noise and felt that even operating until 21:30 hours was too late. She considered that the area already suffered from a high degree of noise and anti-social behaviour. She also advised that the residents were disturbed by people using the staircase adjacent to the flats but recognised that the staircase was independent of Camper Coffee and McCoys Arcade.

Responding to MH, JL confirmed that she believed that the proposed operation would increase the issues of noise and disturbance. Similarly, responding to DH, she felt that this was still the case given the nature of the operation and that there would still be an impact on tenants. Also responding to DH, she stated that she had not canvassed tenants' views as she had not wished to worry them about this proposal.

GW clarified that there would be no access from the Premises to the back area of the flats. The fire door from the Premises did open onto this area but was locked and could only be opened in an emergency through pressing a button.

Nobody attended on behalf of Mansons Guitar Shop to comment further in respect of the written representation submitted.

INTERESTED PARTIES

JB stated that, as Director of South West Land Ltd he managed McCoy's Arcade for the last 12 years and his office is based in the Arcade. He made the following points:-

- the area around Fore Street had traditionally experienced some noise and disturbance and he confirmed that there was no access into the parking area associated with the flats. To access the flats from the Premises , it would be necessary to walk down Fore Street to access the rear via Bartholomew Street West;
- he, had arranged for locks to be installed to the toilets some 10 years previously. The use of the toilets was restricted to business tenants in the Arcade and their customers;
- the only access from the Premises to the land to the rear was via the fire door;
- drug dealing and anti-social behaviour had not occurred inside the Arcade and the Premises would help create an upmarket environment with added protection of CCTV cameras;
- he attested to the character of the applicants who were responsible and committed business people offering an added draw to the area; and

- the flats were not immediately above the Premises and any noise was unlikely to seep through. Previous live events over the last 10 years had been problem free, other than the one complaint by a resident which had resulted in the music being stopped.

ENVIRONMENTAL HEALTH OFFICER

CM reported that no complaints had been received by Environmental Health regarding noise from the Premises although, because of the proximity of the flats, there were concerns that the roof was not sufficiently sound proofed to prevent sounds emanating from the Premises and impacting on residents. CM stated that she had not accessed the roof to inspect and JB was able to advise that the roof had been strengthened with beam and block.

CM advised that GW had been very co-operative and that, until the Premises were licensed and operating it was not possible to assess the impact of the Premises to determine whether any action should be taken under the Environmental Protection Act 1990, such as an Abatement Notice. If there were problems, a review could be initiated under the Licensing Act 2003. She appreciated that, although conditions had been put forward and accepted by the Applicant in respect of the playing of live and recorded music, they would not be enforceable unless imposed at a review hearing.

The following answers were given to questions from DH:-

- MH advised that, as set out in Home Office guidance in respect of crime and disorder, the Police were the main source of advice. GW confirmed that he had spoken to John Bean, the Police Licensing Officer, over a period of months and that his advice regarding security and CCTV cameras had been taken on board;
- GW advised that the Premises was currently operating as a Coffee Shop; and
- CM advised that the playing of music would potentially be acceptable if the Applicant operated in the manner agreed and in a sensible way, including the playing of music inside only.

In response to JL, MH advised that, if problems were to become apparent at the premises any person, could call for the licence to be reviewed which could result in conditions being added or the licence being revoked.

SUMMING UP

MH invited further comments. No further comments were made.

MH advised the Sub-Committee that in addition to the policy and guidance set out at the start of the hearing, it must have regard to the Guidance issued under section 182 of the Licensing Act 2003 and in particular the following:

Paragraph 2.15: that for the purposes of the Licensing Act 2003 public nuisance is given a broad common law meaning and may include a reduction of the living and working amenity and environment of persons living and working in the area of the licensed premises. .

Paragraph 2.20: Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right.

MH also advised the Sub-Committee of its own policy and in particular the following:

Paragraph 9.2 The Licensing Authority understands the view of the Government, but considers that the risk of disturbance to local residents is greater when licensable activities continue late at night and into the early hours of the morning. For example, the risk of residents' sleep being disturbed by patrons leaving licensed premises is obviously greater at 02.00 than at 23.00. Residents have a reasonable expectation that their sleep will not be unduly disturbed between the hours of Midnight and 07:00.

MH also advised that any conditions added to the Licence must be appropriate reasonable enforceable and proportionate to the circumstances of the case.

THE SUB-COMMITTEE'S DECISION:

In determining this application, the Sub-Committee considered all the relevant evidence and information presented to it both written and oral, and took account of all the matters it is bound to take account of, in particular the following:

- Licensing Act 2003
- Statutory Guidance
- Exeter City Council Statement of Licensing Policy
- Human Rights Act 1998
- Any equality and diversity considerations

The Sub-Committee determined in accordance with its powers under section 18 of the Licensing Act 2003 to grant the Application as applied for subject to conditions consistent with the Operating Schedule and the following conditions agreed with Environmental Health.

- 1 Glass bottles shall not be deposited in any skip, bin or other container located outside the premises building except between 0800 and 2000hrs.
- 2 The Licensee shall ensure that a telephone number for contacting the licensee or a nominated person during licensable activities is made publicly available. Appropriate action shall be taken to investigate any complaint made.

REASONS FOR THE SUB-COMMITTEE'S DECISION:

The Sub-Committee considered that the nature of the Premises, the hours applied for and the proposed conditions in the Operating Schedule demonstrated that the Premises would not add to the cumulative impact of the area. The Sub-Committee was also mindful to the fact that there were no representations made by the Devon and Cornwall Constabulary in relation to the Licensing Objective of Crime and Disorder.

The Sub-Committee had regard to the assurances from the Applicant relating to the playing live and recorded music at the Premises and the Applicants willingness to co-operate with all parties and considered that the conditions set out in the Operating Schedule and the conditions not relating to the performance of live and recorded music agreed with the Environmental Health Officer were appropriate, reasonable and proportionate and promoted the Licensing Objectives.

RIGHT OF REVIEW:

Should there be problems associated with the premises in the future local residents can apply to the Licensing Authority for the premises licence to be reviewed. The same power is also exercisable by the Police and the Council's Environmental Health Department. In addition there are powers for the Council's Environmental Health Department to take action in relation to noise nuisance under the Environmental Protection Act 1990.

RIGHT OF APPEAL:

All parties are reminded of their right to appeal against this decision to the Magistrates Court by virtue of (Schedule 5) Section 181, paragraph 2 of the Licensing Act 2003. Any appeal must be made within the period of 21 days beginning with the date on which you are notified of the decision appealed against.

Any Appeal is commenced by a notice addressed to:

**The Clerk to the Justices, North and East Devon Magistrates Court Office,
Southernhay Gardens, Exeter, EX1 1UH Telephone 01392 415300**

Parties are advised to contact the court office to check the form of notice required and the fee payable.

The Chair of Licensing Sub Committee

.....
Date