

## NOTICE OF DETERMINATION

### EXETER CITY COUNCIL (Licensing Authority)

#### LICENSING ACT 2003

<b>Date of Hearing:</b>	1 July 2016
<b>Application:</b>	New Premises Licence
<b>Name of Premises:</b>	Exeter Cookery School
<b>Address:</b>	60 Haven Road, Exeter, EX2 8DP
<b>Licensing Sub-Committee:</b>	Cllr R Spackman (Chair) (RS) Cllr S Brimble (SB) Cllr G Sheldon (GS)
<b>Committee Legal Advisor:</b>	Matthew Hall (MH)
<b>Licensing Officers:</b>	Phillippa Lane (PL) and Caroline Moorhead (CM)
<b>Member Services Officer:</b>	Howard Bassett (HB)
<b>The Applicant:</b>	Mr Jim Fisher (JF) Mrs Lucy Fisher (LF)
<b>Interested Parties:</b>	Jane Legowski : Spectrum Housing Association (JL) Miss Caroline Strudwick (CS) represented by Ms Christine Squire (CS) Mr Phillip Reed (PR) Mrs Malgorzata Reed (MR)
<b>Hearing Duration:</b>	10:40hrs to 12:30hrs

#### INTRODUCTION:

The Chair introduced the members of the Sub-Committee together with the Legal Advisor, the Licensing Officer and the Democratic 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 stated that the Sub-Committee would take into account the Licensing Authority's Statement of Licensing Policy the Home Office Guidance issued under section 182 of the Licensing Act 2003 and the four licensing objectives of public safety, preventing public nuisance, preventing crime and disorder and the protection of children from harm.

MH explained that the application was for a Premises Licence under the Licensing Act 2003 and this was a separate statutory process to the planning regime. It was noted that the planning and licensing regimes involved consideration of different, albeit related, matters and that the Sub Committee was not bound by decisions made by a planning committee, and vice versa. MH explained Planning Permission had

been granted for the Premises to operate a mixed use of A1 (retail), A3 (restaurant and café) and D1 (cookery school) subject to planning conditions restricting the use of the Premises outside the hours of 08:00 to 23:00 and live or amplified music at any time unless otherwise agreed in writing by the Local Planning Authority.

PL outlined the application and confirmed it had been properly advertised in accordance with the Licensing Act 2003. The application was for a new Premises Licence as follows:

Sale of alcohol	Monday to Sunday 07.00 – 00.00
Regulated Entertainment	Monday to Sunday 09.00 – 00.00
Provision of late night refreshment	Monday to Sunday 23.00 – 01.00
Opening times	Monday to Sunday 07.00 – 00.00

The Applicants' intention was to operate the premises primarily as a cookery school, but with the added potential to use it for corporate events and other similar functions. The Applicants had circulated a letter to the local residents introducing their business and, in an attempt to mediate with the local residents, the Applicants had proposed a meeting dated 26 May 2016 to discuss any issues the residents may have with regard to the Application.

Representations had been received from local residents and interested parties concerning the potential for public nuisance and a risk to public safety together with crime/alcohol related disorder and the lateness of the proposed hours. No representations had been received from any Responsible Authority.

## **THE APPLICANT**

JF introduced and provided a background to him and his wife stating that they had previously operated a cookery school in France. They had returned to Exeter where they had originally met to open another school which would offer half and one day courses.

It was the intention to serve alcohol primarily in association with the cookery courses and generally after the completion of the courses at the end of the day. Alcohol would also be served during corporate and charity events, but he stressed that this would be on an occasional basis only and that the Premises would not be open to the passing public. JF stated that the courses would be advertised but would not be open to the public. It was the intention to sell locally produced wines and ciders, for example, as it was anticipated that those participating in the courses would wish to purchase wines at the end of the day. Alcohol would not be sold to members of the public. A "Challenge 25" policy will be operated so that no under-age drinking can occur on the Premises, LF had completed a personal licence holders course.

MH stated that the Applicants had referred to the events being by invitation only in the Operating Schedule of the Application and confirmed that if the Sub-Committee were minded to grant the Application it would be a condition of the Premises Licence that any alcohol would only be served for persons attending a pre-booked function.

JF explained that the additional events proposed, which would be by invite only, could include light refreshments, dance, film and light music, but would be "one off" events with about six a year anticipated. An example of such an event was a West Foundation Charity fashion show event held at the Met Office. JF confirmed that the hours of opening set by the planning permission would be complied with.

JF emphasised that the proposal was primarily to provide a Cookery School with occasional ancillary use for events.

JF stated that it was not anticipated that drink driving would not be an issue and that the Cookery School website would request patrons to leave the area quietly and, as far as possible, to avoid dropping off and picking up at the Premises. He referred to three separate car parks near the Premises, with some offering three hour parking which would be suitable for half day courses. A taxi service would be arranged for any events that took place.

With regard to music, JF stated that at the proposed launch event on 29th July 2016 live music, possibly classical or jazz, would be played and that recorded music could be played during courses when the School was open. Amplified music at an acceptable level may be played during evening events but windows and doors would be kept shut as much as possible. An expensive ventilation system had been purchased which would also help keep the noise to a minimum. The landlords of the Premises, at the insistence of JF and LF, had installed heritage double glazing to help prevent noise travelling from the Premises.

LF stated that the thickness of the walls would also help reduce sound from travelling and that, although the workmen preparing the Premises were not quiet, the sound of their radio within the Premises could not be heard outside.

JF stated that large companies were investing in the School. For example, kitchen appliances to the value of £105,000 were to be supplied and both he and his wife wished to meet the faith placed in them and to responsibly deliver a quality service. JF referred to a letter of support from a local resident living opposite the School and to support received from the West Foundation, Families for Children Charities and the YMCA.

JF outlined how the Premises would seek to promote the Licensing Objectives by confirming the details set out in the Operating Schedule of the Application. JF stated that a "Challenge 25" policy would operate and staff employed at the Premises would receive appropriate training. Fire alarms and fire detectors would be installed and regularly checked. Notices would be placed at the Premises and on their website and within promotional literature regarding the right of neighbours to expect peace and quiet. As the courses would be pre-booked those attending would be by invitation only and not members of the general public. As such, these patrons were likely to be responsible and well behaved.

Appropriate arrangements would be made for the retention and disposal of rubbish. Bins would be hired from the Council and suitably secured.

JF reiterated that the business was primarily a Cookery School which would teach people to cook and that they had been planning the project since March 2015.

LF stated that, although the Application was for seven days a week, it was likely that the School would shut on Mondays and Tuesdays. A varied timetable of operation was anticipated and the Premises would be offered to local businesses for occasional business breakfasts usually starting at 7.30am but these would not include music. Cookery courses would not be held every night.

Responding to GS JF stated that the ideal size for a course would be eight people, with courses up to 16 people useful for team building, for example, with teams

cooking against each other. He was unable to confirm the likely numbers for events but referring to the plan of the Premises provided with the Application, he anticipated that with the furniture moved there would be a capacity of around a 100.

SB asked why a terminal hour of midnight was sought given that it was unlikely that alcohol would be sold regularly beyond 21:00 hours. JF explained that the courses would run from 9am to 4.30pm with the occasional evening course finishing at 9.30pm. It was the intention to hold award ceremonies and charity functions for example. Evening events were expected to finish at around 11pm, but an extension was sought beyond this time in order for guests not to feel the need to leave at 11pm precisely.

MH asked the Applicant to clarify why they had applied for late night refreshment to 01:00 hrs which was beyond the Premises closing time of midnight set out in the Application.

LF stated that they wanted the flexibility in the hours as they may wish to operate after the hours they have applied for example New Year's Eve.

MH advised that without further consent to change the opening times, they could not carry out the licensable activity of late night refreshment beyond midnight.

MH asked PL for clarification in respect of the Application as to whether the Applicant had included any non-standard timings to allow the Applicant to extend hours beyond the hours applied for on special occasions such as New Year's Eve. PL stated that there was reference to seasonal variations in Box J (Supply of Alcohol) to sell alcohol until 02.00 on Bank Holidays, Christmas and New Year however if the Premises was intending to be open after Midnight and serve alcohol the Applicant would still have to apply for a Temporary Event Notice (TEN).

MH also sought clarification on the maximum number of patrons for special events anticipated and the nature of events.

JF confirmed that the likely maximum of patrons was up to 100 and that, in addition to possible New Year's Eve events, a number of enquiries had already been made for the pre- Christmas period. It was unlikely that the school would open immediately after Christmas and it was not the intention to open until 2.30 am as Bar Venezia sometimes did.

Without being called upon, MR referred to a mistake in the public register which stated that the opening times applied for were Sunday to Monday, whereas the licence being sought was for Mondays to Sundays. She asserted that some individuals would not have been inclined to object on the basis that they believed the register to be correct.

PL apologised and confirmed that this was purely an error on the register and that the requirements under the Licensing Act 2003 for advertising and publishing an application had been met. This included the correct information being on the notice outside the Premises the advertisement in the paper and the publication on the Licensing Authorities website. These all referred to the correct opening days as Mondays to Sundays.

MH stated that given the statutory requirements had been met the error on the register did not prejudice anyone.

RS, as Chair, stated that the Sub Committee had no concerns regarding the validity of the application.

PR also stated that the building works at the Premises had restricted the view of the notice affixed to the building detailing the proposed Application. PL advised that she had visited the Premises and was happy that the notice was clearly visible.

PR again without being called upon, stated that, whereas the planning application had stated that the bins would be placed within the curtilage of the Premises, they were in fact to be left on the highway which, he maintained, was unsuitable given that they would contain kitchen waste.

RS, as Chair, stated that issues relating to the planning permission were predominantly planning matters and not relevant to the Licensing Objectives.

MR, asked whether the applicants also had a cookery school in Topsham.

LF stated that they did not own any property in Topsham.

JL asked if the applicants were subletting any property. JF stated that they intended to sublet part of the Premises to a bakery which would include a break clause and that the Cookery School itself might take on this space should it decide to expand in the future.

MR stated that through the planning process and now through the licensing process, a variety of suggested closing times had been submitted by the Applicants. Initially a terminal time of 5pm had been proposed and then 6pm with a subsequent letter to residents setting out a closing time of 9.30pm. The Applicants had sought a 11pm closure as part of the planning permission but were now suggesting 12 midnight or even 2am terminal hours. MR and her husband had met JF and LF they had been advised that three occasional events were possible but that the Applicant was now suggesting at least six.

JF stated that the original planning application had been for a 11pm finish and that this remained the case generally.

#### **OBJECTORS:**

##### Mr and Mrs Reed

PR stated that their residence was 10 feet from the Cookery School at 60 Haven Road. The original proposed opening hours of 9am to 5pm Monday to Friday were now being exceeded by various suggested terminal hours throughout the week and that both the office premises above the Cookery School and the surrounding residential area would be adversely affected by noise and increased activity.

On 26 May 2016, PR and his wife had met JF and LF together with Natalie Vizard who was also a Councillor for the Newtown and St Leonards ward. The presence of Natalie Vizard gave Mr and Mrs Reed the impression that the Council would already know of the proposal for the Premises and therefore the Application would be prejudiced in favour of the Applicant.

MH advised that the presence of Natalie Vizard was not of any significance to the Sub-Committee. The Sub-Committee is independent and convened to determine this Application based on the Licensing Objectives. Any complaints about individual Councillors could be made to the Council separately and objectors should concentrate on how this Application impacts on the Licensing Objectives.

PL stated that the original representation received from both PR and MR did not refer to Natalie Vizard.

PR referred to a charity event on 26 June 2016 on the Quay which had resulted in road closures. PR stated that with the event was particularly noisy because of the layout of the Quay. PR considered that the layout of the Quay would also exacerbate noise and disturbance emanating from the Premises. .

PR stated that, with regard to noise, the City Council had undertaken tests when Terracina had been built but that there had been no subsequent tests.

PL stated that, if there were concerns regarding noise levels, Environmental Health should be contacted and that if such concerns could not be resolved a review of any premises licence granted could be instigated.

PR stated that he considered that 100 people at a "one off" event was excessive and would disturb residents particularly when leaving the Premises.

PR stated that the general increase in activity would be disruptive to this residential area within which there were a number of families with young children, some with learning difficulties. Further, the sale of alcohol could lead to crime and disorder issues which would necessitate Police involvement.

PR asked for his original written objections to be read out and PL read out PR's written objection in full.

#### Spectrum Housing Association

JL had nothing further to add to her written representations.

#### Christine Squire on behalf of Caroline Strudwick

CS asked if there was any legal definition of "occasional" in respect of the assertion from the Applicant that it would only operate occasional events.

MH stated that the Application should be considered as a whole. The Application as applied for has no limit on the number of events that the Applicant can operate within the timescales requested.

CS asked whether the Applicant could extend the hours for events.

PL stated in the event the Application was granted the Applicant would have to apply for a Temporary Events Notice (TEN) to extend the hours of licensable activities beyond those already set out in this Application. . PL stated that up to 15 TEN's were permitted for a single premises in any one year and that a personal licence holder could apply for up to 50 TEN's, but for different premises. Five TEN's could be permitted in respect of a non personal licence holder.

CS asked if a separate procedure was necessary should the School seek to expand licensable activities at the Premises.

PL stated that any such change could only be achieved by means of an application for a minor or full variation of the Premises licence. An application for a full variation of the Premises Licence follow the same consultation process as the grant of a new

Licence. Therefore there would be an opportunity for objections to be raised. Similarly, a review of the premises licence could be requested by the public.

## **SUMMING UP**

MH invited further comments from all parties. 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 in respect of the Licensing Objective of preventing Public Nuisance:

*Paragraph 2.14: The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes a public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of the licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance light pollution, noxious smells and litter.*

MH advised that all applications must be determined on their own merits and referred to paragraph 10.1 of the Council's Statement of Licensing Policy which states:

*When considering whether any licensed activity should be permitted after its discretion has been engaged e.g. following representations, the Licensing Authority will assess the likelihood of that activity causing unacceptable adverse impact, particularly on local residents and businesses, by considering the following factors amongst other relevant matters:*

- *The type of use;*
- *the proposed hours of operation;*
- *the means of access and egress to the premises by patrons;*
- *the measures that are proposed to avoid nuisance being caused to residents and businesses in particular from outside smoking, drinking and eating in terms of noise, obstruction of the highway and anti-social behaviour.*

## **THE SUB-COMMITTEE'S DECISION:**

In determining this application, the Sub-Committee had carefully 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.

In accordance with its powers under section 18 of the Licensing Act 2003 the Sub-Committee has determined to grant the Application as applied for subject to conditions consistent with the Operating Schedule and the following further condition:

All windows and external doors at the Premises shall be kept closed after 21.00 hours or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.

**REASONS FOR THE SUB-COMMITTEE'S DECISION:**

The Sub-Committee were mindful of the residents' concerns but granted the Application as it considered there would be no negative impact on the Licensing Objectives for the following reasons:

1. The nature of the premises and its proposed operation predominantly as a Cookery School with ancillary events/functions;
2. The conditions set out in the Operating Schedule restricting access to the general public and the monitoring of noise together with a further condition to ensure that the windows were closed during regulated entertainment and after 2100hrs;
3. There had been no representations received from a responsible authority; and
4. There was insufficient evidence presented that the Application would have a negative impact on the Licensing Objectives.

**Advisory Note:** The Licensing Sub-Committee reminded all parties that the Licence could be reviewed in the event that the Licensing Objectives were not promoted and reminded the Applicants that the Premises required planning consent in order to operate the hours granted in this Licence.

**RIGHT OF REVIEW:** Should there be issues 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**



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Date: 6 July 2016