

**EXETER CITY COUNCIL (Licensing Authority)
LICENSING ACT 2003**

NOTICE OF DETERMINATION

Application under Licensing Act 2003 section 34 for the variation of a premises licence in respect of The Bike Shed, 162-163 Fore Street Exeter EX4 9JY.

Decision of the Licensing Sub-Committee sitting at the Civic Centre Exeter on Monday 18 October 2010 at 0930hrs, convened under Licensing Act 2003.

Councillor R Newby (Chairman), Councillor N Shiel, Councillor Mrs H Sterry

In the presence of the Principal Licensing Officer Ian Ley (IL) and the Licensing Solicitor Elaine Kale (EK)

The meeting commenced at 0940hrs and closed at 1040hrs

In attendance for the Applicant for a variation to the premises licence Mr F Irwin-Bowler (FI-B) and Mr D Lockwood (DL). In attendance for the Responsible Authority Devon and Somerset Fire and Rescue (DSFRS) Ms M Purchase (MP) and Mr K Baker (KB). Before the hearing commenced the Chairman declared former employment with another fire rescue service stating that he did not think this raised the possibility of bias on his part. Parties to the proceedings were advised to make any submissions in respect of this but none was made. EK advised the Applicant and the Responsible Authority as to the procedure adopted by the Licensing Sub-Committee and each confirmed that they understood.

Application

The Applicant applied for the variation of the premises licence in the terms set out at pages 3 – 19 of the Operating Schedule which accompanied the application.

The licensable activities to be varied were as follows:

- (A) Plays
- (E) Live music
- (F) Recorded music
- (G) Performance of dance
- (H) Anything of a similar description to that falling within E, F or G
- (I) Provision of facilities for making music
- (J) Provision of facilities for dancing
- (K) Provision of facilities for entertainment of a similar description to that falling within I or J
- (L) Late night refreshment
- (M) Supply of alcohol

The licensable activity of:

- (B) Films

is to be added to the licence

The licensing hours applied for in respect of each activity with the exception of (L) are:

Sunday - Saturday 1100hrs – 0200hrs.

The licensing hours applied for in respect of (L) are:

Sunday – Saturday 2300hrs – 0200hrs.

In addition the Applicant applied to remove the conditions requiring the Premises Licence Holder to join the EBAC, for the bar to be staffed at all times, for substantial food to be available, for a noise limiter to be installed and for the avoidance of doubt all conditions under the Public Entertainment Licence (embedded restrictions, attendance, marking of doors, smoking, hypnotism, maximum number of persons, striptease entertainment and Licensing Act 1964 embedded restrictions). There were no relevant representations relating to this aspect of the variation so these matters were not considered in the course of the hearing.

FI-B explained the nature of the application to the Licensing Sub-Committee. There is an application to transfer the existing premises licence into his name and the variation centres on the addition of a basement area to be used as a theatre auditorium. At present building regulation approval is outstanding but the Applicant is working towards meeting these requirements. The Devon and Somerset Fire Rescue Service have given a list of matters to be addressed and the Applicant has started to address these. Generally speaking, this relates to escape routes and exits being in place as well as matters such as emergency lighting being installed in the bar area. DL explained that the building was previously licensed as a restaurant and had only one exit at that time but it now had two exits. There is a new entrance into the bar. A CCTV system has been installed. The Applicant is working on an evacuation procedure and ensuring that all staff are adequately trained. The premises would operate a ticketing system. Outstanding matters still to be addressed included changing doors to open outwards to improve safety for exiting the building. FI-B explained that the maximum capacity for the building was 60 which was not a lot of people. A surveyor had prepared a report into the structural integrity of the building and there was no risk to the structural integrity of the building or of disproportionate collapse.

In response to a question from Councillor Newby the Applicant confirmed that the numbers in the café bar as well as those in the theatre auditorium meant that the capacity of the whole building was 120.

There is an issue because the fire escape door was 730mm wide and not 750mm wide. The Applicant had understood that he would not be able to make alterations to this door because of the listed status of the building; however they had had conversations with Conservation and Planning Officers and now believe this may be possible.

In response to a question from Councillor Shiel who asked the Applicant to confirm his interpretation that it had expressed a basic willingness to comply with the requirements of the fire authority, the Applicant confirmed that this was indeed the case.

Councillor Sterry asked if alcohol sales were to be for consumption off the premises. EK advised that this was no longer a significant aspect of licensing as it was the sale of alcohol that was licensed rather than the consumption. The Applicant confirmed, in any event, that there would be no consumption off the premises.

Respondent Responsible Authority

MP, the Fire Protection Officer for the Exeter Support Group of DSFRS confirmed that a representation had been lodged on 16 September 2010. At that stage a variation of the

premises licence had been applied for but that application for building regulation approval had been rejected. The application for building regulation approval was one for change of use. DSFRS is not able to consult where an application for building regulation approval is rejected. For this reason the Respondent did not want to make observations at the hearing. The Respondent was not aware a structural report had been done. The Respondent was able to give advice about risk assessments but was not able to prepare them for the Applicant. They had given the Applicant advice about complying with these aspects. The recommendation of the DSFRS was that the licence should not be granted until building regulations were satisfied. In addition there was concern over the occupancy of the building as they felt the door was too small and could not be an exit. 60 was the total capacity for staff and those working in the bar and not just the audience.

EK advising that capacity conditions could not be placed on the premises licence in these circumstances as this was now a matter to be dealt with under the Regulatory Reform (Fire Safety) Order 2005 and was firmly in the domain of the DSFRS. EK also advising that lack of building regulation approval alone was not a valid licensing objection. EK advising that as far as risk assessments were concerned there were no objections from the relevant health and safety authority which in this case would be Exeter City Council having jurisdiction for theatres in the city. EK asked whether there would be any residual concerns on the part of the Respondent assuming Building Regulation consent was obtained and all aspects of the Regulatory Reform (Fire Safety) Order 2005 complied with. It seemed there were not.

KB explained his understating of how building regulation consent would operate. There was some confusion on the part of the Applicant as to why Building Control Officers had not visited the premises and asked for various matters to be attended to. It was explained that Building Control Officers would only visit the Applicant if an application was satisfactory.

The Applicant discussed the lack of disabled access as an issue they considered important and which they would address at a later stage as soon as the premises was able to open.

In summing up the Respondent said it was unhappy with the application because of the lack of building regulation approval.

In summing up the Applicant said it would not be able to open before building regulation consent was obtained in any event. They wanted to and would adhere to all public safety measures that they were required to.

IL reminded the Licensing Sub-Committee of the fact that this was an application for a variation and that there was a premises licence already in operation at the premises.

The Licensing Sub-Committee retired to consider the application at 1015hrs.

The Licensing Sub-Committee completed its deliberation at 1035hrs

The Decision

In determining this application the Licensing Sub-Committee considered all the evidence before it both written and oral and took into account all matters it is bound to take into account in particular the following:

- Licensing Act 2003 (section 34)
- Statutory Guidance March 2010
- Exeter City Council Statement of Licensing Policy January 2010
- Human Rights Act 1998

The Licensing Sub-Committee determined that there was no sufficient evidence presented to it on the application that justified the exercise of its powers to impose conditions or refuse the application for variation and accordingly the variation was granted as applied for.

The Licensing Sub-Committee recommended that the Applicant for variation obtain the requisite building regulation consent and advised that a criminal offence would likely be committed if the premises opened without this.

Right of Appeal

All parties are reminded of their right to appeal to the Magistrates' Court against this decision by virtue of (Schedule 5) section 181, paragraph 4 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.

Appeal is commenced by a notice addressed to:

The Clerk to the Justices, Central Devon Magistrates' Court Office, Southernhay Gardens,
Exeter EX1 1UH Telephone 01392 415560

Parties are advised to contact the Court Office to check the form of notice required and the fee payable.

Date of notice: 20 October 2010

Principal Licensing Officer