

DECISION RECORD

Licensing Act 2003 (all section references in this record are references to the Act)

LICENSING AUTHORITY FOR BRISTOL

LICENSING (HEARINGS) SUB COMMITTEE MEETING HELD ON 8 May 2014

AGENDA TITLE

Conduct of a hearing into an application for the GRANT of a licence made by Curtis & Bell in respect of Curtis & Bell Patisserie & Bar, 234 North Street, Bedminster, Bristol BS3 1JD

MEMBERS PRESENT:

1. Councillor Wollacott (Chair)
2. Councillor Morgan

OFFICERS PRESENT

Kate Burnham-Davies, Legal Advisor
Abigail Holman, Licensing Policy Adviser
Allison Taylor, Democratic Services

REPRESENTATIONS RECEIVED FROM:

Mr Dylan Davies
Mr Paul Honeychurch 887
Mr Wayne Jones
Liz Kalaugher

Applicants, responsible authorities and interested parties

PARTIES & REPRESENTATIVE (IF ANY) in attendance

Applicant

Mr Curtis – Applicant
Jeremy Woodcraft - Solicitor

Chief Officer of Police (s.13(4)(a))

Not in attendance but the Committee had regard to the representation of PC Honeychurch

Fire Authority (s.13(4)(b))

Not a party to this hearing

Health and Safety Enforcing Authority (s.13(4)(c))

Not a party to this hearing

Local Planning Authority (s.13 (4) (d))

Not a party to this hearing

Environmental Health (Pollution Control) (s.13 (4) (e))

Dylan Davies

Social Services Authority (s.13 (4) (f))	Not a party to this hearing
Any other relevant Licensing Authority (s.13 (4) (g))	Wayne Jones – Licensing Authority
Weights and Measures Authority (s.13. (4) (i))	Not a party to this hearing
Relevant persons who are persons living in the vicinity of the premises (s.13 (3) (a))	Not in attendance but the Committee had regard to the representation of Liz Kalaugher
Relevant persons who are a body representing persons living in that vicinity (s.13 (3) (b))	Not a party to this hearing
Relevant persons who are persons involved in a business in that vicinity (s.13 (3) (c))	Not a party to this hearing
Relevant persons who are bodies representing persons involved in such businesses (s.13 (3) (d))	Not a party to this hearing

RECORD OF HEARING:

The authority made a contemporaneous hand written (long hand) record of the hearing. Any party wishing to receive a typed transcript should contact Councillor Support Officer (Democratic Services, City Hall, College Green, Bristol) for information regarding the arrangements for transcribing and any charge levied where the authority produces the same. Set out below is a summary of the reasons for the decision, in the event of an appeal the Licensing Authority reserves the right to elaborate on the reasons.

DECISION MADE:

1. That the application be **GRANTED** subject to the conditions on the licence as detailed below, the addition of conditions as detailed in Annex 3 below and the mandatory conditions included in the licence under section 19, 20, 21 of the Act

Accordingly the licence is to be issued subject to the following

Licensable activities authorised by the licence and the times the licence authorises the carrying on of licensable activities

STANDARD TIMES

Licensable activities authorised by the licence and the times the licence authorises the carrying out of licensable activities.

Sale of Alcohol	Sunday to Wednesday 08:00 - 23:00
Sale of Alcohol	Thursday to Saturday 08:00 - 23:30
Films	Sunday to Wednesday 08:00 - 23:30

Films	Thursday to Saturday 08:00 - 00:00
Recorded Music	Monday to Sunday 19:00 - 23:00
Late Night Refreshment	Sunday to Wednesday 23:00 - 23:30
Late Night Refreshment	Thursday to Saturday 23:00 - 00:00

Supply of alcohol authorised for On and Off the premises

The opening hours of the premises	
Sunday to Wednesday	08:00 - 23:30
Thursday to Saturday	08:00 - 00:00

NON STANDARD TIMINGS
Supply Of Alcohol, Recorded Music, Late Night Refreshment, and Opening Hours: On New Year's Eve - extend permitted hours to 02:00 hrs the following morning

Annex 1 – Mandatory conditions

Mandatory condition Licensing Act 2003 - Supply of Alcohol

1.No supply of alcohol may be made under the premises licence-

(a) at a time when there is no designated premises supervisor in respect of the premises licence, or

(b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

2. Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Mandatory Licensing Conditions - Additional conditions imposed by Policing and Crime Act 2009

Conditions numbered 1,2, and 3 shall be in force as of the 6 April 2010

Conditions 1, 2, 3 and 5 shall not apply where the premises licence authorises sale by retail or supply of alcohol only for consumption off the premises.

1. (1) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children-

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to-

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;

(d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on-

(i) the outcome of a race, competition or other event or process, or

(ii) the likelihood of anything occurring or not occurring;

(e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.

2. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

3. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

Conditions numbered 4 and 5 shall be in force as of the 1 October 2010

4.(1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

(2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

5. The responsible person shall ensure that-

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures-

(i) beer or cider: ½ pint;

(ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and

(iii) still wine in a glass: 125 ml; and

(b) customers are made aware of the availability of these measures.

Mandatory condition Licensing Act 2003 - Door Supervision

Where this licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, each such individual must:

(a) be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or

(b) be entitled to carry out that activity by virtue of section 4 of that Act.

(As required by s21 Licensing Act 2003 as amended by the Violent Crime Reduction Act)

Mandatory condition Licensing Act 2003 - Exhibition of Films

In this section - "Children" means persons aged under 18."

The admission of persons to the exhibition of any film shall be restricted in accordance with any recommendations made by the Licensing Authority, Bristol City Council as the relevant film classification body, save that in those circumstances where the Licensing Authority has made no recommendation which applies to the particular film, the admission of persons

shall be restricted in accordance with any recommendation made by the British Board of Film Classification. Children shall not be admitted to any exhibition of films at times where access to the premises by children has been restricted by the conditions of this licence.

In accordance with section 20 (3) (b) The Licensing Authority for Bristol hereby notifies the premises licence holder that this licence does not authorise the exhibition of any film categorised by the Licensing Authority or the Film Classification Body as R18. This restriction shall not apply to those premises licensed as a sex cinema in accordance with the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 Section 2 Control of Sex Establishments.

Annex 2 – Conditions consistent with the Operating Schedule

Conditions consistent with the operating schedule submitted on 13 March 2014

1 Further Details

Films – Limited to Indoors only
Typically music videos on TV - type screen

Recorded Music - Limited to Indoors only
Music by way of CD's or other sound system. For the majority of hours permitted, music will be played at background level.

Late night refreshment - provision shall take place indoors only

2 The premises shall not be permitted to be used for any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children, which prohibited uses include, among other things, nudity or semi-nudity, films for restricted age groups or any relevant entertainment (with the meaning of the third schedule to the Local Government (Miscellaneous Provisions) Act 1982 except where that is expressly permitted under a licence or waiver granted or given under that legislation.

Annex 3 – Conditions attached after a hearing by the licensing authority

Conditions proposed by Responsible Authorities:

Pollution Control

1 NP68 - Noise from plant & equipment

Noise from any ventilation, refrigeration or air conditioning plant or equipment shall not cause nuisance to the occupants of any properties in the vicinity.

Recommendation:

(a) The Rating Level of any noise from any fixed plant shall not exceed the background noise level by more than 0dB at the nearest noise sensitive property as determined by BS 4142: 1997 Method of Rating Industrial Noise Affecting Mixed Residential and Industrial Areas at any time.

(b) Anti vibration mounts should be used to isolate plant from fixed structures and a flexible connector used to connect the flue to the fan if there is a potential to transmit vibration to any noise sensitive property. Any systems will also need regular maintenance so as to reduce mechanical noise.

Guidance on the above can be gained at 'Guidance on the Control of Odour & Noise from

Commercial Kitchen Exhaust System' Published electronically by Department for Environment, Food and Rural Affairs. Product Code PB10527.

2 WM10 - Odour from any flue used for the dispersal of cooking smells serving the building shall not cause nuisance to the occupants of any properties in the vicinity. Recommendation: It is recommended that any flues for the dispersal of cooking smells shall either:

- (i) Terminates at least 1 metre above the ridge height of any building in the vicinity, with no obstruction of upward movement of air or:
- (ii) Have a method of odour control such as activated carbon filters, electrostatic precipitation or inline oxidation.

Guidance on the above can be gained at 'Guidance on the Control of Odour & Noise from Commercial Kitchen Exhaust System' Published electronically by Department for Environment, Food and Rural Affairs. Product Code PB10527.

<http://www.defra.gov.uk/environment/noise/research/kitchenexhaust/pdf/kitchenreport.pdf>

3 NP39 - Noise Limiter

- (i) If officers of the council witness noise at a level that causes unreasonable disturbance to the occupants of any properties in the vicinity then a noise limiting device shall be used in relation to all sound amplification equipment used in conjunction with the Premises Licence.
- (ii) The noise limiting device shall be installed and set at a level approved by the Council through an authorised officer of the Pollution Control Team within 1 month of notification, for its requirement, from the Licensing Authority.
- (iii) The noise limiting device shall be properly secured so that it can not be tampered with.
- (iv) The noise limiting device shall only be reset with the authority of the Council through an authorised officer of the Pollution Control Team.
- (v) If deemed necessary, the noise limiting device shall be reset to a level approved by the Council through an authorised officer of the Pollution Control Team within 14 days of notification.

4 Customer Noise - NP57

Clear notices displayed at all points where customers leave the building must instruct them to respect the needs of local residents and leave the premises and the area quietly.

5 NP61 (amended)

There shall be no consumption of beverages in the outside area to the front of the premises between 22:30 and 08:00hrs.

6 Litter – WM3

The licence holder shall ensure that adequate measures are in place to remove litter or waste arising from their customers and to prevent such litter from accumulating in the immediate vicinity of their premises. In particular, where necessary the premises licence holder shall ensure that adequate measures are in place to provide customers with sufficient receptacles for the depositing of waste materials such as food wrappings, drinks containers, smoking related litter, etc.

7 Refuse, Collections and Deliveries - WM7 (amended)

Activities relating to the on site disposal (including placing into external receptacles) of refuse, bottles and recyclable materials shall only take place between 08:00 and 21:00hrs.

8 WM8

The collection of refuse, bottles and recyclable materials shall only take place between 08.00 and 21.00 Monday to Saturday and not at all on Sundays or Bank Holidays.

9 WM9

Activities relating to deliveries shall only take place between 08.00 and 21.00 Monday to Saturday and not at all on Sundays or Bank Holidays.

10 General

If justified complaints of noise nuisance are received by Bristol City Council then following discussions with authorised officer(s) of Bristol City Council's Pollution Control Team any appropriate steps identified by authorised officer(s) of Bristol City Council's Pollution Control Team shall be taken to prevent further unreasonable disturbance to the occupiers of properties in the vicinity.

11 Lighting - PS01 - Outdoor lighting shall be positioned, so far as is reasonably practicable, so as to limit its intrusion into residential accommodation in the vicinity of the licensed premises whilst maintaining an adequate level of lighting for the safe access and egress of customers and persons employed at the premises.

Avon and Somerset Police

12 CCTV

CC01 - CCTV shall be in use at the premises.

(i) Where a CCTV system is to be installed, extended or replaced, it shall be to an appropriate standard as agreed with the Licensing Authority in consultation with the Police. Where a CCTV system is to be installed it shall be fully operational by commencement of this premises licence. Where existing CCTV systems are to be replaced or extended the replacement or extension to the system shall be concluded by commencement of this premises licence and the system be fully operational on that date.

(ii) The CCTV equipment shall be maintained in good working order and continually record when licensable activity takes place and for a period of two hours afterwards.

(iii) The premises licence holder shall ensure images from the CCTV are retained for a period of 31 days. This image retention period may be reviewed as appropriate by the Licensing Authority

(iv) The correct time and date will be generated onto both the recording and the real time image screen.

(v) If the CCTV equipment (Including any mobile units in use at the premises) breaks down the Premises Licence Holder shall ensure the designated premises supervisor, or in his/her absence other responsible person, verbally informs the Licensing Authority and the Police as soon as is reasonably practicable. This information shall be contemporaneously recorded in the incident report register and shall include the time, date and means this was done and to whom the information was reported. Equipment failures shall be repaired or replaced as soon as is reasonably practicable and without undue delay. The Licensing Authority and the Police shall be informed when faults are rectified.

(vi) The premises Licence holder shall ensure that there are trained members of staff available during licensable hours to be able to reproduce and download CCTV images into a removable format at the request of an authorised officer of the Licensing Authority or a constable.

(vii) There shall be clear signage indicating that CCTV equipment is in use and recording at the premises during all licensable hours

13 PS11 - Spirits shall be located (insert location), and all other alcoholic beverages to be located on display in such a position that it is not obscured from the constant view of the cashier / staff by other fixtures. (If this is not reasonably practical because of refrigeration

or other limitations, the Licensing Authority shall be consulted regarding other suitable locations in the premises).

14 SA01 - All staff to be trained in the prevention of underage sales to a level commensurate with their duties. All such training to be updated as necessary, for instance when legislation changes, and should include training on how to deal with difficult customers. The training should be clearly documented and signed and dated by both the trainer and the member of staff receiving it. The documentation shall be available for inspection on request by an authorised officer of the Licensing Authority or a constable.

15 SA02 - (a) An approved proof of age scheme shall be adopted, implemented and advertised within the premise such as "Challenge 25" whereby an accepted form of photographic identification shall be requested before any alcohol is sold to any person who appears to be under 25 years of age. Acceptable proof of age shall include identification bearing the customers photograph, date of birth and integral holographic mark or security measure. Suitable means of identification would include PASS approved proof of age card, photo-card driving licence and passport.

(b) Publicity materials notifying customers of the operation of the Challenge 25 scheme shall be displayed at the premises, including a Challenge 25 sign of at least A5 size at the entrance to the premises and where practicable at each point of sale.

16 SA03 - The premises licence holder shall require the designated premises supervisor, or in his/her absence other responsible person, to keep an 'incident/refusals logbook in a bound book in which full details of all incidents are recorded. This shall include details of any refused sales and shall give details of the persons involved, incident description, time and date, actions taken and final outcome of the situation. This shall be completed as soon as possible and in any case no later than the close of business on the day of the incident. The time and date when the report was completed, and by whom, is to form part of the entry. The logbook is to be kept on the premises at all times and shall be produced to an authorised officer of the Licensing Authority or a constable when required

17 Cider, beer or lager with an ABV in excess of 6% shall not be displayed, sold or offered for sale.

Licensing Authority

18 NP02 - Amplified music shall not be played at a level that will cause unreasonable disturbance to the occupants of any properties in the vicinity.

19 NP03 - Except for access and egress all doors and windows shall be kept closed during periods of entertainment associated with the Premises Licence.

20 NP04 - No speakers for amplification of music shall be placed on the outside of the premises or on the outside of any building forming a part of the premises.

21 NP29: The premises licence holder shall take appropriate measures to ensure that patrons using any outside areas (such as terraces and beer gardens) do so in a quiet and orderly fashion.

22 NP63 - The premises supervisor, manager or other competent person shall manage the outdoor area to ensure that customers do not behave in a noisy, rowdy or offensive manner.

23 NP64 - Clear notices must be displayed at prominent points in all outdoor areas requesting that they respect the needs of local residents and behave in a quiet and orderly manner.

24 EX02 - All outside areas must be closed and cleared of customers by 23:00 hours. Adequate notices shall be displayed to inform patrons of this requirement.

25 EX04 - The premises licence holder shall forward a plan to the Licensing Authority within one month of the date of the grant of the licence of the external areas, which shall illustrate the layout and numbers of all furniture including tables and chairs, access and egress points to those areas.

26 EX06 - A risk assessment shall be conducted and regularly reviewed to assess the numbers of persons that the outside area can safely accommodate. The premises licence holder shall ensure that there are measures in place to monitor the external area to ensure that a safe occupancy figure is not exceeded.

Conditions attached after this hearing by the licensing authority

Conditions imposed by this committee

27 There shall be no customers in the outdoor rear area of the premises at any time.

28 Any outdoor drinking areas must not be used by customers after 23:00 hrs.

29 There shall be no beverages in the front drinking area after 22.30 hrs.

Annex 4 – Plans

Plans as submitted to the Licensing Authority on 13 March 2014.

2. That the GRANT here agreed will take effect immediate effect.

3. That in accordance with Section 23 of the Act a duly authorised officer be directed to give Notice of determination to:

- (a) Curtis & Bell
- (b) The Chief Officer of Police

And the following bodies that made representations:

Mr Dylan Davies
Mr Paul Honeychurch 887
Mr Wayne Jones
Liz Kalaugher

REASONS FOR DECISION

The following paragraphs summarise the sub-committee's reasons for granting the application and for modifying the conditions on the Licence.

The sub-committee carefully considered the representations together with the information provided for the Hearing and that received during it. The sub-committee had regard to the Secretary of State's guidance to Licensing Authorities and the Authorities own statement of licensing policy.

The committee's decision was particularly influenced by the consideration of the promotion of the licensing objectives concerning the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm.

The Committee first noted that the premises was located within an area that had been designated under the Council's Statement of Licensing Policy as a Cumulative Impact Area. "Cumulative Impact" is defined in the National Guidance as the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. For example, the potential impact on crime and disorder or public nuisance in a town or city centre of a large concentration of licensed premises in that part of the local authority area. The effect of adopting a Cumulative Impact Policy is to create a rebuttable presumption that applications for new premises licences will normally be refused if relevant representations to that effect are received, unless it can be demonstrated by the applicant that the operation of the premises will not add to the cumulative impact already being experienced in the area.

The Committee first heard that;-

- The application arose from the proposal to sub-divide the present combined premises of 232 and 234 North St into two completely separate businesses. The current owner planned to continue to operate 232 North St as a smaller premises;
- This application sought to continue the existing licensable activities and trading hours;
- The applicant had agreed more restrictive conditions than had previously been imposed with the Police in order to promote the licensing objectives which included no draft beer sold, a capacity of 50 and food to be available throughout the day;
- The current licence would be surrendered subject to the grant of this licence;
- The premises style would be a patisserie/café which would have an extensive wine list, Champagne and two bottles beers and would serve a dish of the day in the evening;
- The applicant was trained in Geneva and had a Masters in Patisserie;
- Flexibility was important to the offer as he wished to be able to serve a customer millefeuille at 9pm;
- The applicant had been unsuccessful in contacting the Relevant Person to allay her concerns. He believed the premises was not the type of premises where there would be late night noise. He understood her concerns with respect to the area but not for his premises.

The Licensing Authority representative stated that his main concern had been noise nuisance in a CIA area but was content with the application subject to the outside area being cleared of customers by 22.30 hours.

The Pollution Control representative stated there had been a few complaints with the previous premises regarding music but these had been resolved easily. He was satisfied with the application as all conditions had been agreed by the applicant. It was noted that there was no intention for customers to use the outside rear of the premises.

The applicant, in sum up, stated that the new premises was of a much smaller scale than the past. He believed it offered something different and was a positive benefit to the street.

The Committee, having carefully deliberated, agreed that the CIA was not triggered by this application as the premises was not the type of venue the policy had been intended for. The application could therefore be treated on its merits. The Committee therefore agreed to grant the application as applied for and subject to all conditions agreed with the Responsible Authorities.

The Committee noted the concerns of the Relevant Person but this venue was not the type that would cause her concerns and nevertheless conditions had been agreed which promoted the licensing objectives and mitigated any concerns

SIGNED:

CHAIR

Name: Councillor Woolacott

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