

## 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 18 June 2014 and 25 June 2014 (immediately following a Site Inspection)

#### AGENDA TITLE

Conduct of a hearing into an application for the GRANT of a licence made by Nueva Cocina Ltd in respect of Flour And Ash, 203B Cheltenham Road, Bristol, BS6 5QX

#### MEMBERS PRESENT:

1. Councillor Pearce (Chair)
2. Councillor Morgan
3. Councillor Payne

#### OFFICERS PRESENT

Naseem Aziz, Legal Advisor  
Abbi Holman Licensing Policy Adviser  
Jeremy Livitt, Committee Clerk

#### REPRESENTATIONS RECEIVED FROM:

Lydia Spry  
Mrs Victoria Wilkins  
Geoff Sherratt  
Mr David Hutt  
Gina Thomas  
Mr P Wilkes  
Mr MacGregor  
Mark Curtis  
Sgt Jonathan Derrick  
Dave Thomas  
Cathy Stanbrook  
Matthew Bolton

#### Applicants, responsible authorities and interested parties

#### PARTIES & REPRESENTATIVE (IF ANY) in attendance

Applicant

Mr Gale

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

Mr Derrick

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

Not Applicable

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

Not Applicable

<b>Local Planning Authority (s.13 (4) (d))</b>	<b>Not Applicable</b>
<b>Environmental Health (Pollution Control) (s.13 (4) (e))</b>	<b>Not Applicable</b>
<b>Social Services Authority (s.13 (4) (f))</b>	<b>Not Applicable</b>
<b>Any other relevant Licensing Authority (s.13 (4) (g))</b>	<b>Not Applicable</b>
<b>Weights and Measures Authority (s.13. (4) (i))</b>	<b>Not Applicable</b>
<b>Relevant persons who are persons living in the vicinity of the premises (s.13 (3) (a))</b>	<b>Not Applicable</b>
<b>Relevant persons who are a body representing persons living in that vicinity (s.13 (3) (b))</b>	<b>Not Applicable</b>
<b>Relevant persons who are persons involved in a business in that vicinity (s.13 (3) (c))</b>	<b>Not Applicable</b>
<b>Relevant persons who are bodies representing persons involved in such businesses (s.13 (3) (d))</b>	<b>Not Applicable</b>

**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: Following a Site Inspection by the Licensing Sub-Committee on 25<sup>th</sup> June 2014, the following decision was made**

1. (a) That the application be GRANTED IN PART AND REJECTED IN PART subject to the conditions on the licence as modified as follows:
  - (i) The addition of conditions as detailed in Annex 3 below
  - (ii) The mandatory conditions included in the licence under section 19 and 21 of the Act
- (b) That the following licensable activities to which the application relates shall be excluded from the scope of the licence- RECORDED MUSIC
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) Nueva Cocina Ltd
  - (b) The Chief Officer of Police

And the following bodies that made representations:

Lydia Spry  
Mrs Victoria Wilkins

Geoff Sherratt  
Mr David Hutt  
Gina Thomas  
Mr P Wilkes  
Mark Curtis  
Sgt Jonathan Derrick  
Dave Thomas  
Cathy Stanbrook  
Matthew Bolton

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

<b>Licensable activities authorised by the licence and the times the licence authorises the carrying out of licensable activities.</b>	
--	--

Sale of Alcohol	Monday to Sunday 12:00 - 23:00
-----------------	--------------------------------

Late Night Refreshment	Monday to Sunday 23:00 - 23:30
------------------------	--------------------------------

Supply of alcohol authorised for On and Off the premises

<b>The opening hours of the premises</b>	
--	--

Monday to Sunday	12:00 - 23:30
------------------	---------------

<b>NON STANDARD TIMINGS</b>
-----------------------------

Late Night Refreshment, Supply of Alcohol and Opening Hours:

From the end of permitted hours on New Year's Eve until the start of permitted hours on New Year's Day

#### Annex 1 – Mandatory conditions

- 1 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.

## 2 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)

## **Annex 2 – Conditions consistent with the Operating Schedule**

### **Conditions consistent with the operating schedule application submitted on 30 April 2014**

#### 1 Further Details

Late Night Refreshment: provision shall take place indoors only

Sale of coffee, other hot drinks and hot food and desserts

2 EL09: Electrical installation in areas used by members of the public shall be subject to the following:

(i) Any alterations made to electrical installations, including the use of temporary wiring and distribution systems, shall comply with the relevant edition of the Regulations for the Electrical Equipment of Buildings issued by the Institution of Electrical Engineers (BS 7671 or any British Standard replacing or amending the same).

(ii) All electrical equipment and installations shall be subject to regular visual checks to ensure that they are safe and in good working order, as well as formal routine tests by a competent person as advised in the aforementioned BS 7671 guidance.

(iii) A Residual Current Device protection sensitive to tripping currents of not more than 30 milli-amperes, must be fitted to power circuits supplying outdoor sockets and also indoor sockets that might be expected, with the use of plug-in extension leads, to power outdoor circuits.

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

4 CV11: 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.

5 Children must be accompanied by an adult

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

Conditions recommended by Responsible Authorities:

#### **Public Protection**

- 1 CA08 The licence holder shall determine the occupant capacity of the premises on the basis of documented risk assessment(s).
  - (i) The risk assessment(s) must take into account all relevant factors including space, means of access and egress, toilet provision, load-bearing capacity of floors, ventilation, etc and must be reviewed regularly, and if circumstances change.
  - (ii) Where necessary separate occupancy levels must be set for different parts of the premises.
  - (iii) The premises licence holder shall ensure that they consult the Public Health Services of Bristol City Council and any other relevant authority (for example the Fire Rescue Service regarding emergency evacuation limitations) as to the occupancy figure. Confirmation of the consultation and any outcomes shall form an integral part of the risk assessment on which the capacity figure is based.
  - (iv) The capacity figure proposed by the premises licence holder shall be notified to the Licensing Authority in writing prior to the commencement of the licence.
  - (v) Measures must be put in place to ensure that the capacity is not exceeded at any time.
  - (vi) All documentation pertaining to the proposed figure must be kept on the premises and must be available immediately on request to any authorised officer of the Licensing Authority or a constable.
  - (vii) The premises licence holder shall regularly review, update and amend any risk assessments particularly following any changes to the layout or operation of the venue. Such reviews etc shall be fully documented and form an integral part of the risk assessment.

#### **Avon and Somerset Constabulary**

- 2 CV05 Intoxicating liquor will only be sold and supplied to customers who are engaging in a sit down table meal, as an ancillary to that meal.
- 3 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.
- 4 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.

- 5 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.
- 6 Off Sales will be limited to persons who having taken a table meal wish to buy a bottle of wine or bottle of other alcoholic drink to take home with them.

### **Pollution Control**

#### Sound Insulation

- 7 A detailed scheme of noise insulation measures for both music and customer noise shall be submitted to and approved in writing, by an Officer of the Pollution Control Team, Bristol City Council. The noise insulation measures shall be designed to achieve noise insulation to a standard that nuisance will not be caused to the occupiers of any residential accommodation in the vicinity by noise from music and customers from these premises.

The assessment and scheme of noise insulation measures shall be carried out by a suitably qualified acoustic consultant/ engineer and shall take into account the provisions of PPG 24 Planning Policy Guidance: Planning and Noise, BS4142: 1997 "Method of rating industrial noise affecting mixed residential and industrial areas" and BS 8233: 1999 "Sound Insulation and Noise Insulation for Buildings - Code of Practice".

The approved details shall be implemented in full prior to the commencement of the use of the premises licence.

Recommendation:

(i) The recommended design criteria for dwellings are as follows:

Daytime (07.00 - 23.00) 35 dB LAeq 16 hours in all rooms

Nighttime (23.00 - 07.00) 30 dB LAeq 8 hours in bedrooms

Where residential properties are likely to be affected by amplified music from neighbouring pubs or clubs, the recommended design criteria is as follows:

Noise Rating Curve NR20 at all times in any habitable rooms

#### Customer Noise

- 9 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.

Refuse, Collections and Deliveries

10 Activities relating to the placing of refuse, bottles and recyclable material into external receptacles shall only take place between 09.00 hours and 20.00 hours,

11 The collection of refuse, bottles and recyclable materials shall only take place between 07.00 hours and 20.00 hours Monday to Saturday and not at all on Sundays or Bank Holidays.

#### **Conditions attached after this hearing by the licensing authority on 25 June 2014**

12 No more than 8 persons shall be allowed in the garden at any one time and these persons shall be engaged in a sit down meal.

13 Signage shall be displayed in the garden area asking customers to respect the neighbours and keep noise to a minimum and that the garden must be cleared of customers by 22:00hrs.

14 The Premises Licence Holder shall ensure that customers are not able to access the flat roof.

15 The Premises Licence Holder shall ensure that the outdoor area shall be screened so as to prevent customers from overlooking neighbouring premises.

16 There shall be no recorded music.

#### **Annex 4 – Plans**

Plans as submitted to the Licensing Authority on 30 April 2014

#### **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 following points were made by the applicant and his representative:

- (1) The application was for an upmarket Pizza restaurant serving alcohol to 11am, including 30 minutes drinking up time only to be served ancillary to food;
- (2) This development would redevelop and regenerate a premises which had been empty for approximately 4 years;
- (3) The Planning Application was pending and would be decided through a separate process;
- (4) There would be no promotion of the garden as a smoking area (the garden) which would be used for dining. There would be no smoking allowed within the premises;
- (5) The neighbouring properties were also close to the garden of the neighbouring pub, the Cat and Wheel, which had live music and traded until 2am, with the garden open until 11am;
- (6) A Management Plan had been developed for control of music in the outside area;
- (7) The applicant had been a nearby resident in Gloucester Road for the last 6 to 7 years and wanted to open a family-oriented restaurant with locally sourced food and drink via an Independent Wine Merchants and supplier of High End Artisan beers;
- (8) Smells should be kept to a minimum through a DEFRA approved clean burning area;
- (9) Whilst the outside garden space was important to utilise during summer, bookings would not be specifically made for this area. Due to its size, it was only proposed to have 8 tables of 2;
- (10) Whilst it was acknowledged that the establishment was within a CIA, this was linked to the late night consumption of alcohol and fast food outlets which should not be an issue in this case – the garden itself would be shut at 22.00Hours;
- (11) It was estimated that there would be approximately 40 seats inside the restaurant. Customers with young children would be encouraged to come early when booking was taken.

The following points were made by objectors:

#### Police

The Police were satisfied that this application was a lower risk than some establishments within the CIA and it would be acceptable to approve it with the proposed conditions – it was noted that most crime and disorder occurred between 12am and 4am and so would not be applicable in this case;

#### Mr Wilkes and his representative

His objection was relating to the concerns about noise from the garden. If the applicant was prepared to withdraw the use of the garden within the application and to agree to a condition to ensure closure of doors and back windows, Mr Wilkes would remove his representation. There were also concerns about the possible impact of fumes from the kitchen via a flue which was at the same height as one of the residential apartments. The Sub-Committee's attention was drawn to the appropriate paragraph within the CIA Policy which indicated that the protection of residents should have a central place in the strategy. The Plan and photographs which were circulated showed how close the garden of the property is to neighbouring properties. Noise would reverberate around the properties and cause a lot of disturbance. The garden had never before been used for commercial

purposes, even when it was used as an Indian Fast Food establishment.

#### Geoffrey Sharratt

His objection was to the use of the garden which would create excessive noise and other smells which could arise from people smoking in the area which could not be stopped even if it was not encouraged. This was a very enclosed area for noise to travel and create disturbance.

#### Mr Hutt

The application was supported subject to removal of the garden and the disturbance it could cause.

#### Mr Tiley

This establishment would create noise.

#### Ms Wilkins

There had been a considerable number of complaints in the past due to noise and previous establishments not sticking to Licensing hours. The primary concern was that the use of the garden would create excessive noise in the area.

During their deliberations, the Sub-Committee noted that, whilst this property fell within the CIA, it was not a late night use and, therefore, had received no objection from the Police and did not trigger the CIA policy. In addition, conditions requested by pollution control had been accepted by the applicant. The Management Plan restricted the number of people in the garden but it was acknowledged that there were remained concerns from residents about the impact of noise and smells.

Following further deliberations, the Sub-Committee agreed to defer a decision pending a Site Inspection to take place at 10am on 25<sup>th</sup> June 2014, following which the Sub-Committee would return to the City Hall to make a decision.

On reconvening after the site visit, the Committee retired to deliberate. After careful deliberation, the Committee agreed to grant in part and reject in part and subject to all conditions agreed with responsible authorities. The Committee rejected the recorded music element of the application as the applicant had offered to withdraw this activity and it was agreed that this would promote the licencing objectives.

The Committee found that the CIA was not triggered as the premises was not alcohol led and the hours did not encroach on residents' sleep time which were primary reasons behind the Gloucester Road CIA.

The Committee considered that the inside of the premises had been conditioned well to promote the licensing objectives and the hours of operation were acceptable within the CIA area. The site visit had helped inform the Committee's decision regarding the garden area as this area was of concern to Relevant Persons' representations relating to public safety and the prevention of public nuisance licensing objectives.

The committee gave great weight to the concerns of residents and Pollution Control with respect to noise nuisance but nevertheless felt that the licence could be granted with

conditions so that the prevention of public nuisance was not undermined.

With respect to the numbers in the garden and the hours of operation, the Committee felt that a compromise could be reached and granted until 22:00 hours and for 8 customers at any one time in the garden. Should residents in the future feel there were nuisance issues, they could seek a review of the licence as well as contact the Pollution Control team.

**SIGNED:**

**CHAIR**

**Name: Councillor Pearce**