

## 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 22 January 2015

#### AGENDA TITLE

Conduct of a hearing into an application for the GRANT of a licence made by Foosball Academy Limited in respect of Foosball Academy, 16 Trenchard Street, Bristol, BS1 5AN

#### MEMBERS PRESENT:

1. Councillor Clark (Chair)
2. Councillor Threlfall
3. Councillor Budd

#### OFFICERS PRESENT

Elaine Kale, Legal Advisor  
Sarah Flower, Licensing Policy Adviser  
Allison Taylor, Committee Clerk

#### REPRESENTATIONS RECEIVED FROM:

Nola Davis  
Planning Scrutiny Committee of Christmas Steps Arts Quarter  
Jonathan Derrick  
Andy Lyle  
Craig Sheppard  
Jennifer Collins

#### Applicants, responsible authorities and interested parties

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

Applicant

David Oates

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

Inspector Rundle

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

Not a party to the hearing

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

Not a party to the hearing

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

Not a party to the hearing

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

Not a party to the hearing

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|--|--|
| <b>Social Services Authority (s.13 (4) (f))</b>  | <b>Not a party to the hearing</b>  |
| <b>Any other relevant Licensing Authority (s.13 (4) (g))</b>   | <b>Andy Lyle</b>   |
| <b>Weights and Measures Authority (s.13. (4) (i))</b>  | <b>Not a party to the hearing</b>  |
| <b>Relevant persons who are persons living in the vicinity of the premises (s.13 (3) (a))</b>          | <b>Craig Sheppard<br/>Jennifer Collins<br/>Nola Davis</b>  |
| <b>Relevant persons who are a body representing persons living in that vicinity (s.13 (3) (b))</b>     | <b>Not a party to the hearing</b>  |
| <b>Relevant persons who are persons involved in a business in that vicinity (s.13 (3) (c))</b>         | <b>Not a party to the hearing</b>  |
| <b>Relevant persons who are bodies representing persons involved in such businesses (s.13 (3) (d))</b> | <b>Not in attendance but the Committee had regard to the representation of Planning Scrutiny Committee of Christmas Steps Arts Quarter</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:**

1. That the application be GRANTED 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

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  | Sunday 12:00 - 19:00             |
| Sale of Alcohol  | Monday to Thursday 12:00 - 22:30 |

Sale of Alcohol

Friday to Saturday 12:00 – 21:00

Supply of alcohol is authorised for ON premises only.

### **The opening hours of the premises**

|                    |               |
|--------------------|---------------|
| Sunday             | 12:00 - 19:00 |
| Monday to Thursday | 12:00 - 22:30 |
| Friday to Saturday | 12:00 – 21:00 |

### **NON STANDARD TIMINGS**

Non standard timings not applicable.

## **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 - 4 shall be in force as of the 01 October 2014.

Conditions 1, 2 and 4 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 must 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 -
  - (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 in a manner which carries a significant risk of undermining a licensing objective;
  - (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 in a manner which carries a significant risk of undermining a licensing objective;
  - (d) 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;
  - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
2. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
  3.
    - (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
    - (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
    - (3) 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 either -
      - (a) a holographic mark, or
      - (b) an ultraviolet feature.
  4. The responsible person must 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;
    - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
    - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

#### **Additional conditions imposed by Licensing Act 2003 (Mandatory Conditions) Order 2014**

Conditions numbered 1 - 4 shall be in force as of 28 May 2014

1. A relevant person shall ensure that no alcohol is sold or supplied for

consumption on or off the premises for a price which is less than the permitted price.

2. For the purposes of the condition set out in paragraph 1 -

(a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;

(b) "permitted price" is the price found by applying the formula -

$$P = D + (D \times V)$$

Where -

(i) P is the permitted price,

(ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -

(i) the holder of the premises licence,

(ii) the designated premises supervisor (if any) in respect of such a licence, or

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

## 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 submitted 1 December 2014**

1 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.

2 TR04 All staff are to be trained with respect to underage sales, such training to be updated as necessary when legislation changes and should include training in how to refuse sales to difficult customers.

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

4 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.

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

#### **Conditions attached at hearing on 22 January 2015**

##### Police

1 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.

2 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.

3 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.

4 No alcohol with an ABV above 20% shall be offered for sale or supplied.

### **Licensing Authority**

5 CA11 The occupancy shall be restricted twenty (20) persons in the premises. The occupancy figure includes staff, performers and public. The Premises Licence Holder shall ensure that there are appropriate management controls to ensure that the occupancy figure is not exceeded at any time. Appropriate controls shall be put in place to ensure that the occupancy of the premises are not exceeded at any time.

Signage to be prominently displayed at the premises stating the maximum capacity is 20 persons including staff.

6 No persons under 16 years of age to be admitted unless by prior arrangement.

7 CV04 Children must be accompanied by an adult.

8 NP65 A clear notice shall be displayed at any exit to the premises to instruct customers to respect the needs of local residents and leave the premises and the area quietly.

### **Annex 4 – Plans**

Plans as submitted to the Licensing Authority on 01 December 2014, drawing dated 27.11.2014.

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 the following Responsible Authorities and Relevant Persons who made representations:

Foosball Academy Limited  
The Chief Officer of Police, Avon and Somerset Constabulary  
Bristol City Council (FAO Andy Lyle)  
Nola Davis  
Planning Scrutiny Committee Of Christmas Steps Arts Quarter  
Craig Sheppard  
Jennifer Collins

### **REASONS FOR DECISION**

The following paragraphs summarise the Licensing Sub-Committee's reasons for granting the application and for modifying the conditions on the Licence.

The Licensing Sub-Committee carefully considered the representations together with the information provided for the Hearing and received during. The Licensing Sub-Committee had regard to the Secretary of State's guidance to Licensing Authorities and the Authority's own Statement of Licensing Policy.

The Licensing Sub-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 Licensing Sub-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 statutory 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 applicant made the following comments in opening:

- The application was for a venue for Foosball enthusiasts to play in tournaments and to practice. The public could attend to learn how to play or observe;
- It was not a club or bar but an amateur sports club with a small capacity of 20;
- He believed that the premises was possibly unique in the area and understood that the CIA policy could be set aside for premises which offered something different;
- He had applied for alcohol so that people could have a bottle of beer whilst playing or watching foosball. There would be no draft beer or spirits on sell;
- He currently planned to open Tuesday to Thursday and sometimes on Saturday but as it was his hobby he would never be open all the time. As it was a niche interest, he would open flexibly. He had been open for 2 months and had had 2 TENS which had gone well;
- He was uncertain regarding future demand but emphasised that he would never be there for more than a certain amount of time as he had a personal life and this was just a hobby.

On behalf of the Police, Sgt Derrick made the following comments:

- these premises was within the CIA which would normally be a concern in respect of the impact on crime and disorder. However, having spoken with the Applicant and noting that the Applicant had agreed to a condition reducing the hours for the sale of alcohol, was closed before midnight and was not a vertical drinking establishment, the Police were content with the application subject to conditions preventing the premises from becoming a bar;
- he understood that the Relevant Persons' concerns were different from the Police and noted that it was difficult to condition smoking areas.

On behalf of the Licensing Authority, A Lyle, made the following comments:

- he was content that a condition reducing the hours had been agreed and that alcohol was ancillary to the primary use of the premises;
- he noted that the other Licensing Authority conditions to ensure promotion of the licensing objectives had been agreed by the Applicant.



The Relevant Persons made the following comments:

- there was no need to serve alcohol – coffee and cakes would suffice;
- vulnerable people and children would walk past the premises when alcohol was offered for sale;
- there would be incidents and the licence holder would not be able to control customers;
- there had never previously been alcohol in that outlet and this would lead to late night drinking and no foosball being played;
- the sale of alcohol changed the dynamics of a venue;
- the Applicant wanted a licence simply to cover the costs of the venue;
- this could be a difficult place to live with noise and anti-social behaviour;
- excess noise and smoking from the premises would add to the problems in the area;
- the City Council had fought for the housing development in the area and it was therefore their obligation to protect the environment around it;
- there had not been a proper impact assessment on this application;
- the pavements were extremely narrow and smokers would therefore obstruct pedestrians;
- there were flats all around and it would become a problem in the summer;
- this would add to the impact on residents' lives and make them miserable;
- if granted, a condition requiring doors to be closed, should be imposed.

The Relevant Persons, in summing up, stated:

- that consideration be given to residents' health with respect to smoking outside and noted that noise was detrimental to the heart;
- the nearby Griffin public house was horrendously noisy and it seemed to be forgotten that people lived in the city centre;
- there were vulnerable people around and they did not want to see people drinking bottles of beer outside.

The Licensing Authority, in summing up, stated that the licence was an on-licence only so there would be no bottles of beer on the street.

The Applicant, in summing up, stated:

- the same issues regarding noise and smoking would arise whether there was a licence in place or not;
- there would be no outside drinking and this would be enforced;
- there had been a full acoustic survey undertaken;
- this was not the sort of venue that people would come to simply drink – most customers would be repeat players and he was likely to know them;
- if there was no licence he could choose to offer BYO but he wished to offer customers the opportunity to have a beer when they were playing a game;
- this would help costs but he was not there to make money;
- there would be no impact on the licencing objectives and he would resolve any issues that might arise.

The Licensing Sub-Committee, having carefully deliberated, agreed that the CIA policy was not triggered as the premises was not alcohol-led and would not be operating at hours when the promotion of the licensing objectives were most challenging.

The Licensing Sub-Committee therefore considered the application on its merits and agreed to grant the application subject to conditions which it found appropriate to impose bearing in mind the Applicant's agreement with the Responsible Authorities. This included a condition relating to the hours for the sale of alcohol and the opening hours. The Licensing Sub-Committee also noted:

- that the capacity of 20 was small;
- that it should not attract people to come in just to drink as there were plenty of other 'real' drinking establishments in the area;
- the conditions agreed prevented the premises becoming a bar in the future.

The Licensing Sub-Committee noted the concerns of the Relevant Persons but believed that these would be mitigated with the conditions imposed. The Licensing Sub-Committee acknowledged that the Relevant Persons' concerns were safeguarded by the review mechanism should issues arise in the future.

**SIGNED:**

**CHAIR**

**Name: Councillor Clark**