

**MONMOUTHSHIRE COUNTY COUNCIL
REPORT**

SUBJECT: Application for a Premises Licence for 24 Frogmore Street, Abergavenny, Monmouthshire, NP7 5AH
DIRECTORATE: Social Care and Health
MEETING: Licensing & Regulatory Sub-Committee
Date to be considered: 3rd November 2020
DIVISION/WARDS AFFECTED: Priory Ward, Abergavenny

1. PURPOSE:

To consider an application for a Premises Licence under the Licensing Act 2003 for 24 Frogmore Street, Abergavenny. Due to representations received against the licence application the Local Authority, are required to hold a hearing to consider the application. A copy of the application with plans provided by the applicant is attached as Appendix A.

2. RECOMMENDATION(S):

2.1 It is recommended that members consider and determine the application referred to in 3.1 below, based on the information provided;

2.2 Members of the sub-committee may determine to:-

- To grant the licence with the condition specified in the application
- To grant the licence with the conditions the Council considers appropriate for the promotion of the licensing objectives
- To exclude from the scope of the licence any of the licensable activities to which the application relates
- To refuse to specify a person in the licence as premises supervisor
- To reject the application

3. KEY ISSUES

3.1 A new application for a premises licence under the Licensing Act 2003 was received from Mr Andreas Christou of Flat 1, 44 Frogmore Street, Abergavenny, NP7 5AN for 24 Frogmore Street, Abergavenny for the following:-

- Supply of Alcohol (On and Off sales) Monday to Saturday 12.00hrs – 02.00hrs and Sunday 12.00hrs – 21.00hrs
- Live Music – Sunday to Thursday 19.00hrs – 21.00hrs, Friday and Saturday 19.00hrs – 02.00hrs (Indoors)
- Recorded Music – Monday to Saturday 10.00hrs – 02.00hrs and Sunday 10.00hrs – 21.00hrs (Indoors)
- Hours Open to the Public - Monday to Saturday 09.00hrs – 02.00hrs and Sunday 18.00hrs – 21.00hrs

The opening hours on the application form did not correspond with the times requested for Alcohol, recorded and live music on Sundays. The applicant confirmed this was an error and requested opening hours from 10.00hrs – 21.00hrs on a Sunday.

3.2. The applicant has described the premises in his application as a cocktail bar for people 21 and over providing the sale of alcohol and snacks. However, more details of the premises usage was found at the premises with a canvas advertising cocktail and shisha bar coming soon. A picture of the advertisement is attached to the report as appendix B.

The premises previously traded as an underwear retail shop on Frogmore Street, Abergavenny. The premises is situated in between The Auberge nightclub and Tapas Twist a licensed restaurant. In front of the premises is a wide paved area and a carriageway with mixed parking use.

The applicant within their operating schedule has outlined their arrangement under the four licensing objectives.

General

No information

The prevention of Crime and Disorder

Security from 21.00hrs on Friday and Saturday
24 hour CCTV

Public Safety

Security from 21.00hrs on weekends

The prevention of public Nuisance

We will accept bookings only and have 21 and over only
We have a no nuisance policy

The protection of children from harm

No children will be allowed from 18:00hrs then it will be 21 and over only
We will be checking I.D. upon entry

- 3.3 The applicant has a statutory duty to send copies of his/her premises application to the 'Responsible Authorities' namely Heddle Gwent Police, South Wales Fire Service, The Local Health Board, Immigration. Plus the following departments of Monmouthshire County Council, Environmental Health section, Social Services, Planning, Licensing and Trading Standards departments. To assist applicants the Licensing Section also circulate a copy of the application and plan to the Responsible Authorities by email, and this was completed. A notice also has to be circulated in a local newspaper within the area of the premises by the applicant.

A public notice must also be displayed at the premises to enable businesses and residents to make a representation. This notice was inspected by Licensing who found the notice to be displaying an incorrect format with an incorrect applicant name. As such, the application was therefore rejected due to incorrect process of the public notice displayed at the premises. When the applicant corrected the notice the Licensing Section accepted the application and conducted a 28 day consultation period from the 13th August 2020 that ended on the 9th September 2020.

The application is also advertised via the Council's website, which gives details on how a person can make a representation and this was carried out by the Licensing Authority.

- 3.4 The Planning department submitted the following in relation to the application:

The planning application for the change of use has only just been received by the Planning department. Until we have had a chance to determine this application we are unable to offer any comments.

Planning application number: DM/2020/00864

Section 9.45 of the revised guidance issued under section 182 of the Licensing Act 2003 states:

Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs. The planning department have asked the Licensing Section for comments and a copy of this report with the decision of the hearing will be provided to the Planning department.

3.5 Representations were received against the application from Heddlu Gwent Police requesting the applicant agree to accept alternative licence conditions. The applicant through mediation has agreed to accept the following conditions;

- The premises licence holder shall ensure images from the CCTV are retained for a period of 28 days. This image retention period may be reviewed as appropriate by the Licensing Authority and any other authorised person.
- The correct time and date will be generated onto both the recording and the real time image screen.
- 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.
- The premise 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 any authorised officer of the Licensing Authority or a constable;
- There shall be clear signage indicating that CCTV equipment is in use and recording at the premises.
- The premises shall operate a Challenge 25 policy and signage will be displayed to indicate this is in operation. The age check shall be made by examining either a passport, photographic driving licence or a PASS approved proof of age card. No other form of identification shall be accepted.
- The Premises Licence Holder shall operate and maintain an up-to-date Register of Refusals of Sale of Alcohol, indicating the date, time and reason for refusal which shall be made available for inspection by any Responsible Authority under the Licensing Act 2003. The DPS shall check the book once a month ensuring that it is complete and up to date. The DPS will sign the book each time it is checked.
- The Premises Licence Holder shall operate and maintain an up-to-date incident book, detailing the time/date/individual involved /incident that has taken place. This shall be made available for inspection by any Responsible Authority under the Licensing Act 2003. The DPS shall check the book once a month ensuring that it is complete and up to date. The DPS will sign the book each time it is checked.
- Fully documented staff training, to include training on the Premises Licence conditions as well as the premises' Challenge 25 Policy must be given. Training must be undertaken at regular intervals throughout the calendar year, at a minimum every 6 months. Staff must sign and date documentation at the conclusion of their training session, acknowledging that they have received and fully understood the training provided to them. This can be made for inspection by any Responsible Authority under the Licensing Act 2003.
- During the times live music is played, staff shall ensure that all doors and windows will be kept closed to reduce any unnecessary nuisance to residents of the surrounding area.
- Signage shall be displayed requesting customers to leave the premises quietly and to have regard for neighbouring premises.
- Staff shall ensure that all litter is collected from outside the premises.
- As stated in the application, the need for door supervisors will be in place from 9pm on a Friday and Saturday and shall also be assessed by the licence holder on a regular basis and such personnel shall be employed when and where the

assessment requires. Where door supervisors are used, the premises licence holder shall ensure that the following details for each door supervisor are entered into a bound register kept for that purpose to include the following details:

Name

Date of birth

Address

Contact telephone numbers

SIA certificate number

The full details of any agency through which they have been allocated to work at the premises if appropriate

These details should be easily accessible to any authorised officer of the Licensing Authority or Police Constable.

Heddlu Gwent Police removed their representations after the applicant agreed to accept all of the conditions provided above.

3.6 The Licensing Section requested the following condition be added to the licence;

- The premises is to be a member of Pubwatch and a representative attends Pubwatch meetings and participates in all initiatives.

The applicant has agreed to accept the condition.

3.7 Representations received from Environmental Health as follows;

I refer to the attached Premises Licence application, which I understand was amended by the applicant on the 22nd August 2020 to a midnight closing time including for live and recorded music.

I can advise that I have visited the premises and note that there are a number of residential properties in very close proximity including:

- A flat at first floor level and a flat at second floor level, located directly above the premises subject to this application, each with a window overlooking the proposed rear annex / yard of the Cocktail Bar.
- Three flats above Tapas Twist, 23 Frogmore Street, two of which are at first floor level with windows / door opening to rear aspect. (Planning permission DM/2018/01803 approved 3/9/19).
- Flats at 21 and 22 Frogmore Street with windows opening to rear aspect.

I note that the premises on either side of 24 Frogmore Street has a Premises Licence. In particular I understand the Auberge under the conditions of its licence can have live / recorded music in the outside area of the premises until 2am Thursday – Saturday; and Tapas Twist opening hours and live / recorded music inside the premises until midnight.

However these existing licences do not preclude the need for this section to consider this application carefully and be satisfied that licensing objective 'the prevention of public nuisance' will be met.

In this regard I must advise that I am concerned that very little detail has been provided by the applicant to assure this section that the nearby residents will not be significantly impacted by noise from the premises if a licence is granted. In particular I am concerned regarding the potential for noise from:

- The transmission of noise from customer voices and especially music directly through the ceiling / floor to the first and second floor flats above. Some information has been provided regarding the ceiling treatment undertaken to mitigate against noise transfer but this is very limited in detail and no acoustic data has been provided to support it. Detail of sound insulation of the ceiling / floor between ground and first floor levels, including sound levels at source and at the residential receptor above is needed to satisfy this section that a grant of the licence requested will not give rise to excessive noise impact.

I understand that it is the intention of the applicant to lease the flats at first / second floor levels but clearly this may not happen or always be the case, with the potential for future occupiers to have no tied interest with the Cocktail Bar use.

- The potential for the live / recorded music indoors to impact on residents in the area through open windows / doors, particularly when customers access the proposed outside rear yard area. I understand the rear annex under construction is intended to be timber framed which may have a limited sound insulation value.
- The potential of noise from customers using the outside rear yard area. The applicant has advised me this afternoon that is prepared to close the use of this outside area at 11pm which will be positive from the noise impact perspective, but this has not been detailed in the application.

In view of these concerns, which in my view the applicant has not addressed in the information submitted, I must object to the grant of the licence under licensing objective 'the prevention of public nuisance'.

In my opinion the application should be supported by an assessment of the noise impact of the proposals, in particular the matters I have identified above, with regard to the nearby residential accommodation. The report should include, if appropriate, measures to be taken to mitigate excess noise impact. The information should be prepared by a person with appropriate acoustic qualifications and with regard to relevant guidance.

I look forward to the opportunity to comment further in due course if this information is provided.

3.8 Representations from 12 local residents objecting to the licence, are attached as Appendix C, all marked Objection 1 – 12. As there are numerous representations objecting to this licence. I have highlighted the main concerns as below:

- Noise pollution from music and customers late at night
- Concerns for local children
- Concerns for elderly residents
- Concerns over a potential rise in Anti-social Behaviour
- Concerns over transport to and from the venue late at night
- Tolerate noise from Auberge and Abergavenny Kebab house at weekends, concerned the premises will add to the disturbances.
- Comments and references to the use of Shisha (whilst not referenced in the application, advertised at the venue as stated in the report)
- Excessive hours for a small premises
- Lack of local Police Officers

A satellite view of the local area with the location of the objectors marked blue in comparison to the premises marked green are attached to this report as appendix D.

3.9 Representations made under the Licensing Act 2003 must be made under the four key licensing objectives, namely:-

- The prevention of crime and disorder;
- Public Safety;
- The prevention of public nuisance; and
- The protection of children from harm.

3.10 When considering their decision members are asked to consider the licensing objectives guidance. Sections 2.1 – 2.21 of the Home Office revised guidance issued in April 2018 under section 182 of the Licensing Act 2003 are attached as appendix E.

3.11 In accordance with 9.2 of the Home Office Guidance issued under Section 182 of the Licensing Act 2003. A hearing is not required where an application has been properly made and no responsible authority or other person has made a relevant representation or where representations are made and subsequently withdrawn. Licensing authorities should not hold hearings for uncontested applications, for example in situations where representations have been made and conditions have subsequently been agreed.

The Licensing Officer has written to residents informing them of the conditions accepted by the applicant following Police and Licensing comments. Residents have also received notification the applicant has volunteered to reduce his licence application hours for the premises to close at midnight. However, no representations have been withdrawn by local residents and the representations from the Environmental Health section are received therefore a hearing is required.

3.12 Upon receipt of the representation from the Environmental Health Officer the applicant sent the following email response to the Licensing Officer;

Hi yes I am aware I'm getting complaints from neighbouring businesses for my application aswell I'm willing to work with residents I will make a noise assessment just to be clear it is restaurant background music that will be playing no different to the tapas next door I will also be closing the outdoor area at 11pm so there will be no late external noise there will be no music outside and there will only be a capacity of 40 people allowed in the premises at any given time all 25 and over we are also renting all the flats above the premises and I will have a series of letters from residents and local business who want to see us open I will get them to email you I hope we can take in to consideration that 85k has been spent renovating and also we are paying 1500 pounds rent every month at the moment so I do stress whatever you guys need me to do even to open i.e. lower the time to 11pm inside aswell I do not care this is going to become financially unviable for me soon and I'm seeing several hurdles put in my way please let me know what will we need to do I have chosen next to a nightclub to open a bar as they already have noise and this should not add to it or be a problem I'm willing to work things out just give me the solid or what you need from me I am very flexible

4. REASONS:

4.1 The determination of an application is to be considered in accordance with Section 18 of the Licensing Act 2003.

4.2 In section 9.4 of the Guidance issued under section 182 of the Licensing Act 2003, the Secretary of State recommends that, a representation would only be "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.

4.3 In section 13.10 of the Guidance issued under Section 182. It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation

of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and this Guidance.

- 4.4 Monmouthshire County Council's Policy sets out its views on the prevention of Crime and disorder, Prevention of public nuisance and Public safety. The relevant sections 10 – 12.7 of the Policy issued 1st July 2020 are attached to this report as Appendix F.

5. RESOURCE IMPLICATIONS:

Nil

6. CONSULTEES:

Heddlu Gwent Police, South Wales Fire Service, Home Office (Immigration) and the following departments from Monmouthshire County Council, namely, Environmental Health, Social Services, Planning, Trading Standards, Licensing and the Local Health Board

7. BACKGROUND PAPERS:

Licensing Act 2003
Guidance issued under Section 182 of the Licensing Act 2003 dated April 2018.
Monmouthshire County Council's Statement of Licensing Policy dated 1st July 2020.
Live Music Act 2012

8. AUTHOR:

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