

REPRESENTATION RESPONSE

RUSSELL'S YARD, 71 DERBY ROAD, MELBOURNE, DERBY DE73 8FE

APPLICANT Russells Yard Limited
OBJECTOR(S) Matthew Lea
LAST UPDATED 18th November 2020

THIS DOCUMENT AND ITS CONTENT ARE SENT WITHOUT PREJUDICE

We are the agents (Licensing Consultants) acting on behalf of the applicant, in the application for a new Premises Licence for:

Russell's Yard
71 Derby Road
Melbourne
Derby DE73 8FE

Having received your representation, we have considered all the points raised and would welcome the opportunity to discuss your concerns further.

We believe it is in everyone's interest to reach a consensus in such cases, rather than take matters to a Licensing Committee Hearing; although we respect the right of all parties to be heard in such a forum.

However, if there were reasonable suggestions you might have which would allay your concerns that were not already dealt with in the original application, we would welcome the opportunity to discuss them with you and seek to reach an agreement, which might enable you to withdraw your representation.

I will provide you with honest and transparent information throughout this document, including some further detail on how the Licensing Act works. I apologise if some of the information is already known to you, this document does not seek to patronise, but we always assume that residents may have less familiarity with The Licensing Act 2003 than those of us who work in the field or the Responsible Authorities who enforce it.

OVERVIEW

This application has been subject to the usual period of public consultation, a copy of the application was forwarded to all ten Responsible Authorities including the Police,

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Licensing Authority, Environmental Health, Health & Safety, Fire Service and Child Protection.

The application has also been open to Public Consultation for 28 days, with notices being displayed prominently at the premises and the application being advertised in the local paper.

This gave all of the responsible authorities and local people the prescribed 28 days to make representations in relation to this application.

Now that the consultation period has come to an end, the application has received just one representation; which is yours. We would welcome the opportunity to discuss this further with you.

It would be more useful for us to be able to discuss your representation in a telephone conversation, that way I could answer any specific concerns you may have and provide you with further information. If you would like to do so, please call me anytime on 01784 434 392; if I am unavailable a colleague will take a message and I will call you back.

NATURE OF THE PREMISES

I thought it might be useful to outline the nature of this premises and the Premises Licence applied for, in case you have not seen the full application the applicant submitted.

The details the applicant included in the original application would, were the Premises Licence to be granted, become legally binding through a set of conditions attached to the Premises Licence.

The first floor will be a fine dining restaurant where alcohol will in the main only be sold to people eating a meal, it is generally accepted that restaurants do not attract high levels of crime & disorder, as people eating food tend not to drink excessively.

The ground floor will operate as a high-end lounge bar where bar meals will also be served, this is therefore not an application for a loud bar / nightclub.

They have not applied for any form of live or recorded music or regulated entertainments to be permitted at the premises and have specified in their application that only music of a background nature, should be allowed.

Furthermore, the external areas shall be closed at 22.00 on every day, so after this time customers will only be permitted to consume alcohol inside the premises.

However, we understand that such assurances are easy to give. To show the commitment to meeting these standards the applicant volunteered a set of 12 conditions in the application.

Every Premises Licence is accompanied by a set of 'conditions', either offered by the applicant, agreed with the Responsible Authorities during the application process or decreed at a hearing.

These 'conditions' are legally enforceable and so must be adhered to by the holder of the Premises Licence; failure to comply can result in very large fines or even imprisonment.

All the other Responsible Authorities have considered the application and feel that the application was strong enough not to warrant any representation.

These 'conditions' reflect the perceived risk in relation to the Licensing Objectives, such as those you raised in your representation. However, in respect of those points you raised, the applicant had already given them consideration in the application.

To demonstrate this, I have summarised below some of the 'conditions' offered which will be attached to the Premises Licence were it to be granted:

1. Full training shall be provided to all staff on commencement of employment relating to all age-restricted products sold and any system or procedures they are expected to follow in the course of dealing with these goods.
 - a. Refresher training shall be provided at regular intervals – at least every 6 months.
 - b. Records detailing the training provided shall be kept on the premises for production upon request of a Police Officer or other authorised person.
 - c. All records must be written and shall be retained on the premise for a minimum of 12 months.
2. The DPS shall ensure that a written incident log is maintained within the premises and details of all incidents are recorded within the log. This log shall be kept on the premises for a period of not less than 12 months and shall be produced upon request of a Police Officer or other authorised person.
3. The DPS shall ensure that a written Refusals log is maintained within the premises and details of all challenges and refusals are recorded within the log. This log shall be kept on the premises for a period of not less than 12 months and shall be produced upon request of a Police Officer or other authorised person.
4. The Premises Licence Holder shall devise and adhere to a drugs policy when the premises are open for licensable activities.
 - a. Training in this policy shall be given to all staff working at the Premises and records shall be kept for a period not less than 12 months.
5. The Premises Licence Holder or nominated person shall ensure that clear, prominent and legible notices are displayed internally at all exits, requesting customers and other users to leave the premises and the area local to the premises, quietly and in an orderly manner respecting the needs of local residents.
6. A CCTV system shall be installed at all times and the recording system must be maintained in good working order and any faults repaired as soon as possible. (It is

recommended that all maintenance paperwork be kept to show that the retailer has shown all due diligence in maintaining the system).

- a. The CCTV recording system must be operating at all times when the premises are open for licensable activities.
- b. All CCTV recordings must be retained for a minimum of 28 days. These images must be available for viewing at any reasonable time upon request of a Police Officer or other authorised person as detailed within Section 13 of the Licensing Act 2003.
- c. The Premises License Holder, Designated Premises Supervisor or person in charge of the premises must be able to retrieve and copy any recording/images at the time of asking or within 48 hours if so required. (The police will not meet the cost for a recording or materials used for a reproduction of the image in respect of any crime and disorder; all costs are to be met by the owner of the system. If the incident was unrelated to the premises, the retrieval, if a cost incurred, would be met between the agencies requiring the image).
- d. The CCTV recording unit is to be kept secure, to be opened only by the Premises Licence holder, Designated Premises Supervisor, or authorised, designated member of staff.
- e. Installed CCTV cameras are to be positioned so as to ensure that all parts of the premises to which the public has access are sufficiently covered (save for any toilet areas).
- f. All cameras installed will be of a standard that will offer optimum image quality in low light.
- g. All digital recordings to be made in real time (time lapse not to be used).
7. No customer shall be allowed to remove any alcoholic or other drinks from the licensed area of the premises in an open container (e.g. glasses and open bottles) unless to an external area set aside for consumption indicated on a plan.
8. Anyone under the age of 16 is not permitted to be in the ground floor bar area of the premises after 22.00hrs.
9. Any outdoor areas will not be used after 2200 for the consumption of alcohol.
10. Any music played at the premises will be background music only.
 - a. Checks will be made each night to ensure that any music played within the premises can not be heard outside the building.
 - b. The logs for these checks will be kept for a minimum of 12 months.
 - c. There will be no use of voice amplification within the premises.

Hopefully you can see that from the outset the applicant has sought to provide legally binding reassurances through the adoption of a strong set of conditions on the Premises Licence.

RESPONSE TO THE CONCERNS YOU RAISED

With regard to the particular concerns you raised I would respond accordingly:

1. Parking and traffic congestion are not a matter which is for consideration under the Licensing Act or in relation to a Premises Licence application; it is a matter for Planning & Highways to consider. This is the type of concern which would be raised during a planning application and my understanding is that you are familiar with the planning consent granted in relation to this premises.

I can not in good faith comment on matters regarding parking and congestion when responding to representations, as only matters which relate directly to one of the four Licensing Objectives can be used to make a legitimate representation.

However off-sales are not a driver for this business and as a sign of good faith the applicant is willing to drop off-sales from this application, if you are willing to withdraw your application in full; further details of this offer are explained below.

2. We do not agree that it is unreasonable to operate to the hours applied for.

The planning application recently granted, suggest that the hours for the premises be aligned with other similar premises in the local area, which they do.

The applicant has a restriction for the use of the external areas until 22.00. As a result of this dispersal will occur more gradually and earlier in the evening. By allowing the extended hours at weekends, it can be beneficial as dispersal will take place over a longer period, rather than everyone leaving at 23.00 as you suggest.

15 years ago when the Licensing Act was put into place, it was partly designed to aid dispersal by ensuring that not everyone spilled out on to the streets at the same time. For this type of premises with low-level background music, the longer hours do facilitate a calmer dispersal.

Furthermore we have seen evidence following the 22.00 curfew put in place during the pandemic, that these earlier hours have led to large crowds gathering in the streets at the same time. As those people perceive it to be early evening, they seek to socialise further and thus do not disperse as quickly as they might otherwise do.

There are strategies in place which can aid dispersal, such as keeping customers inside when they wait for a taxi, having a dedicated taxi company who know the premises and who work in conjunction with the premises to minimise disturbance. The premises Licence holder is dedicated to operating in a responsible manner in that respect.

It should be noted that no other residents have made representation and that the Police and Environmental Health who are the experts when it comes to public nuisance have made no comment in relation to the hours applied for.

3. New Year's Eve is a one-off occasion and one which many people choose to celebrate, it is perfectly normal that this and other premises are operating later on these occasions.

In my experience the application to operate on New Year's Eve until only 01.30 is a very reasonable one.

There was a provision in the original guidance to the Licensing Act, that premises be permitted as a rule to operate all through the night on this one occasion every year and a large number of my clients have 24 hours as standard on New Year's Eve; I would therefore suggest that the self-imposed curfew of 01.30 is one you should accept willingly.

I don't think the suggestion that there be a cut off of 12.15am is a realistic one. The idea that on this occasion when midnight is the turning point of the year, customers get to wish each other Happy New Year and then within minutes are all asked to leave, is a little absurd.

The consequence of a 12.15am curfew on New Year's Eve, would be a potentially full venue being ejected at the very moment when they are at their most energetic, which would inevitably result in those people not dispersing quickly and exasperate the situation rather than resolving it as you suggest.

4. If you look at the plan associated with this application, you will note that the external staircase is not within the area set aside for consumption of alcohol and therefore no one will be on that staircase drinking alcohol.
5. The access for people with disabilities is again not a matter for a Premises Licence application, but is rather covered by the Disability Discrimination Act and the associated building regulations.

However if access for people with disabilities is a concern for you, I can inform you that the premises will, when the building works are completed, be compliant with their DDA obligations. They have provision for an accessible toilet and a platform lift for access to the ground floor.

In regard to Public Safety, people with disabilities will be accounted for in the premises Fire Risk Assessment and their associated evacuation planning. Staff will be fully aware of their obligations in relation to safeguarding people with disabilities in such circumstances.

I hope that these explanations have provided you with reassurance in relation to the concerns you raised.

As I mentioned in relation to point 1 above, as a gesture of goodwill, we would be open to removing the 'off-sales' element of this application, subject to you withdrawing your representation and making no further representation in respect of this application.

Should you choose not to withdraw, as is your prerogative, then we would argue for the retention of off-sales at the subsequent hearing.

THE OPTIONS GOING FORWARD

With your representation still outstanding, the application is set to be considered by the Licensing Committee at a hearing.

However we are still committed to resolving this matter in advance of a hearing, if it is possible to do so.

The licensing process allows and actively encourages, all parties to discuss applications and any areas of concern, with a view to resolving matters in a way which is satisfactory to all parties; prior to a hearing.

The application can thus be determined in two ways:

Withdrawal of Representation

Anyone who has made a representation, is able to withdraw that representation if their concerns are met as a result of further discussions or further clarification. If all representations are withdrawn, then the hearing can be avoided.

By writing to further explain the process to you and the way the applicant approached the application, we would hope that either this letter or further discussions could enable us to reach such a position.

If you are satisfied that following the additional information given here your concerns will be dealt with by the applicant, you can choose to withdraw your representation.

If this is the case and you wish to withdraw your representation, this needs to be done formally by writing or emailing licensing@southderbyshire.gov.uk.

Licensing Committee Hearing

If you still have concerns despite the information provided here or provided by subsequent discussion or should you wish not to discuss your representation directly with us, then of course we recognise and respect your right to be heard at a Hearing in front of the Licensing Committee.

It is however in our interest to do everything which is reasonable to try and avoid a hearing and the additional time & cost to all involved.

Should the application end up being heard by a Licensing Committee, we will vigorously defend the application at such a hearing.

I thank you for taking the time to consider the detail outlined in this document and I look forward to your comments.

Kind regards

Peter Mayhew

Director