

BROMSGROVE DISTRICT COUNCIL

MEETING OF THE LICENSING SUB-COMMITTEE

THURSDAY 31ST OCTOBER 2024, AT 11.00 A.M.

PRESENT: Councillors A. M. Dale, J. Elledge and S. M. Evans

Officers: Mrs. V. Brown, Ms. S. Royall, Mr. D. Etheridge and Mrs. P. Ross

Also in attendance: Applicant Ms. R. Scattergood, Mr. J. Najran Business Partner, Ms. S. Knight, Ms. K. MacArthur and Mr. A. Long, local residents

1/24 **ELECTION OF CHAIRMAN FOR THE MEETING**

The Council's Democratic Services Officer opened the Hearing and asked for nominations for Chairman.

RESOLVED that Councillor J. Elledge be appointed Chairman of the Sub-Committee.

2/24 **APOLOGIES**

There were no apologies for absence.

3/24 **DECLARATIONS OF INTEREST**

There were no declarations of interest.

At this stage of the Hearing, Councillor D. J. A. Forsythe who was in attendance as the Reserve Member, left the meeting room.

4/24 **APPLICATION FOR VARIATION OF A PREMISES LICENCE - COFFEE N CLAY, 5 STATION ROAD, HAGLEY, WORCESTERSHIRE, DY9 0NU**

The Chairman welcomed everyone to the meeting and asked all parties present to provide a brief introduction.

In response to the Chairman, all parties in attendance agreed that they were satisfied with the Hearing procedures that would be followed.

The Sub-Committee then considered an application for a variation to a Premises Licence, submitted by Ms. Ruth Scattergood, in respect of Coffee N Clay, 5 Station Road, Hagley, Worcestershire, DY9 0NU.

The application was subject to a Hearing in light of 15 representations being received from members of the public. The basis of their representations detailed grounds for:-

- Public Nuisance
- Crime and Disorder
- Protection of children from harm
- Public Safety
- Parking issues
- Conservation area

The Technical Officer (Licensing) WRS, introduced the report and in doing so highlighted that the applicant was applying for the following variation to their existing premises licence, as follows:-

Sale of Alcohol (on the premises)

Monday	17:00 to 21:00 hours
Tuesday	17:00 to 22:00 hours
Wednesday	12:00 to 22:00 hours
Sunday	15:00 to 21:00 hours

The existing premises licence was for:-

Sale of Alcohol (on the premises)

Monday and Tuesday	12:00 to 17:00 hours
Thursday to Saturday	12:00 to 22:00 hours
Sunday	12:00 to 15:00 hours

Members were further informed that no objections had been received from any of the Responsible Authorities.

The Technical Officer (Licensing) Worcestershire Regulatory Services (WRS) drew Members' attention to page 13 of the main agenda pack, and in doing so highlighted that parking matters and the premises being located in a conservation area were not considered valid representations under the four licensing objectives.

As detailed in the report, Members were asked to note that as the application related to a premises that was already licensed for the sale of alcohol for consumption on the premises, the provisions of paragraph 12A of Schedule 1 and section 177A of the Licensing Act 2003 therefore applied in respect of live and recorded music.

The result of these provisions was that the performance of live music and the playing of recorded music was not to be regarded as the provision of regulated entertainment provided that: -

- The music took place within the hours of 8:00am to 11:00 pm.

- The music was performed or played in front of an audience not exceeding 500 people (where the music was amplified).
- At the time of the music, the premises were open for the purposes of being used for the supply of alcohol for consumption on those premises.

The Council's Legal Advisor reiterated that Sub-Committee Members should consider only those matters directly relevant to the premises under consideration and should disregard reference to any matters that fell outside of the Licensing Act.

The Council's Legal Advisor reminded Members that they should address their minds only to those matters which were directly related to the applicant's premises.

The Chairman then invited Ms. Scattergood, the applicant, to put forward her case in support of the variation application.

Ms. Scattergood explained to the Members that she had founded Coffee n Clay in 2018, a place for families to enjoy pottery and painting, and that she had recently expanded classes to include clay workshops. The premises accommodated approximately 30 people in the downstairs area. She currently employed 11 staff.

The premises was an arts crafts venue, and she also worked with children who were being home-schooled and Grounded a mental health charity organisation. She offered a calm environment in the studio in order for customers to relax, and customers often commented that they felt very relaxed whilst there.

Ms. Scattergood emphasised that the sale of alcohol was ancillary to the business and only equated to less than 2% of sales. The venue was not a bar or live music venue, it was predominately a painting and pottery shop.

Ms. Scattergood continued and informed Members that the business needed to be flexible and that it was also a seasonal business, and she had applied for the variation to her existing premises licence in order to align / reflect the current needs of her business.

The business had had a premises licence for the sale of alcohol on the premises for three years and she had received no complaints from any of the Responsible Authorities during that period. She took her business and livelihood very serious, there were CCTV cameras on the front and rear of the premises and all reservations were managed by her. Staff were fully aware of the need to adhere to the proof of age policy for alcohol sales. Regular fire checks were also carried out at the premises.

Ms. Scattergood explained that she had good relationships with her customers and that to her knowledge there had only ever been one

incident that had upset local residents, and that this was referred to in the representations received to the variation application. Namely, a customer leaving the premises singing an Abba song. Incidents of disruption were few and far between. Children's welfare was important, and she had an enhanced Disclosure and Barring Service (DBS) check and a safeguarding certificate.

Ms. Scattergood stated that she was very disappointed that the residents from Station Road had not spoken to her about their concerns. Her business was an asset to Hagley and the wider community. She had fully adhered the four licensing objectives.

Mr. J. Najran added that he had sought legal advice concerning issues and comments previously made. Ms. S. Knight asked the Council's Legal Advisor for advice regarding this, and it was clarified that legal advice was only to Sub-Committee Members regarding the application and any factors relevant to it.

In response to questions from Sub-Committee Members, Ms. Scattergood explained that she was looking to have a jazz singer (who was a member of staff) perform live at the Paint and Prosecco nights. Not every night, just once a month or every 2 months in order to add value and to enhance the Paint and Prosecco nights, which took place between 7:00 p.m. and 9:30 p.m. and she anticipated that the Jazz singer would perform from 7:30 p.m. and 9:30 p.m. with a break added in.

Ms. Scattergood responded to further questions from Sub-Committee Members, whereby she reiterated that no-one had come to her shop to make her aware of the problems they were experiencing. With regards to bookings at the premises she would steer everyone towards the booking system. Should anyone just 'walk into' the premises and there was a free table she would allow this. However, she would still ask for email addresses and phone numbers in order to let them know when their pottery was ready for collection.

The business was seasonal with more bookings during the autumn / winter months for the clay classes, which had really taken off. Hence, her licence variation application. There was a minimum of two staff members in attendance at night with another staff member glazing, they did not work 'front of house'.

One of the 'Other Parties' to the proceedings, Ms. S. Knight, commented that prior to 2021 customers could bring their own alcohol to the premises and that events were held once a week. However, this had now 'ramped up', with recorded music at events 4/5 times per month. So, she surprised that as stated earlier by Ms. Scattergood that alcohol sales only accounted for less than 2% of sales.

The Chairman took the opportunity to briefly explain that at this stage in the Hearing, that the 'Other Parties' to the proceedings should be putting

any relevant questions to the applicant. The 'Other Parties' to the proceedings would have the opportunity to address the Sub-Committee, to present their representations.

In response to questions from the 'Other Parties' to the proceedings, Ms. S. Knight questioned the capacity at the premises being more than 30, as stated during the course of the Hearing by Ms. Scattergood. Ms. Scattergood explained that the downstairs of the premises could accommodate up to 30 people, the small room upstairs could accommodate 6 people, with the outside seating area accommodating 8 people.

In response to the Chairman, Ms Scattergood agreed that 36 people could be accommodated inside the premises if the small room upstairs was included. The small room upstairs and the outside seating area were not included on the current premises licence for the sale of alcohol.

With the agreement of the Chairman, the Principal Officer (Licensing), WRS clarified that the outside seating area was for the consumption of alcohol not the sale of alcohol. The sale of alcohol inside the premises (licensable activities) was limited to the room downstairs, and that if no alcohol was being sold in the small upstairs room, then it did not need to be included on the premises plan submitted, as detailed on page 35 of the main agenda pack.

Mr. J. Najran commented that not all customers ordered alcohol some ordered coffee.

In response to further questions from Ms. S. Knight, Ms. Scattergood explained that the jazz singer would be positioned at the rear of the premises (by the kiln area), and that she envisaged that they would be seated on a stool and not moving around the room as there wasn't enough space. There would be a one amplifier next to the jazz singer. There was no air conditioning in the premises and the windows at the back of the building were kept open due to the kilns being located there.

Mr. A. Long raised a number of questions and concerns with regards to noise nuisance and the suitability of the building for live music events, there was no air conditioning or sound proofing in the premises. Ms. Scattergood had not taken any additional precautions to prevent noise nuisance.

In response the Council's Legal Advisor stated that Ms. Scattergood had purchased the building as it was, and therefore was not able to comment on the original structure of the building.

During the course of the Hearing, Ms. S. Knight and Ms. K. MacArthur both referred to the Council's Statement of Licensing Policy, Parts 8.2 and 8.3, which detailed that –

'The licensing authority will take into account requests for licensable hours in the light of:

- environmental quality
 - residential amenity
 - the character or function of a particular area and,
 - the nature of the proposed activities to be provided at the premises.
- Consideration may be given to imposing stricter restrictions on licensing hours when it is appropriate to control noise and disturbance from particular licensed premises, such as those in mainly residential areas'.

Ms. K. MacArthur further highlighting that nearby residents were anxious about noise nuisance emanating from the premises.

In response the Council's Legal Advisor stated that Members would have the Council's Statement of Licensing Policy to refer to.

In response to the Chairman, Ms. Scattergood clarified that as stated earlier that currently she was looking to have a jazz singer perform at the Paint and Prosecco nights, so not every night. The jazz singer would have one amplifier and would be positioned at the rear of the building near to the kiln area. The property was a double fronted property, one on the walls was positioned next to another business, and the kiln room and garden were located at the rear of the property.

Ms. Scattergood further reiterated that the Paint and Prosecco nights took place between 7:00 p.m. and 9:30 p.m. and that she anticipated that the Jazz singer would perform from 7:30 p.m. and 9:30 p.m. with a break added in.

The Chairman then invited the 'Other Parties' to the proceedings to put forward their representations in objection to the variation application.

Ms. S. Knight addressed the Sub-Committee and in doing so read out a comprehensive representation, which in summary highlighted that the variation application was looking to extend licensable activities by 50%, potentially enabling 68 hours of licensable activities to take place at the premises.

The premises was located on a residential road, with two local schools and a children's nursery.

There was no soundproofing at the premises and windows were left open. There were no car parking facilities and parking issues were now a common law aspect. If the licensing hours were increased, then the business opening hours would also increase. It was a single access route, and cars were left parked on the road and on the kerbs. Therefore, making it difficult for pedestrians, elderly pedestrians and pedestrians with push chairs to manoeuvre around parked vehicles.

Ms. Scattergood had already received a warning from Licensing, WRS for illegally selling alcohol outside of her premises licence hours and had had waste removal issues, with pottery waste products often overflowing at the premises.

A local Councillor had been involved in arranging the removal of waste products from the premises. Parish Councillors, the Ward Member and two nearby Ward Members were also against the variation application; with the two nearby Ward Members submitting representations. Their representations reiterated that the premises was located on a residential street in a conservation area; with noise nuisance permeating from the premises. The premises had no sound proofing and customers smoked and vaped outside of the premises. Therefore, there was potential for increased noise, light pollution and general nuisance should the additional hours be granted.

Ms. Knight continued and in doing so reiterated that it was a quiet residential road, customers leaving the premises between 10 p.m. and 11 p.m. were often noisy when leaving, with loud chatter being heard and car doors slammed.

Ms. Knight stated that she had contacted Worcestershire County Council, Highways about the parking issues and was referred to Bromsgrove District Council (BDC), who had then referred her to Wychavon District Council who undertook Civil Parking Enforcement services on behalf of BDC.

Ms. Knight stated that Ms. Scattergood had sold alcohol outside of her current premises licencing hours and as stated earlier had had to have waste removed from her property by a local Councillor who had arranged for the appropriate Council officers to remove the overflowing waste.

Mr. A. Long then addressed the Sub-Committee and in doing so, further added that Ms. Scattergood had commented that she was disappointed that no one had reported any issues to her. However, there were a substantial number of representations over a period of time, as presented to Sub-Committee Members for their consideration. He had wanted to give the business a chance when the initial premises licence was granted, he had even visited as a customer. However, with the issues now being experienced, the variation of the hours was a step too far. The business initially in 2021 had been described by Ms. Scattergood as a creative, pottery business, but the business was very different now. The variation application, if granted, would enable the business to have live entertainment four nights a week until 10:00 p.m. and drinking seven nights a week. Ms. Scattergood had stated that she only intended to have live music once a month, but if granted, she could have events / live music every night of the week as her business grew.

They were all neighbours and wanted to get on and make things work, however, they were also disappointed that Ms. Scattergood had failed to notify any of the neighbours of what she intended to do. They were only made aware when the variation application was advertised.

Mr. Long further referred to the variation application being incorrectly advertised by not providing the requisite consultation period. The application was therefore not initially advertised in accordance with the legislation, and that this should also give Sub-Committee Members cause for concern.

Mr. Long continued and stated that he wanted to emphasise his concerns with regards to the protection of children from harm and the prevention of public nuisance, his reasons were very detailed in his submitted representation. He would ask Members to be mindful that the premises was situated on a small quiet residential road and that there was potential for noise nuisance for those children living in close proximity to the premises.

He would ask Sub-Committee Members to bear in mind, that if granted in full, any control of the premises would be lost. He would urge Members to think about the sale of alcohol and drinking element at the premises. He would agree that most customers were good, honest people, but people tended to do things they would not normally do when under the influence of alcohol.

With the agreement of the Chairman, the Council's Legal Advisor explained that with regards to the application process, the statutory 28 days consultation period was followed for this application; and that this was detailed in the officer's report. However, Mr. Long was referring to the two prior applications received by WRS, whereby the statutory 28 days consultation period would not have been met and that both of these applications were withdrawn by the applicant, when this was made clear by WRS officers.

Ms. K. MacArthur then addressed Sub-Committee Members. Ms. MacArthur stated that as a group of residents they were initially pleased to know that No. 5 Station Road was to be a pottery and painting business and were joyed that such a business would be taking place there.

However, noise nuisance was now being created with customers smoking and vaping at the front of the premises. Live music was unreasonable more than one night per month as was the extended hours applied for.

There had been issues with waste products at the premises, with packaging and pottery debris causing bins to overflow. Last year there were rats which was reported to WRS.

Her bedroom had now become a spare bedroom due to the noise and continuous flashing lights; which she had asked to be dimmed and was told to close her blinds / curtains.

Ms. MacArthur continued and commented that she was disappointed that, due to work commitments and school half term, that more residents had been unable to attend the Hearing in order to address Sub-Committee Members with their concerns. She would ask Members to consider the issues raised, the waste concerns and the impact with the extended hours applied for.

Members questioned the allegation of Ms. Scattergood breaching her existing licensing conditions and thereby receiving a warning from WRS, as alluded to by Ms. Knight during her address to Sub-Committee Members.

In response the Technical Officer (Licensing) WRS, explained that a letter was sent to the applicant advising her that WRS had received allegations that alcohol was being provided in conjunction with sales. The applicant was also emailed regarding concerns that she was offering licensable activities out of hours which was the initial contact that led to the application. However, a warning was not issued.

The Chairman then asked the 'Other Parties' if they wanted to 'sum up'.

Ms. Knight stated that she had nothing further to add. Mr. Long acknowledged that the Chairman had kindly allowed them to go over their allocated time of 15 minutes. Members had the representations before them to consider and he would ask Members to consider these and the affect the business was having of local residents. It was a residential road with lots of children nearby.

The Council's Legal Advisor also acknowledged that the Chairman had allowed their time to run over, and that the Chairman could extend the same gesture to Ms Scattergood in her summing up.

Ms. Scattergood expressed her thanks.

Ms. Scattergood then summed up and in doing so stated that she was not going to reply to some remarks made by the 'Other Parties' during the course of the Hearing. She was very passionate about painting and pottery, the business had not changed, she was diversifying the business, in order to align the licensing hours with her opening hours.

Ms. Scattergood highlighted that she was responsible and had not received any complaints from any of the Responsible Authorities. She had a good relationship with the Council and would rectify any issues / concerns raised.

At the invitation of the Chairman, the Council's Legal Advisor further informed Members that they should consider the four licensing

objectives, the written and oral representations as presented during the course of the Hearing, section 182 of the Licensing Act 2003 and the Council's own Statement of Licensing Policy.

The Council Legal Advisor stated that Members could take the following steps as it considered appropriate for the promotion of the licensing objectives:

- (a) Grant the application as requested.
- (b) Modify the conditions of the licence, by altering or omitting or adding to them.
- (c) Reject the application in whole or in part.

Members should give no less weight to the representations received from those who were unable to attend and address the Sub-Committee during the course of the Hearing due to their commitments.

Members were reminded that when considering the representations received, that they were only able to have regard to matters that were within their remit.

The Council's Legal Advisor referred to the Live Music Act 2012, that the applicant could have live music and recorded music at the premises in accordance with paragraph 12A of Schedule 1 and section 177A of the Licensing Act 2003. This was also referenced on page 13 of the main agenda pack.

At this stage in the Hearing the Chairman announced an adjournment in order for Sub-Committee Members to determine if they had all of the information needed to make an informed decision.

With the agreement of the Chairman, Ms. Knight further referenced parking issues and the Council's Statement of Licensing Policy section 6.32, which stated that:-

"In particular the licensing authority will consider the action that is appropriate for the premises that the applicant has taken or is proposing with regard to the following:-" (items listed as specifically referred to by Ms. Knight)

- i) prevention of noise and vibration escaping from the premises, including music, noise from ventilation equipment, and human voices. Such measures may include the installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices.
- ii) the structural suitability of the premises to provide the licensable activities sought including for example matters such as whether the premises benefits from double glazing and lobbied doors.
- vi) arrangements for parking by patrons and staff, and the effect of the parking on local residents.
- xv) whether the premises would lead to increased refuse storage

or disposal problems, or additional litter (including fly posters and illegal placards) in the vicinity of the premises.

With the agreement of the Chairman, the Council's Legal Advisor stated that Sub-Committee Members would refer to the Licensing Act 2003, the Councils' Statement of Licensing Policy and the s182 Guidance when making a decision. Members were also mindful that car parking enforcement issues were addressed on the Council's behalf by Wychavon District Council and that waste management was managed by a different department at the Council; there was often more than one agency to look at specific issues. Members would further consider the licensing objectives and what weight they would give to the issues raised.

Accordingly, the Hearing stood adjourned from 12:16 hours to 13:05 hours.

Having reconvened the Chairman put a number of questions to Ms. Scattergood with regard to her future business plans.

In response Ms. Scattergood explained that currently she opened the premises 11:00 a.m. to 4:00 p.m. on weekdays, with paint / clay / pottery sessions lasting approximately 1½ to 2 hours. People were encouraged to use the online booking system to pre-book a session. The Paint and Prosecco events were held between 7:00 p.m. and 9:00 p.m.

Ms. Scattergood further emphasised that she was looking to open as the business now dictated. There were usually 30 customers in the premises on a weekend, but not so full during the week. She wanted the flexibility in order to plan and see what days worked, it was a fluid business; and she wanted to look at trends. Live music was and would be ancillary to the business, usually on the Paint and Prosecco evenings. Currently she had a jazz singer booked for one night in December. Recorded music was already played in the premises as background music.

With regards to the complaints received by WRS, this was possibly due to the sale of alcohol outside of her current premises licence hours. WRS had informed her of the complaints, and she was advised to apply for a Temporary Events Notice (TEN) or a variation to the premises licence. Ms. Scattergood further explained that the recent complaints referred to by the 'Other Parties' for selling alcohol outside of her licencing hours; was a pottery class event she had advertised which included a free glass of fizz. The advert template she had used was for previous events held during her licensable hours and she had mistakenly reused the same template. After being made aware by WRS she had then subsequently emailed the customers who had booked this event to inform them to bring their own alcohol.

People could just walk into the premises for food and drink, but this did not happen very often as they were usually busy with pre-bookings.

The Chairman then took the opportunity to thank everyone for attending and explained that the Decision Notice would be issued in five working days to the applicant and all those who had submitted a representation.

The Council's Legal Advisor reminded all parties of the review process that applied to any premises that failed to promote the licensing objectives; and that any party was able to request a review of a licence where evidence indicated that the licensing objectives were not being met.

Mr. A. Long then took the opportunity to thank the Chairman and Sub-Committee Members. He had felt that the Hearing had been conducted fairly, had enabled all parties the opportunity to address Sub-Committee Members and ask a number of questions. The Chairman had also kindly extended their speaking time in order express their concerns fully and he would like to thank the Chairman.

Having had regard to:

- The licensing objectives set out in the Licensing Act 2003.
- The Guidance issued under section 182 of the Act.
- The Council's Statement of Licensing Policy.
- The Report presented by the Technical Officer, Licensing, Worcestershire Regulatory Services.
- The application and oral representations made at the Hearing by and on behalf of the applicant.
- The written and oral representations submitted by other parties, pages 37- 74 of the report.

The Sub-Committee decided to grant the variation application for a premises licence relating to Coffee N Clay in the terms set out in the application.

The Chairman stated that a copy of the Decision Notice would be sent to all parties to the proceedings.

All parties were made aware of the review process that applied to any premises that failed to promote the licensing objectives. Any party was able to request a review of a licence where evidence indicated that the licensing objectives were not being met.

An appeal by any party to the Magistrates' Court against the Sub-Committee's decision must be lodged within 21 days of the date on which written confirmation of the decision was received.

Licensing Sub-Committee
31st October 2024

The meeting closed at 1.16 p.m.

Chairman