

NOTICE OF DECISION

LICENSING SUB-COMMITTEE –26 MAY 2021

SECTION 17 LICENSING ACT 2003: CHILL OUT BILLARDS POOL LIMITED, ARCH 148, EAGLE YARD, HAMPTON STREET, LONDON SE1 6SP

1. Decision

That the application made by Chill Out Billards Pool Limited for a premises licence to be granted under s.17 of the Licensing Act 2003 in respect of the premises known as Chill Out Billards Pool Limited, Arch 148, Eagle Yard, Hampton Street, London, SE1 6SP be granted as follows:

2. Hours

Activity	Hours
Recorded Music (Indoors)	Sunday to Thursday: 08:00 to 23:30 Friday to Saturday: 08:00 to 00:30
Late Night Refreshment	Sunday to Thursday: 23:00 to 23:30 Friday and Saturday: 23:00 to 00:30
Supply of Alcohol (on premises)	Sunday to Thursday: 10:00 to 23:30 Friday to Saturday: 10:00 to 00:30
Opening Hours	Sunday to Thursday: 08:00 to 00:00 Friday and Saturday: 08:00 to 01.00

3. Conditions

- i. That there is an accommodation limit of 120 including staff.
- ii. That a dispersal policy be held at the premises with the premises licence and is made available upon request. All staff will be trained in respect of the dispersal policy.
- iii. That the dispersal policy is amended that patrons are encouraged to use public transport and taxis should be directed to Hampton Street and the same is included on all relevant publicity material.
- iv. That the dispersal policy shall be amended to reflect the hours imposed by this licensing sub-committee.
- v. That there shall be no off sales of alcohol.

- vi. That a telephone number shall be provided to local residents and tenant's association(s).
- vii. That there shall be no dancing after 23:00.
- viii. That all windows and doors shall remain closed with the exception of ingress and egress when licensable activity takes place.
- ix. That there shall be 80 seats downstairs in the premises.
- x. That food shall be served at all times when licensable activities take place.
- xi. That the rear outside area shall be closed at 21:00 with the exception of smoking. The number of smokers shall be limited to a maximum of 10 at any one time, after 21:00.
- xii. That all bottling, refuse collection and deliveries shall only take place between 08:00 and 20:00.
- xiii. That there shall be no hiring of the premises to external third parties or for externally promoted events.

4. Reasons

This was an application made by Chill Out Billards Pool Limited in respect of a premises licence application in respect of the premises known at Arch 148, Eagle Yard, Hampton Street, London, SE1 6SP. In the application, the premises were described as being a *"Tapas Cafe with pool and billiards tables on the floor above...."*

The licensing sub-committee heard from the solicitor for the applicant who advised that the premises would be a café style pool/snooker premises. The representation made by licensing responsible authority was objected to by the solicitor for the applicant, stating that it was not appropriate to submit a generic representation; always seeking accommodation limits and a dispersal policy conditions, without good reason in line with the decision in Daniel Thwaites PLC v Wirral Borough Magistrates' Court [2008] EWHC 838 (Admin), CO/5533/2006.

The solicitor for the applicant noted that no other responsible authorities had submitted representations. Reference was made to paragraph 9.14 of the Home Office's Section 182 Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018) which states that licensing responsible authorities should not make representations where these responsible authorities are reasonably able to do so. Furthermore, the additional information submitted did not amount to an amplification of the original representation, so should be disregarded in accordance to paragraph 11.9 of the Section 182 Guidance. The legal advisor for the sub-committee stated that the additional representations could be considered, but only in so far as they were relevant to the original representation.

The solicitor for the applicant stated that the application was within policy hours and that the application was amended, removing off-sales. There was an outside

area at the rear of the premises that would be used for smokers. Concerning the objections received from the other persons, the concierge at the Strata Building had informed him that none of the windows in Strata House had opening windows, so no sound would be audible by them. In any event, the applicant would be fitting an additional lobby door as an added protection for the local residents.

The licensing sub-committee then heard from the officer representing licensing as a responsible authority whose representation was based on the Southwark's statement of licensing policy 2021 – 2026 and related to the licensing objectives for the prevention of crime and disorder and the prevention of public nuisance.

The licensing responsible authority officer advised that the premises is situated in the Elephant and Castle major town centre area and in Southwark's statement of licensing policy 2021-2026 the appropriate closing times for public houses, wine bars or other drinking establishments was Sunday to Thursday 23:00 hours and Friday and Saturday 00:00 hours.

They added that residents live close by the premises and the application seeks opening hours exceeding those hours recommended in the policy. The officer was of the view that there was no compelling reason for the sub-committee to divert from the opening hours recommended in the policy.

To promote the licensing objectives the officer recommended that the closing times be brought back in line with those hours in the policy for a bar in the area, allowing half an hour for drinking up time and also that late night refreshment is removed from the operating schedule on Sunday to Thursday. The officer also sought an accommodation limit and a written dispersal policy to be added as conditions to promote the licensing objectives. The officer emphasised that this was sought so that the footfall could be established.

The licensing sub-committee then heard from other persons who were local residents, being party F and Party O in the agenda papers, at Appendix C.

Party F advised that he lived on the first floor of Draper House. His objection was based on the prevention of public nuisance licensing objective. He stated that he wanted the applicant's business to flourish and hoped that the business would be a good neighbour but was concerned that the premises would add to the existing problems with antisocial behaviour and customers dispersing from the venues under the arches. He added that currently people spill out into the service yard and argue, shout, wait for minicabs, urinate, take drugs etc - very close to homes on the Draper Estate and the Strata Building.

Party F referred to the hours granted under the planning permission and wanted an explanation for the disparity in the licence and planning hours. Concern was also made of the premises being akin to a nightclub. Ultimately, Party F asked that the licensing sub-committee limit the hours of the premises to protect the residential neighbours and prevent further noise and public nuisance.

The licensing sub-committee heard from Party O, who reiterated Party F's representation. Her representation was primarily in connection with the prevention of public nuisance licensing objective. Party O stated that she lived in the Strata

Building, which overlooks the servicing yard, Maldonado Walk (also known as Eagle Walk).

During the summer months she was constantly disturbed by noise associated with the local late night activity. Whilst the premises had not yet opened, residents were very concerned about the cumulative impact of the number of premises in the immediate vicinity and that the premises would add to the existing problems. Party O Also asked the licensing sub-committee to limit the hours to protect the local residents and to add such other conditions to the licence that would prevent further public nuisance arising to residents.

During the discussion part of the hearing, there was serious concern that the premises would be a nightclub or morph into one. Other person F pointed out that the plan at page 30 of the agenda showed a dance floor being present. On being questioned on this, the applicant's solicitor made it clear that this plan had been submitted erroneously and was a plan submitted for the planning application. A condition was subsequently suggested by the applicant's solicitor "*that there be no dancing*", to reassure local residents that the premises would be a tapas cafe with pool and billiards tables.

The applicant's solicitor also confirmed his client was committed to not using single use plastics as detailed in Southwark's statement of licensing policy. The solicitor was unwilling to agree to a restaurant condition as this would hamper the premises business plan. The suggestion of SIA officers to assist with the dispersal of patrons was also refused.

The licensing sub-committee noted the representations from 15 other residents who were not in attendance.

The solicitor for the applicant commented that given the absence of these individuals from the sub-committee, members should give appropriate weight to this evidence.

The sub-committee noted that it was not unusual for residents to be absent from licensing sub-committee meetings due to work and other day to day commitments. What was clear from all 17 representations from other persons is the concern of existing issues of crime and disorder and noise nuisance from the licensed premises in the vicinity. Members considered the 15 other representations and it was clear that they shared the identical concerns that parties F and O had. Matters that members found particularly compelling included:

"Noise has affected my sleep and as a result has affected my mental health".
Other Person B).

"I am concerned that this venue will add to the existing problems with antisocial behaviour from customers dispersing (or not dispersing) from the venues under the arches" (Other Person B).

"...significant concerns about resident's wellbeing in this area in relation to the venues on Eagle Yard that are continuously being disregarded in an apparent effort to make this residential area a nightlife hotspot." (Other Person C)

“[Please reject this application and] preserve the right of hundreds of residents to a good night's sleep.” Other Person H.

“Residents of the Draper Estate and Strata Tower have suffered years of noise and public order nuisance emanating from the establishments in Maldonado Walk (the actual name of that location), and I don't see how adding another drinking venue can possibly avoid adding to this ongoing problem.” (Other Persons A, D, J and P).

“The Southwark Statement of Licensing Policy talks about "proper integration with the planning regime" and says that it is "strongly recommended" that applicants should have planning permission in place” (Other Persons B, F, I, K and Q).

This licensing sub-committee include members that have many years experience in determining licensing applications and must promote all of the licensing objectives. The sub-committee also considered the April 2018 revised Section 182 guidance from the Secretary of State for the Home Office and Southwark's own statement of licensing policy 2021-2026.

Twelve licensed premises are currently situated in the 100 metres radius around the premises and it is apparent that the residents from the Draper Estate and the Strata Building have suffered from noise made by patrons outside the various premises in Eagle Yard (also known as Maldonado Walk) when leaving. There is no suggestion that the applicant has caused any noise nuisance to date, since the premises has yet to open. However, local residents fear that the grant of another premises licence on Eagle Yard would add to this ongoing problem. A grant of this licence application would essentially amount to the grant of an extension into a sensitive time when nearby residents would be sleeping.

Residents have experienced the cumulative impact in the form of public nuisance, anti-social behaviour from the licensed premises in the locality. Whilst the premises is not situated in a cumulative impact area there is evidence of cumulative impact. It is entirely proper that this licensing sub-committee takes into account evidence from the licensing responsible authority and other persons regarding cumulative impact as well as the Southwark framework hours policy. Paragraph 14.42 of the Section 182 Guidance provides:

“14.42 The absence of a [cumulative impact assessment/policy] does not prevent any responsible authority or other person making representations on an application for the grant or variation of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives, However, in each case it would be incumbent on the person making the representation to provide relevant evidence of cumulative impact”.

In view of the Section 182 Guidance, this licensing sub-committee have agreed the application with hours that reflect those in Southwark's statement of licensing policy to prevent further public nuisance by noise and disruption.

The applicant's solicitor commented on the generality of the representation from the licensing responsible authority and seeking conditions relating to a dispersal policy and accommodation limit.

The sub-committee do not agree. The officer representing licensing as a responsible authority informed the sub-committee that these conditions were sought to determine footfall and this is accepted. The sub-committee need to be sure that conditions imposed would adequately deal with the concerns raised.

Additional conditions are only ever imposed by the licensing sub-committee on a case-by-case basis and are tailored to the size, type, location and characteristics and activities taking place at the premises concerned (paragraph 10.10, Section 182 Guidance), in addition to the issues raised in the representations. The sub-committee are satisfied that the conditions it has imposed are both appropriate and proportionate in the circumstances and promote the licensing objectives.

The applicant's solicitor also raised concern of being ambushed by additional information from the licensing responsible authority regarding planning issues, which were irrelevant to the original representation.

This licensing sub-committee has only taken this additional information in so far as it relates to the original representation namely, the prevention of public nuisance. The sub-committee note the hours imposed by the planning permission. Licensing and planning are two separate regimes and the licence is not bound by the planning permission. The applicant is however reminded that if they operate in breach of their planning permission they would be liable to prosecution under planning law (*Gold Kebab v Secretary of State for Communities and Local Government* 2015 [2015] All ER (D) 48 (Sep))

In reaching this decision the sub-committee had regard to all the relevant considerations and the four licensing objectives and considered that this decision was appropriate and proportionate.

5. Appeal Rights

The applicant may appeal against any decision:

- a) To impose conditions on the licence
- b) To exclude a licensable activity or refuse to specify a person as premises supervisor.

Any person who made relevant representations in relation to the application who desire to contend that:

The licence ought not to be been granted; or that on granting the licence, the licensing authority ought to have imposed different or additional conditions to the licence, or ought to have modified them in a different way may appeal against the decision.

Any appeal must be made to the Magistrates' Court for the area in which the premises are situated. Any appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates' Court within the period of

21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

Issued by the Constitutional Team on behalf of the Director of Law and Governance.

Date: 26 May 2021