

## **DURHAM COUNTY COUNCIL**

At a Meeting of **Statutory Licensing Sub-Committee** held in Council Chamber, County Hall, Durham on **Thursday 19 January 2023 at 1.30 pm**

### **Present:**

**Councillor D Brown (Chair)**

### **Members of the Committee:**

Councillors R Adcock-Forster, C Bihari, E Peeke and M Wilson

### **Also Present:**

Helen Johnson – Licensing Team Leader

Stephen Buston – Solicitor, DCC

### **Applicant**

Charles Holland – Barrister

Sarah Smith – Solicitor

Tania Woodhouse – Operations Director, Stack

Neill Winch – Managing Director, Stack

### **Other Persons**

Roger Cornwell – Crossgate Community Partnership

John Ashby - Crossgate Community Partnership

John Lowe – City of Durham Trust

Chris Hugill – Crossgate Community Partnership and City of Durham Trust

Janet George – St Nicholas Community Forum

Councillor Susan Walker – City of Durham Parish Council

Councillor Esther Ashby - City of Durham Parish Council

Adam Shanley – Clerk to City of Durham Parish Council

### **1 Apologies for Absence**

There were no apologies for absence.

### **2 Substitute Members**

There were no substitute Members.

### **3 Declarations of Interest**

There were no declarations of interest.

#### **4 Minutes**

The Minutes of the meeting held on 16 December 2022 were agreed as a correct record and were signed by the Chair.

#### **5 Application for the Grant of a Premises Licence - Stack, 4-6 Silver Street, Durham**

The Committee considered a report of the Corporate Director of Neighbourhoods and Climate Change regarding an application for the grant of a Premises Licence in respect of Stack, 4-6 Silver Street, Durham (for copy see file of Minutes).

A copy of the application and supporting information had been circulated to all parties together with additional information from the Applicant, Crossgate Community Partnership and the City of Durham Parish Council.

Roger Cornwell referred to the letter from the Fire and Rescue Service in the Bundle which stated that a fire safety risk assessment must be carried out and was informed that this did not amount to a representation regarding the application.

Following a question from Adam Shanley, Clerk to the City of Durham Parish Council, it was confirmed that the revision to the report by APEX consultants would be considered by the Sub-Committee.

Stephen Buston, Solicitor asked the Officer about vehicular access to the premises along Silver Street. Helen Johnson confirmed that Silver Street was pedestrianised apart from between the hours of 6pm and 10am for deliveries, waste collection etc. There were bollards at the top of the street to prevent vehicular access outside these hours.

Roger Cornwell of Crossgate Community Partnership was invited to address the Sub-Committee. He commenced by stating that this was a new type of venue for the City and although it had proved successful elsewhere there were differences in the locations. Seaburn Stack was located on the seafront with plenty of space surrounding it. Pilgrim Street was a development site and residents were therefore accustomed to experiencing more background noise. In Durham there were a number of residential properties in that area.

The operating schedule had been revised three times and there were still unresolved issues.

Mr Cornwell highlighted the representations made by the Partnership:

The original operating schedule had been based upon a different Stack location. Whilst amendments had been made to the operating schedule it was still not site specific.

Their approach to looking at the operating schedule was to compare it against the Statement of Licensing Policy and referred the Sub-Committee to their representations regarding this.

The Applicant had added Policies to the schedule but these documents had not been made available. He also asked if there would be a policy which would address how the premises would deal with customers who were intoxicated and how Stack would help vulnerable customers get safely home.

In terms of training he asked if temporary staff would receive the same training as permanent employees.

There was no procedure for the prevention of anti-social behaviour. Reference was made to calling for Police support - this was not prevention. The operating schedule referred to a policy but this needed to be seen. From the census the majority of residents in the City were aged between 15-25, most of which would be students and over 18 but some may be younger than that, and he asked if Challenge 25 would be in operation.

In terms of the additional information the Partnership had provided and the licensing objective prevention of public nuisance, he noted that the operating schedule had been updated to state that no live or recorded music would take place in the outside area after 11pm but it did not mention other licensable activities. The latest report from APEX stated that Stack would not be seeking authorisation for regulated entertainment on the outside terrace. This was a last minute change which the Applicant should address.

The Partnership had provided a map showing a list of properties where planning permission had been granted for residential accommodation in close proximity which would now be faced with noise from the roof terrace. APEX had stated that residents would be required to close their windows. Residents should be able to open their windows and therefore to mitigate the Partnership suggested that the terrace be closed after 7pm. The Noise Impact Assessment had not considered the impact of customers from the premises emptying onto Silver Street. Sound echoed off the buildings, and the Partnership suggested a closing hour of 11pm to mitigate this.

At this point with the agreement of all parties, Mr Cornwell shared photographs from the Applicant's own website which gave an idea of the nature and exuberance of a live event at one of its other premises. The

Applicant had not described how customers would leave the premises following an event.

In terms of public safety Moatside Lane was proposed as an emergency exit. The lane was narrow, dark, twisting and sloped.

John Ashby had explored the Lane after dark. Mr Ashby lived close to the Market Place and was familiar with all the vennels. He had walked the length of the Lane on 8 January at 7pm. He found it worrying walking along the slippery cobbles on uneven and unmarked steps, with bulkhead lights only working on some parts of the route.

Although it could be argued that there had been a fire exit onto Moatside Lane for many years, this was used by a retail premises that was open mostly in daylight. Customers from Stack may be intoxicated and it would not be safe for them to leave the building this way.

Councillor Susan Walker addressed the Sub-Committee on behalf of the Parish Council who were in complete agreement with the other objectors to the application. The Parish Council was concerned with the lack of care taken over the first operating schedule, residential amenity and that a number of businesses were being considered within a single application.

The premises would extend over 2700sqm and would attract huge numbers of visitors. The yard to the rear was small and accessed down a narrow lane from Saddler Street. To the front was narrow Silver Street. The Parish Council therefore asked how deliveries etc would be arranged for Stack and seven businesses within it.

With regard to staff training it was not clear how this would be delivered and the Parish Council asked that a condition be included to state that all businesses must adhere to the conditions on the Premises Licence, including training. They also asked that the training be delivered to temporary staff as well and that there should be sufficient members of staff trained on the evacuation procedures.

The Parish Council was concerned about the potential for noise nuisance. The survey from APEX was completed when there were fewer residential properties in the vicinity. APEX had recommended additional sound insulation at these properties but that was to mitigate against pedestrian noise on Silver Street. It was unrealistic to expect residents to keep their windows closed.

The music speakers faced the Castle which was not only a key part of the World Heritage site but was also residential with a wellbeing garden for students. Noise would be created in such a sensitive area and the University

had expressed serious concerns, which had been circulated. Students' quality of life would be impacted. The Parish Council supported the University and students who were less likely to engage in the licensing process.

The Parish Council would also like to see more detail on the CCTV system, and how Stack would deal with a build-up of crowds. It also considered that the proposed location of the toilets may encourage drug activity. The Parish Council noted the reference to a Drugs Policy but that it had not been presented.

In terms of the licensing objective 'protection of children from harm', the Parish Council could see no evidence that this objective would be promoted. This was of concern given that Stack wished to operate as a family friendly venue during the day.

The town was frequented by secondary school children at the end of the school day and the venue, especially the gaming area, would be popular. Councillor Walker asked about safeguarding arrangements.

Janet George addressed the Sub-Committee on behalf of St Nicholas Community Forum and commenced by stating that following discussion at their regular monthly meeting, the letter was sent to 65 people. Not one member had given a positive response to this application.

The Forum's particular concerns related to the licensing objectives public safety and the prevention of public nuisance.

Based on many years use of the premises the Forum had serious concerns about the safe evacuation of large numbers of patrons in the event of an emergency onto Silver Street or Moatside Lane.

The external doors marked on the plans indicated the number of customers emerging and from which floor they would be evacuating and the escape route. Internal access to the windows on the first and second floor frontage was blocked by bars and glass wash areas. The only exit towards the rear of the property seemed to be at first floor level. No exit was marked on the plans to the rear of the premises at ground floor level.

Numbers on the plans may meet Building Regulations and Fire Safety Guidance but in any emergency the Forum was not confident in the Applicant's ability to deliver safe evacuation of large numbers of customers.

Silver Street was a narrow sloping street and in the event of an evacuation, emergency vehicles would need unrestricted access to the building. Any large number of people leaving the premises would need to stream up

towards the Market Place (Silver Street is only 7 metres wide) or they would need to move down to Framwellgate Bridge, which had the potential for accident.

Moatside Lane was treacherous to navigate. It was steep, cobbled, uneven and the sides bowed up. There were irregular steps at intervals. Trying to walk this in sensible shoes in the daylight on a dry day was tricky enough and for those less surefooted it was very easy to fall. Large numbers of people attempting to get out of the building this way in a hurry or panic, in the dark or rain, in high heels and with or without a drink would be an unpredictable, risky and worrying situation.

Whilst a Stack may be appropriate in another part of Durham City, it was very difficult to see how safety of the public could be absolutely assured by using this building for the purpose proposed in the application. The recent awful events at Brixton Academy and closer to home in Durham were a stark reminder of how quickly a managed situation could get out of control.

A growing number of the retail premises on Silver Street had been converted into living accommodation on the upper floors. The distance between the living accommodation and the building was small. Recent university figures showed there were over 100 students in close proximity.

This application was for entertainment and music for large numbers of people until late at night every night. While the application aimed to keep noise inside the venue below a certain level, it would be virtually impossible to police noise outside the building on the streets once customers had exited the premises.

As well as street noise every night, there would be daytime disturbance from delivery vehicles and refuse collection. Everyone was entitled to peace in their homes. It was knowingly creating a Public Nuisance to allow such a lot of noise and large number of people so close together in this historic and confined area.

The geography of Durham allowed easy noise travel. With the river so close in three directions at Back Silver Street, Elvet Bridge and Framwellgate Bridge the Forum were concerned that noise and light from the development would be very disturbing to wildlife as well as residents.

Even controlled music and lighting on the proposed roof terrace would easily travel up to people living in the Castle and to the accommodation in Saddler Street as well as having consequences for the general amenity value of the area.

It had been reported this week that as a result of current economic pressures, one of the bars in Durham would be closed two days a week until further notice. Durham had a great many food, drink and entertainment outlets already. She asked if turning this building, in one of the City's traditional historic shopping streets, the best and most sustainable long-term way to use this building.

John Lowe of the City of Durham Trust was invited to address the Sub-Committee. He stated that the Trust fully supported the representations voiced by the previous speakers, and endorsed the representations of Mr Cornwell who spoke on behalf of both Crossgate Community Partnership and the City of Durham Trust. The Applicant's operating schedule failed to address the four licensing objectives and failed to address the constraints of Silver Street in the heart of the City. The Council's own Statement of Licensing Policy 'considers that achieving good practice in connection with the licensing objectives involved focusing on the four licensing objectives whilst at the same time considering the issues specific to different areas of the local authority and different types of licensed premises'. The Applicant had failed to demonstrate that the licensing objectives would be promoted.

At this point Charles Holland, Barrister was invited to make representation on behalf of the Applicant. He commenced by referring to the documents presented and confirmed that he had no objection to the the late representations submitted by Durham University.

Members were provided with the background to the business which was essentially a hospitality mall. It was self-contained with a combination of food led and wet led entertainment offerings.

The food led outlets were operated by tenants and this provided an opportunity for small local businesses to offer a mixed offering for customers. The trading style was casual with a mixed demographic.

The operator would not charge an entrance fee, but would not be offering drink discounting or using event promoters. Entertainment would be free with performances from local bands as opposed to anything heavily marketed. It was not a concert venue. Other community events such as open mic nights, talent shows, quiz nights and children's activities were proposed. Live music would be played between 4pm and 10pm during the week, and between 12 noon and 10pm at weekends. When live music wasn't playing, there would be background music or DJs. All Stacks had an outside element which was helpful to control smokers within the venue.

Capacity of the premises was high but remained intimate because customers could choose their own experience. It was not a style of business that attracted circuit drinkers.

The premises had been closed since 2018 and Stack had been approached to ascertain whether it would be viable to bring the building back into economic use. The business would employ between 80 and 100 people, with tenancies for seven units employing a possible further 20-25.

The tenancies would all be food led only. There would be no alcohol sales or regulated entertainment permitted.

The planning application was due to be considered by 9 February and Mr Holland made the point that the representations regarding wildlife, sustainability and deliveries were planning matters.

No Responsible Authorities had objected and it was important to bear in mind that Section 182 Guidance referred to these as being the primary source of expertise, when considering an application.

In terms of the operating schedule and the representations made regarding the conditions, Mr Holland stated that larger and more complex applications tended to have fewer conditions; the key test was whether they were proportionate. Larger applicants had sophisticated management teams and were skilled in risk management, working closely with the Licensing Authority throughout the application process.

The three key purposes of conditions were; where a breach was a criminal offence, a breach was grounds for review, or where a premises must be compliant, for example in the provision of CCTV. The operating schedule was not a flow chart dealing with every possible eventuality and was not a substitute for risk assessment or health and safety. Just because it did not deal with every matter did not mean it was inadequate; policies did not need to be reflected in the conditions.

Mr Holland proceeded to respond to the representations by explaining how they were addressed through the proposed conditions, as follows:

Conditions 1 and 2 prevented the premises from being a circuit bar.

Condition 3 - failure to comply was a criminal offence; the Operations Director had been with the business since 2018 and was experienced, ensuring a safe operation by employing skilled Managers.

Condition 4 required risk assessments for the general operations and for individual events, including for the provision of door staff.

Conditions 5 and 6 referred to a drugs policy, vulnerable people and sexual exploitations policy. These were included as specific conditions because of

the level of concerns raised. The policies were not presented because it was not for the Sub-Committee to agree these. The details of the policies would be completed when the venue was operational.

Condition 7 required a minimum of 5 SIA Door Supervisors. Mr Holland stressed that this was a minimum. More would be provided as necessary following risk assessment.

Conditions 8 and 9 addressed capacity. A first draft Fire Safety Strategy had been produced, with a maximum capacity of 1541 persons. Capacity was also specified for each floor level. The overall capacity may reduce further when fittings and furnishings were included.

Condition 10 - Representations had been made that the CCTV system was not identified on the plan. This was not a requirement. Condition 10 addressed CCTV which would need to satisfy the Police.

Condition 14 – there would be no late-night refreshment after 11.00pm, and therefore no late night deliveries. In any event the street was subject to traffic restrictions.

Condition 17 – all staff responsible for selling age restricted goods would be trained, and this would apply to the staff of tenants where relevant. Challenge 25 would be implemented.

Conditions 21 and 22 – the Applicant would be required to implement a dispersal policy but as it was site specific it would be premature to implement straight away. The Applicant would work with the Responsible Authorities to implement an appropriate policy as the building was close to opening.

Condition 23 – representations had been made regarding anti-social behaviour and the wording of the condition that ‘the Police shall be called for support’ was inadequate. This was not intended to be a substitute for a dispersal policy but was included as a condition to be clear on the responsibility of the operators in terms of enforcement.

Mr Holland continued that APEX had prepared a Noise Impact Assessment for the planning submission. The main issue related to the roof terrace which was the most noise sensitive area. Noise from inside the premises had not been highlighted as an issue. APEX had agreed with Environmental Health that a criteria of an internal noise rating level of 20 should be met. Representations had been made regarding residents keeping windows closed but this was not what was being said by APEX. Conditions 18-20 mitigated against this. The operating schedule had been amended at Condition 20 to ban regulated entertainment (other than live sporting events)

in the outside area after 11pm. This would be dependent upon the Noise Management Plan.

The other major issue highlighted by the parties was in relation to public safety in Moatside Lane. The Fire Authority had reduced the capacity to a maximum of 150 on that floor due to the narrow width of the vennel. In case of fire on the first floor 200 people would exit onto the Lane and turn left. This would be included in an Emergency Evacuation Policy. If it was not feasible then the capacity would be reduced further. Mr Holland reiterated that this would be a technical policy produced by experts when the final layout was known, and it would not be appropriate to refuse the application on these grounds.

Addressing the remaining concerns Mr Holland confirmed that the Applicant would participate in Pubwatch which did not need to be added as a condition. There had been no objections from Safeguarding, and as with their other premises, children would not be admitted without a guardian over the age of 25, would be required to be off-site by 9pm.

All parties were invited to ask questions. Helen Johnson clarified that the national Pubwatch scheme had written to Licensing Authorities discouraging the inclusion of a condition requiring attendance at Pubwatch meetings because it was not enforceable. Having said that Durham Police actively encouraged premises to join the scheme.

Adam Shanley noted that seven individual operators providing food could offer a delivery service until 11pm which was concerning, and he asked how this would be managed. Tania Woodhouse, Operations Director replied that based on other Stack premises, the traders' main income would be from within the site although they may use delivery services during the week when business was quieter. They would have a delivery management plan.

Following a question from Roger Cornwell, Mr Holland confirmed that the Stack operation would be the only outlet selling alcohol. The parties were advised that the tenants would enter into a Tenancy Agreement with covenants specifying how they must operate, which included complying with the operating schedule. Tania Woodhouse added that their reputation was very important and the standards were set very high in the food outlets. If there were breaches, it would not be a defence to say it wasn't the operator's fault.

Following a further question from Roger Cornwell regarding training, Tania Woodhouse confirmed that the company used an accredited on-line training provider. Every Team member must complete the training before starting their employment. The traders would be required to train their own staff but

the policies (drugs policy, dispersal policy etc) would have to be signed off by the traders.

Roger Cornwell asked if the Applicant had visited Moatside Lane. Mr Holland confirmed that they had and that the Fire Safety Strategy and evacuation process had been drawn up by professionals. The Strategy provided for this exit to be an escape route.

Chris Hugill asked if consideration had been given to whether the building could be safely evacuated using other exits. Mr Holland replied that advice received from the Fire Service was that Moatside Lane should be used as a Fire Exit. If there were circumstances where it could not be used the capacity of the premises would be reduced; the business would still be able to trade. The Fire Service advice was that it should be used with regular checks to ensure that it could be used safely.

Sarah Smith, the Applicant's Solicitor highlighted that evacuations would be supervised and the Lane would be checked every time the premises was open.

Mrs Esther Ashby of the Parish Council found the Applicant's representations that the policies were yet to be written concerning. She asked what timeframe the Applicant was working towards for the presentation of the policies. Mr Holland clarified that the policies would not be presented, the Applicant was asking the Sub-Committee to consider the conditions in the revised operating schedule. The policies were not matters for consideration at the hearing.

Adam Shanley asked if it was usual for so many matters to be resolved later, before the Premises Licence was granted.

Mr Holland did not accept that the operating schedule was inadequate and he had already explained at length why it should not give cause for concern. The application must be considered on its own merits.

The Applicant was asked how each floor would be managed in terms of capacity, given that people would move around and it would be a fluid environment inside. Neill Winch, Managing Director confirmed that at busy times there would be a minimum of 5 Door Supervisors, and all areas would be manned with a counter, using a one in one out approach.

Councillor Elaine Peeke asked what percentage of food would be served inside the premises as opposed to deliveries. Neill Winch expected food service to be 10% of the overall offerings. They were not relying on a delivery service.

All parties were invited to make a closing statement.

John Ashby stated that those who had made representation appreciated the good reputation of Stack, and that the concept would be welcome in the City in a different location.

Chris Hugill stated on behalf of Crossgate Community Partnership and City of Durham Trust that having heard the evidence he did accept that the Premises Licence could not be expected to address all policies and appreciated that the views of experts were required. However this was a sensitive location in terms of noise and fire safety, and the application should not be granted. He was not satisfied that those matters had been addressed.

Mr Holland was very grateful for the courteous way in which representations had been made. There had been a forensic criticism of the application and many of the issues raised did not need to be addressed. He asked that the application be granted and it was a matter for the Sub-Committee to add or amend conditions but argued that the operating schedule as presented struck the right balance.

At 16.25pm Councillors D Brown, C Bihari and M Wilson resolved to retire to deliberate the application in private. All parties were asked to leave. At 16.45pm all parties returned and the Chair delivered the Sub-Committee's decision.

In reaching their decision the Sub-Committee had taken into account the report of the Licensing Team Leader and additional information presented, the verbal and written representations of other persons who were the City of Durham Parish Council, City of Durham Trust, Crossgate Community Partnership, St Nicholas Community Forum, Elvet Residents Association and Mr and Mrs Nicholas. Members had also taken into account the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

**Resolved:**

That the application be granted for the hours requested and subject to the conditions set out in the revised operating schedule submitted on 12 January 2023.