

# LICENSING ACT 2003 SUB COMMITTEE

Friday, 20th October, 2023  
10.30 am





# LICENSING ACT 2003 SUB COMMITTEE

## RECEPTION ROOM

Friday, 20th October, 2023 at 10.30 am

### AGENDA SUPPLEMENT

#### 6) *Determination of a Premises Licence Application*

3 - 18

To determine a Premises Licence application under the Licensing Act 2003 relating to Cocktails & Creamz, 25-29 Hammerton Street, Burnley:

Covering report – Public version

Covering report – Private version

Appendix A – Licence Application

Appendix B – Representations – Public version

Appendix B – Representations – Private version

Appendix C – Env. Health Conditions

Appendix D – Police Conditions

Appendix E – Operating Schedule

Supplementary agenda:

Appendix F – Residents' Submission – Public version

Appendix F – Residents' Submission – Private version

## Submission by the Foundry Residents' Committee

### Issues in the Application Process

- I. In submitting this objection to the licence application for the Cocktails and Creamz, we attend the hearing under protest. Our legal representative was not able to make that date for the hearing - being such short notice - and on requesting a change to still accommodate this hearing within the required 20 days, we were refused.
- II. This places us at unfair advantage in being able to professionally and fully promote our case. Indeed, the two week gap between between the notification and the hearing was actually shorter than a previous hearing attended in January for a minor variation. This is an application which is a potential to have a severe impact on our living in The Foundry opposite, and to be railroaded into such a short period and denied our support is egregious.
- III. Under *Conditions Imposed in Accordance with the Operating Schedule & Under Paragraph 18(4) & 18(5) Schedule 8 Licensing Act 2003*, the original submission included no substantive outline of how the club would be managed to secure public safety and public nuisance. Regulations state that any noise coming from premises should not cause a statutory or a public nuisance, but there is no evidence of this being satisfied.
- IV. Notice of the hearing, given by the council on the 5th of October, made no inclusion or reference to any of these conditions and, therefore, we are working to the handwritten application by the applicant at this hearing. He should fall or stand by his original application.
- V. In a letter the applicant sent to \_\_\_\_\_ t shows the police and environmental health officer have gone to a considerable effort subsequently to suggest to the applicant what he should put in his application in order to secure the licence, but have not consulted with any of the residents of The Foundry as they should do under the new regulations of July 2023. The Revised Guidance issued under section 182 of the Licensing Act 2003 July 2023 1.5 encourages greater community involvement in licensing decisions by giving local residents the opportunity to have their say regarding licensing decisions that may affect them. But this is not carried out by finding an application in a window and having to respond to it!
- VI. In entering his submission, the licensee applied for the 21st of October as the date for the license to begin, and lo and behold, the date for the hearing has been set for the 20th of October. The suspicion is this is a facilitated shoe-horning.

### Background to Our Experience of Living in Hammerton Street

- I. There are many fine buildings in Burnley centre, particularly municipal and bank-ing structures. All of them designed by architects from the Burnley or Manchester area; local design from the Victorian and interwar period. But with its chimney poking high on the promontory that sits on the end of Hammerton Street, the street provides a vista second to none. The street is perhaps the finest in Burnley, architecturally, comprising the Co-operative Society's phalanx of buildings, and evidence of that so-ciety's huge influence on the growth of commerce in the town during the Victorian pe-riod.

- II. To look at it from the corner of Saint James, the street has a vista that any town or city would be proud of. The Foundry was originally a cotton mill (later the foundry) and then a roller skating rink. The building is in three sections, the centre being the original from the 1820s, the end with the chimneys is 1840s, and the T section facing upwards in the direction of the Manchester Road, 1890s. It is grade 2 listed.
- III. Converted into 26 flats, all of them occupied, and providing an example of how to modify a historic building sensitively to bring life to the centre of Burnley itself, and by the way providing through the council tax almost £40,000 in revenue to the council every year, and with more to come when the basement is developed into office space. The 50 or so people that now live in the building spend their money in the centre of the town benefitting the economy of Burnley to over £250,000 in this respect. £300,000 a year in total.

### **The Problems**

- I. And yet, it's also the filthiest street in Burnley, and marks the disrespect that the inhabitants of this town have shown to its wonderful Victorian heritage.
- II. The flagstone pavement is trashed by grease from discarded food, drink, broken glass, vomit, and chewing gum permanently embedded, on which you have to walk on every day getting to the top of Hammerton Street.
- III. This a consequence of venues offering music till 3.00 in the morning, based around mainly the junction between Hargreaves Street and Hammerton Street - an exception being the balcony of the \_\_\_\_\_ obviously - but that's an ongoing case. Hargreaves Street is a fair distance from The Foundry and with the noise coming out onto that street itself rather than Hammerton, but it's still bad enough.
- IV. Then there \_\_\_\_\_ which is about 70 m from The Foundry on Hammerton Street itself and which emits very loud noise onto the street through two sets of doors left open continuously.
- V. As a consequence, the conjunction of Hammerton Street and Hargreaves Street is a focus of extreme noise with screaming, yelling and scuffles taking place, and with music pumping out of continuously open doors. Continuous aggravating noise.

### **Noise**

- I. Noise is not a measurable thing, based on decibels. Nor is it something that should be left to clubs to measure. It's a personal thing and how it affects you as an individual. I live at the end the Calder side of The Foundry and find the sound from the river soothing; my brother took some time to get used to it, and another friend looked at it and remarked, how can you sleep with that racket? Three people, three opinions of the same sound.
- II. The issue with noise from these clubs a distance from The Foundry is profound with the agreed conditions ignored by the licensees, and by the Council's environmental health team, and the police in investigating and making effective changes to reduce the public nuisance which these clubs emit.

## Real and Potential Problems

- I. If a license is granted to the \_\_\_\_\_ his profound nuisance is bound to migrate up and coalesce around the Calder bridge right next to The Foundry. It will increase the street noise level to a totally unacceptable degree. There are steps which are part of the Foundry's curtilage, opposite these premises, and it will just encourage people to invade our space. The situation will be further exacerbated by the continuing presence of a \_\_\_\_\_ outside the Job Centre and will allow for the two venues to feed off each other in terms of footfall and mess.
- II. The Council's policy on Cumulative Impact is weak but CI should be applied at this end of the street, with provision no venue should be open beyond 12 midnight.
- III. The street is under a Public Spaces Protection Order (PSPO), but there is no effective monitoring of this by the police, environmental health or venues on the street itself. So, we have no confidence that any monitoring or mitigating factors will apply or be effective. From experience, we know the hoops you have to go through to get resolutions to problems. One has still been ongoing for nigh on a year and another has taken a year to get to some sort of satisfactory resolution. And all this time our sleep has been badly affected.
- IV. Cocktail and Creemz is right in the face of The Foundry facing it directly within 30 metres, and will increase the disturbance to residents manifestly, we think to an unacceptable level, and which the applicant has made no submission to address in his application. He made no qualifying statements about Public Safety or Public Nuisance in his application, two features in the act which have to be satisfied before a license can be provided. An application with such an ill thought out proposal demonstrates a fast and loose approach to managing the requirement of running the venue consequently.
- V. Furthermore, the frontage has huge glass windows with what looks like no sound-proofing and with music and noise as part of the design (there is a DJ stand at the back of the ground floor). The provision of an outdoor space at the back of the building, and which actually straddles the Calder, is nearer even than the balcony of the \_\_\_\_\_. We see significant problems in relation to noise during the day and into the night with this provision. Bottles being thrown into the river as they are off the balcony of the \_\_\_\_\_.
- VI. We can see nothing about the design of the building that will allow for sound to be contained within. The applicant stated in a letter to one of the residents that his was a cocktail and coffee bar for a more sophisticated, mature clientele. But you don't get that sort of person at three in the morning on Hammerton Street, and all this is a smokescreen for what is in effect a nightclub blaring out noise until the early hours under the current time request. What has Indie Rock got to do with cafe culture? We are being sold a sophistry I fear.
- VII. We are also concerned about permissions to play music during the day and the effect it will have on our well being. In summer when the river is low, and we have to keep the windows open to let in fresh air, music playing all day will be a disturbance to the enjoyment of our residencies; even more so at night.
- VIII. In a separate debate about the use of the balcony by the \_\_\_\_\_ the council made an argument for an Agent of Change; that since the balcony was there first, they

had a priority on the use of the the environment. Well, we are the holders of the Agent of Change in this respect, so our priority should be respected and our requirements met absolutely.

- IX. The other prospect to bear in mind is this is a license is in perpetuity, and very difficult to roll back from once given. Although his desire may be what he is promoting, it may not necessarily turn out that way, and we insist absolutely that this is thought about and bolted down. How is it going to stop the rowdy element coming up the road to use his venue, for example? What happens if his venture fails and is taken over by someone with a more extreme agenda? What feature creep does he have in mind because it's much easier to secure a variation to a license thereafter and very difficult for residents to secure their protection against safety and nuisance?
- X. The opening hours for the range of activities undertaken are not suitable for a venue facing a residential block. He would expect timeframes that would last from Sunday to Thursday and another from Friday to Saturday, but timings at 2.30 and 3.30 are a no goer.
- XI. The applicant should be aware that there is currently a move to push back this early morning opening on the street coming from both established nightclub owners in Burnley and from other influential people (political, business and public service ) in the town so the venue, if it is to have a license, needs to run in a manner that follows this roadmap to create a town centre where heritage, culture, expanded possibilities for living, and a late-evening economy can thrive in synergy with each other.

### **A Good Example**

If you want to run a cocktail bar-cum-café then the \_\_\_\_\_ at the end of the street is a good example to imitate, and we would like proof in this application that a similar experience could be delivered.

### **Sleep**

We can see no evidence that public health has been consulted either in framing this application. Public Health England state that sleep is as vital for survival and health as food and water. Sleep is involuntary and inevitable. A wealth of evidence exists about the fundamental role sleep plays in protecting us from problems with our health and wellbeing. Poor sleep is linked to a wide range of physical, mental, behavioural and performance issues. Given sleep's pivotal role in the nation's health and wellbeing, it needs to be a key priority for the public's health. We cannot see how the application can be managed to ensure a sleep is not disturbed at all from the venue.

## **Conclusion**

In conclusion, therefore, there is no space for such a venue within close proximity to a residential building with 26 flats and over 50 people including a deal of pensioners and a significant number of medics working shifts where sleep and the ability to do so without disturbance at night as well as during the day is vital. This request which, the diagram accepted, could not have taken more than 10 minutes to construct, masks a whole host of issues, and which haven't even been thought about, never mind considered for their impact.

**We request, therefore, that the license application be declined in full.**

**The Foundry Residents Conditions Imposed on Cocktails and Creemz in Accordance with the Operating Schedule & Under Paragraph 18(4) & 18(5) Schedule 8 Licensing Act 2003**

**1. Monitoring**

- i. The management of the premises will ensure that the area immediately outside the entrance to the premises is kept clean, tidy and free from litter.
- ii. The management of the premises will ensure that no boisterous conduct occurs on the bridge at the rear of the property at any time of the day or night.
- iii. A noise limiting device must be installed and must operate at all times regulated or unregulated entertainment takes place at the premises. The device must be of a type, in a location, and set at a level approved in writing by Environmental Health and agreed by a representative of the The Foundry (FRC) residents' committee. The level will be set so as to prevent any noise, sound or disturbance reaching dwellings nearby.
- iv. On any occasion that regulated or unregulated live or regulated or unregulated recorded music is carried on at the premises, regular assessments of the sound and noise on the premises will be undertaken. Whenever said assessments indicate that the sound or noise emanating is likely to cause nuisance to any local resident, remedial action will be taken to stop it. Said assessments will be documented and produced to an authorised Officer upon request.
- v. The premises will have a written dispersal policy designed to ensure patrons leave the venue and the area in the direction of Hargreaves Street quickly and quietly. Records will be kept to demonstrate noise monitoring caused by people exiting the premises is being undertaken and will be available for Officers to view on request.

**2. Restrictions and Curtailments**

- i. No music will be played on, or heard from, the external seating area at any time of the day or night.
- ii. When the premises has regulated or unregulated live, or regulated or unregulated recorded music live playing, all windows and doors are to be kept closed and remain so except in the case of emergency. Music must be turned off whenever the doors are open for ingress and egress. Any external doors will never be kept ajar except when no music is playing.
- iii. There will be no light trespass, over-illumination, glare, or light clutter from the premises.
- iv. The windows must be soundproofed and internal baffling created to eliminate any sound or noise emanates from the building.
- v. There shall be no noise or odours caused by the kitchen extraction evident.
- vi. Except in an emergency, any outdoor space must be closed to any use after 22:00 hours.



vii. Empty bottles will not be placed in any external receptacle between 22.00 and 8.00.

viii. Application for one-off special events excepted, the licensees agree that they will not seek any future variations in respect of this license, and if changes are required or requested, the license will be re-submitted in full.

(Or)

The license will be issued for a maximum of two years if it is understood it is applied for in full again; in which event viii can go.

ix. Any resident in residences within 100 metres of the premises will be able to call-in the licence of the Cocktails and Creemz and force it to be referred back in in full to the Licencing Committee if is to be found in a **significant breach** relating to Public Nuisance of any of the conditions under the above Conditions Imposed in Accordance with the Operating Schedule & Under Paragraph 18(4) & 18(5) Schedule 8 Licensing Act 2003.

### **3. Opening and Closing Hours**

10.00 to 23.00 Sunday to Thursday

10.00 to Midnight (00.00) Friday and Saturday



By virtue of paragraph(s) 1 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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