



LICENSING AND GAMBLING SUB COMMITTEE - 15TH MARCH 2024

SUBJECT: LICENSING ACT 2003 - DETERMINATION OF PREMISES LICENCE APPLICATION

REPORT BY: KATHRYN HOPKINS SENIOR LICENSING OFFICER

1. Application Details –

Applicant	Premises	Application Type
Francesca Keirle	Geshmak Bar and Bistro 6 Clive Street Caerphilly CF83 1GE	Grant of Premises licence

1.1 Application for Grant of a New Premises Licence - Licensing Act 2003

An application has been submitted to apply for a new premises licence for the above premises. The proposed application for consideration is set out in 1.3 of this report.

The applicant has provided the following description of the premises, *'The premises comprises of a ground floor seating area and a toilet and kitchen to the rear. There is a designated seating area on the front externally, with small capacity for around 8 people to sit. The property has two large windows to the street facing wall. The premises has capacity for a seating area inside and will seat approximately 35 people and have space for a small bar and serve-over counter area.'*

1.2 Site Plan/Photographs

The plan of the licensed area is reproduced as **Appendix 1**.

An aerial plan of the location is reproduced as **Appendix 2**.

Photographs of location are reproduced as **Appendix 3**.

1.3 Proposed Trading Times and Licensable Activity

The initial application for the grant of a Premises Licence sought to permit the following Licensable Activities: -

- **Supply of Alcohol (On and Off Sales)**
Monday to Sunday between 1000-2300 hours

During the application process, the applicant subsequently amended her application to reflect the supply of alcohol (on and off sales) between the hours of **10.00 until 22.30 Monday to Sunday.**

- 1.3.1** The following steps have been volunteered by the applicant as part of the Operating Schedule, to promote the Licensing Objectives, and are reproduced directly from the application: -

Training will be given to all staff on upholding and promoting the 4 objectives. All staff will receive training on keeping records of objections to sales and communicating with customers in the event of a refusal of sale. All records will be maintained and preserved for a minimum of 28 days. All staff will be responsible for ensuring that any evidence of the use or distribution of drugs is reported to local partners and relationships with local partners will be developed and maintained in order to bolster the promotion of the objectives. Training on acceptable forms of ID and checking the authenticity will be provided. Partnerships with other local venues will be created and communication channels between us and them maintained. Adequate and clear refuse systems will be in place, and suitable drinking vessels supplied to customers drinking on the private yard when it is developed into an outdoor eating area. The premises will be primarily an eating venue, so drinking without food will be discouraged by staff.

Partnerships with local law enforcement will be fostered and maintained. Tolerance of drunk and disorderly behaviour will be a low threshold and any aggressive behaviour will cause the aggressor and associated parties to be refused service.

Staff will maintain a close eye on quantities consumed and be trained to spot any issues early and deal with them in an open and friendly manner.

Records of any incidents will be maintained and preserved for at least 28 days. Any evidence of drug taking or the sale of it near or on the premises will be reported to the police and any offenders will be barred from the premises.

Any evidence of littering or creating high noise levels will be dealt with swiftly, and signage will be up around the premises to reinforce all of these measures.

External lighting will be in place in the rear yard to deter loiterers and break ins. The yard will be locked and inaccessible to the public when the premises is closed.

There will be a zero tolerance policy on drugs and weapons being brought into the premises.

Posters will be used to reinforce the measures.

Training and briefings will occur frequently and records of these maintained.

CCTV will be installed and recorded material will be kept in an accessible format and available to copy for 35 days. Signs will be placed to inform individuals that recording is taking place.

Staff will be trained in a duty of care for any customers suffering from the effects of alcohol and drug use.

Staff will be trained in spotting the signs of this and in appropriate measures for dealing with it.

Any aggressive behaviour will be met with a zero tolerance approach.

Drinks promotions will be sensible and not cause the excessive drinking of alcohol.

A first aid trained member of staff will be present at all times.

Fire exits are lit and marked clearly and fire extinguishers and blankets maintained and checked regularly according to guidance.

Risk assessments will be carried out and updated regularly with regards to any potential hazards in the venue.

Tables and glasses will be cleared regularly and any spillages dealt with immediately and signage put in place to inform

customers of recently cleaned or wet flooring.

Increased lighting and a period of no alcohol service will preempt closing every night.

The premises is in a mixed residential and commercial zone, so noise factors will be monitored and prevented through

limited use of the outdoor area with early shutting of this.

Signs reminding customers to be considerate of neighbours will be in place.

Windows will be closed in evenings to limit the sound escaping from the venue.

Staff will be trained in communicating clearly and in a friendly way about the expectations of clients.

Local residents will be provided with a telephone number they can call to resolve any sound issues immediately.

Refuse bins will be maintained to a clean standard and made available to customers to prevent issues with rubbish. Bins

will be locked to prevent any pest issues developing or escalating.

A record of any noise issues will be maintained to assist in developing future training and strategies.

Children will only be admitted if accompanied by an adult in the evening.

Children may eat at the premises in the daytime, but will be refused service if they request it.

Staff will be trained to implement a 'no ID, no sale' policy and all patrons will be IDd if they appear to be under the age of 25

Lists of appropriate forms of ID will be made available to staff and highly visible in the service area. These signs will also be customer facing so that there is a clear method of communication between staff and patrons.

A log of any and all refusals shall be maintained and preserved for a minimum of 28 days from the date of each refusal of alcohol sale.

1.4 RELEVANT CONSIDERATIONS

Caerphilly County Borough Council Licensing Policy **Appendix 4**

National Guidance **Appendix 5**

1.5 RELEVANT REPRESENTATIONS RECEIVED DURING APPLICATION PROCESS

1.5.1 Responsible Authorities:

Gwent Police

Document	Date received	Appendix Reference
Initial Representation	14/02/2024	Appendix 6

Environmental Health (Pollution)

Document	Date received	Appendix Reference
Initial Representation	21/02/2024	Appendix 7

Environmental Health (Health and Safety)

Document	Date received	Appendix Reference
Initial Representation	16/02/2024	Appendix 8

Childrens Services

Document	Date received	Appendix Reference
Initial Representation	12/02/2024	Appendix 9

Trading Standards

Document	Date received	Appendix Reference
Initial Representation	14/02/2024	Appendix 10

Licensing Authority

Document	Date received	Appendix Reference
Initial Representation	21/02/2024	Appendix 11

The Fire Authority in its role as a responsible authority responded to indicate that they had no representations in respect of the premises licence application submitted.

1.5.2 Other Persons:Residents

Document	Date Received	Appendix Reference
B Unthank representation	07/02/2024	Appendix 12
A White representation	06/02/2024	Appendix 13
J Grant representation	06/02/2024	Appendix 14
L Morgan representation	07/02/2024	Appendix 15
D Murphy representation	07/02/2024	Appendix 16
C Pipe representation	07/02/2024	Appendix 17

W Purser representation	06/02/2024	Appendix 18
Occupier of Claude Road representation	15/02/2024	Appendix 19
J Thomas representation	15/02/2024	Appendix 20
M Lloyd representation	15/02/2024	Appendix 21
T Elsworth representation	06/02/2024	Appendix 22

1.6 SUMMARY OF REPRESENTATIONS

Heddlu Gwent Police detailed a visit to the premise on 12th February 2024 in which the application was discussed and the hours for the supply of alcohol was amended from 10.00 to 23.00 to 10.00 to 22.30.

The Police do not object to the application but have advocated the re-wording of conditions and proposed additional conditions that would support the applicant in the promotion of the licensing objectives. These additional conditions related to the need to risk assess SIA door supervisors when sporting events or functions are taking place, outside area to be regularly monitored, encouragement to move patrons away from the vicinity of the premises to avoid loitering or anti-social behaviour and that children must be accompanied by a responsible adult at all times.

Environmental Health (Pollution) visited the premise to discuss intended measures to mitigate any potential noise nuisance in relation to the intended music provision described as low-level amplification to accompany food or drink.

Environmental Health (Pollution) do not object to the application, however given the proximity of residential accommodation suggested additional conditions to further safeguard and promote the Prevention of Public Nuisance licensing objective. These additional conditions related to the outdoor area to be closed by 22.00hrs, amplified music must not cause unreasonable disturbance, notices to patrons to respect residents upon leaving the premise and adequate measures are in place for depositing litter/waste.

Environmental Health (HandS) have not objected to the application, however proposed additional conditions in relation to the public safety licensing objective. These conditions related to all drinking glasses used within the premises are of toughened or safety glass and no glass permitted outside.

Childrens Services have not objected to the application but advocated the re-wording of the conditions offered by the applicant in relation to staff training and Challenge 25. This was considered to avoid any ambiguity in relation to steps proposed in the operating schedule.

The Trading Standards Officer supported conditions suggested by Childrens Services in promoting the Protection of Children from Harm licensing objective and have not objected to

the application. The officer suggested an additional condition in relation to all staff to remain vigilant in preventing adults buying alcohol on behalf of persons who are under 18.

The Licensing Authority Officer in its role as a responsible authority supports the representations received from other Responsible Authorities and has not objected to the application. However, the Licensing Authority has proposed additional conditions in relation to providing CCTV coverage of external area, managing outdoor area to ensure customers do not behave in a noisy, rowdy or offensive manner, that the premises shall be cleared of customers within 30 minutes of the last supply of alcohol and no recycling or disposal of refuse/bottles/material between 21.00 and 09.00.

There were eleven relevant resident objections to the application, reference by one is made to recently opened shops and off licensed premises that have been a source of antisocial behaviour. Concern is expressed about drunkenness and teenagers loitering in the street and participating in anti-social behaviour. Fear is expressed should more off licence shops open the worse behaviour will become.

Another resident disagreed with more off licence shops that will fuel the “debauchery and untoward social problems”.

Other resident’s concerns also relate to antisocial behaviour which suggests will amplify an already poor situation. Reference is made to drunkenness and drug issues within Caerphilly town centre.

Reference is also made to noise and litter pollution, parking issues which is already restricted and limited with the potential to cause disruption to buses. There is a concern regarding teenagers that congregate in the area who approach adults to purchase alcohol, cigarettes and vapes for them to use.

Another resident opposes the application and believes it will be detrimental to local and new businesses in the Caerphilly castle development.

1.7 APPLICANT RESPONSE

The applicant responded to agree conditions proposed by Gwent Police, Environmental Health (Health and Safety), Environmental Health (Pollution), Childrens Services, Trading Standards and the Licensing Authority in its role as the Responsible Authority. These comments have been subsequently agreed by the applicant.

The applicant submitted a statement detailing her intentions for the business to provide alcohol with meals and not to be misunderstood as an off licence. The applicant intends to host open mike nights, jazz evenings and craft fayres, bringing together talented crafters, musicians, and cuisine. A copy is reproduced as **Appendix 23.**

The applicant also submitted comments from two individuals who provided letters in support of the application.

One submission was from a retired police officer who attended the applicants existing premise in Newport and felt it was of a high standard, with licence and drink prices clearly displayed and drinks only provided as part of the dining experience. Comments was expressed that the individual witnessed no disorder from drunk customers, no evidence of glasses or bottles left outside the premise and aware of notices on the premise for patrons to respect neighbours. A copy of the comments is reproduced as **Appendix 24.**

The other submission in support of the application was from the leader of Newport City Council writing in a personal capacity. Support was expressed for the applicant moving to Caerphilly to grow her business. Comment was expressed that it would be a loss to Newport as Geshmak had been a very popular independent restaurant since the applicant appeared on Master Chef.

The individual has no hesitation in recommending the applicant as she is a talented and accomplished chef and a responsible owner. Comment is made that the applicant has held a licence in Newport with no issues. A copy of the comments is reproduced as **Appendix 25**.

1.8 LICENSING ASSESSMENT

THE LICENSING ASSESSMENT IS A PROVISIONAL SUMMARY, BASED ON REPRESENTATIONS RECEIVED PRIOR TO THE HEARING. THE HEAD OF PUBLIC PROTECTION, COMMUNITY AND LEISURE SERVICES RESERVES THE RIGHT TO AMEND OR VARY THE PROVISIONS CONTAINED IN THE SUMMARY AND RECOMMENDATION, SUBJECT TO ANY CHANGE IN THE MATERIAL FACTS THAT BECOME KNOWN AT THE HEARING. THE SUB-COMMITTEE IS OBLIGED TO DETERMINE THIS APPLICATION WITH A VIEW TO PROMOTING THE LICENSING OBJECTIVES WHICH ARE:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance;
- The protection of children from harm

In making its decision, the Sub Committee is obliged to have regard to:-

- Licensing Act 2003
- Statutory Guidance issued under S182 of the Licensing Act
- The Council's own licensing policy, and
- All representations made and evidence presented

NOTE: THE SUB-COMMITTEE MAY NOT MODIFY THE CONDITIONS OR REJECT THE WHOLE OR PART OF THE APPLICATION MERELY BECAUSE IT CONSIDERS IT DESIRABLE TO DO SO. ANY SUCH ACTIONS MUST BE NECESSARY IN ORDER TO PROMOTE THE LICENSING OBJECTIVES.

Statutory Power - Licensing Act 2003. This is a Council function which is delegated to this committee to decide.

1.9 OBSERVATIONS

This application relates to the granting of a new premises licence in Caerphilly town centre, for the provision of 'on and off sales' of alcohol. The proposed premises was previously licensed and known as The Deli. The licence for this premises was surrendered in December 2023 and therefore there is no current authorisation in place.

The applicant seeks to provide the retail sale of alcohol between the hours 10.00 to 22.30 Monday to Sunday. As the premise is located in the town centre, the hours sought do not appear to be unreasonable compared to other late-night premises in the area.

Table of nearby premises for alcohol on and off sales

No.	PREMISES	ALCOHOL TIMES	DISTANCE FROM PREMISE (Metres)
1	Kings Arms	Sunday to Wednesday 08.00 to 00.00	33m
		Thursday 08.00 to 01.00	
		Friday and Saturday 08.00 to 01.30	
2.	Volare	Sunday to Thursday 11.00 to 23.00	20m
		Friday and Saturday 11.00 to 00.00	
3.	Railway	Monday to Wednesday 10.00 to 00.00	60m
		Thursday to Saturday 10.00 to 01.30	
		Sunday 10.00 to 01.00	
4.	Malcolm Uphill	Sunday to Thursday 09.00 to 00.00	33m
		Friday and Saturday 09.00 to 01.00	
5.	Shock	Monday to Sunday 11.00 to 23.00	67m

Paragraph 2.5 of the Caerphilly CBC Statement of Licensing states '*Premises and events which are licensed under the Licensing Act 2003 can provide a contribution to the local economy through tourism, cultural development and maximising night time trade.*'

It appears the nature of the application is for customers to consume alcohol on the premises with meals or to consume on the premise in the event of occasional 'open mike' evenings. Live and recorded music will be provided as background music to accompany food and low-level amplification of music. The applicant also intends to have a deli counter occasionally selling local wine or Welsh whisky for off sales.

Relevant representations making objections to the granting of the premises licence have been received from 11 residents.

Paragraph 9.9 of the Section 182 Home Office National Guidance provides the following guidance when considering the merits or relevance of representations and states '*It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.*'

It is noted that some of the objections detailed by the residents are not specifically linked to the licensing objectives, the provision of parking would not ordinarily be a consideration for Members.

Case Law in *The Noble Organisation v Kilmarnock and Loudoun District Council* (1993) states “*the mere number of objections irrespective of their content should not be a good reason for refusing an application, what matters are the grounds on which the objections are based*”.

The residents will be able to amplify their concerns about the merits of this application given reference to “antisocial behaviour”, “debauchery and untoward social problems”, litter pollution, parking issues, disruption to buses and having a detrimental effect on businesses to Members at the hearing. It is noted that a number of residents appear to be fearful of ‘another’ off licence, however on the basis of the application, this does not appear to be the business model of the applicant and that the primary focus will be ‘on sales’ of alcohol with food, with a provision for ‘off sales.’

There has been reference to the existing number of licensed premises in the area, however the Council does not currently have any cumulative impact areas and therefore the number or type of other licensed premises in the vicinity would not ordinarily be a consideration for Members of the Sub Committee. The same principle would apply in relation to the ‘need’ or otherwise for a new, licensed premises.

Advice for Members in relation to need, is provided within the Section 182 Home Office National Guidance, Paragraph 14.19 states ‘*There can be confusion about the difference between the “need” for premises and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy.*’

The concerns of the local residents whilst understandable, appear to be largely anticipatory in nature about the increased levels of behaviour or issues which could arise, should a licence be granted for this premises. Case law in *Daniel Thwaites PLC v Wirral Magistrates Court 2008* has considered similar issues in relation to real evidence and weight to be afforded.

Gwent Police as the lead authority in relation to crime and disorder have not objected to the application but have re-worded steps offered by the applicant and advocated additional conditions should a licence be approved. These conditions have been accepted by the applicant.

There were additional representation responses received from Environmental Health (Pollution Team), Environmental Health (Health and Safety), Childrens Services, Trading Standards and the Licensing Authority advocating conditions to be attached should a licence be granted. These have also been accepted by the applicant.

Paragraph 9.12 of the Section 182 Home Office National Guidance states - *Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority’s main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority’s main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority’s interest or expertise in the promotion of a particular objective may not*

be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

Paragraph 28.9 of the council's statement of licensing policy provides advice in relation to the above and states '*Whilst all responsible authorities may make representations regarding applications for licences and club premises certificates and full variation applications, it is the responsibility of each Responsible Authority to determine when they have appropriate grounds to do so.*'

No confidence in management concerns have been raised by any of the Responsible Authorities in their representations in relation to the applicant.

Other Parties have referenced existing alcohol fuelled anti-social behaviour in the area currently. If they are alcohol fuelled, then these or any historical issues will not be as a result of the actions of the applicant as they are yet to commence selling alcohol from the premises. There is no information offered by objectors to suggest that a 'new' alcohol outlet, if appropriately managed will add to the issues that are being reported.

Paragraph 2.27 of Section 182 Home Office National Guidance provides advice to Members '*Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in antisocial behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.*'

In the absence of any other adverse representations from Responsible Authorities, (RA's), the RA's appear to be satisfied with the applicant's ability to promote the licensing objectives.

Members of the Sub Licensing Committee will be required to determine the application in relation to the promotion of the four licensing objectives i.e. prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

1.10 RECOMMENDATION

Having had regard to the objections made by residents and noting the comments made by the Responsible Authorities, it is recommended that the application to permit the sale of alcohol for on and off sales as set out in paragraph 1.3 of the report, **be granted** subject to the conditions as set out in **Appendix 26**. It is considered that any potential conflicts with the promotion of the Licensing Objectives may be adequately controlled by the recommended conditions which have been agreed by the applicant.

Background Papers: Statutory Guidance issued under S182 of the Licensing Act
 Caerphilly CBC Statement of Licensing Policy

Date of this report: 8th March 2024

Author: Kathryn Hopkins – Senior Licensing Officer
Tel: 01443 866750 - hopkik1@caerphilly.gov.uk