

SOUTH HAMS LICENSING SUB-COMMITTEE



Minutes of a meeting of the **South Hams Licensing Sub-Committee** held on **Thursday, 6th April, 2023** at **12.00 pm** at the **Council Chamber - Follaton House**

Present: **Councillors:**

Chairman Cllr Brown
Vice Chairman Cllr Rowe

Cllr Thomas

In attendance:

Officers:

Solicitor

Licensing Specialist

Principal Environmental Health Officer – Licensing

Senior Support Officer - Democratic Services

Also in attendance

Ms Limberg

Ms Ball

M Phillips-Callender

Mr MacGregor

Mr & Mrs Wright

Mrs Brown

Ms Watson

Dr Mills

Mr Springthorpe

Ms Gutierrez

Ms Adams

Mr Cadbury

WDC Willoughby

3. Declarations of Interest

LSC.01/22

Members and officers were invited to declare any interests in the items of business to be considered during the course of the meeting. There were none.

4. **Application for a new Premises Licence at The Angel, South Street, Totnes, TQ9 5DZ**

LSC.02/22

The Sub-Committee considered a report that sought to determine an application for a new premises licence at The Angel, South Street, Totnes in accordance with Section 18 of the Licensing Act 2003.

The Licensing Specialist introduced the report and outlined the details of the application (as stated in the application form at Appendices A(i), A(ii), A(iii), B, C, D, E, F, G, and H of the presented agenda report). The Licensing Specialist reminded the Sub-Committee that its decision had to be based upon the four licensing objectives.

Live and recorded music has been subsequently withdrawn from the application following the publishing of the report.

Forty-three letters of representation had been received in support including one from the local District Councillor.

Twenty-eight letters in objection had been received, however two objectors had since withdrawn their objections.

The main representation was from Environmental Health's (EH). Their primary concern was the provision of live and recorded music, and the lack of information demonstrating how the applicant would be promoting the objective of prevention of public nuisance. Since making the representation the applicant had been very co-operative and responsive to their concerns. The applicants have removed live and recorded music from the application and were planning to continue engaging the services of an acoustic consultant with a view to implementing measures to reduce the amount of noise coming from the venue. EH were aware of the residents concern on noise and EH have the powers to investigate noise from premises under other legislation such as the Environmental Protection Act 1990 and would continue to work with the venue in their efforts to prevent noise becoming a nuisance in the first place. With regard to people noise outside the venue, the applicant had submitted information on additional controls in relation to having a door supervisor, signage and rules around taking drinks in and out of the venue and understood that these controls had been in place for events held recently.

1. Address by the Applicant

The Applicant reported that The Angel was a community venue with a capacity for 60 people including staff. The venue showcases the work of local artists, caterers, and also used as a yoga studio and the supper nights would supplement their business. They had found the licensing process daunting and were aware that the licensing notice had upset neighbours and have been reassuring neighbours. Following the notice, a complaint was made to their landlord who then put up their rent by 25%. They have found this to be a big learning curve and have worked with statutory partners, produced policies and welcomed open communications with their neighbours and worked closely with Environmental Health. They have removed live and recorded music from the application and would not hire out the venue for private parties and drumming sessions have ceased. They have a noise management plan in place and if they do not get the license they would cease and the venue would become luxury flats. The applicants felt that The Angel would enhance the town immensely.

2. Address by objectors

Mr MacGregor representing two of the objectors that live in close proximity to The Angel. They have raised concerns on disruptive night sleep, vomit, urinating in the street and repetitive beats of the music. Mr MacGregor read out statements from the South Hams Licensing Policy. The objectors do welcome this venue as a dance and mediation centre, however the application being proposed unsound and was unfortunate that the local community were not consulted before this application was submitted. There have been a series of event held last March 2022 resulted in the applicants writing to the local residents on the chaos from that event. The objectors have bitter experience from the TENS events from the last year. The number TENS for 2023 had increased and could remain at the higher level following consultation. Then when you look at the application in which they have taken away live and recorded music in total they have 35 days of licensed activities until late in the evening and not just at weekends. The doorman not SIA registered, no condition on the provision of food and no condition on customers being seated when in the premises. If the Committee grant the licence the applicant could provide live music under the Live Music Act and nothing can be done about that. The premises were fundamentally unsound for provision of live, recorded and amplified music and this was reinforced by Environmental Health. The Sound Reinforcement Report provided by the applicant states that the insulation used in the walls and roof may not have acoustic properties and base frequency would contribute to noise outside the premises, sound proofing should be considered. If the Committee grant this licence then the applicant were entitled to provide live and recorded music. From the report of the Environmental Health Officer and the Sound Report from the applicant, this Committee would be authorising an issue relating to noise and better this was addressed at the outset. If the Committee cannot address this then the application should be refused. However, if the Committee were minded to grant the application, Mr MacGregor had a number of conditions to attach to the application.

The objector was new to South Street and was supportive of the art gallery but concerned about the sale of alcohol. They felt it was a shame alcohol had to be part of this.

The objector raised the traffic problems in South Street and traffic systems in place. They raised concerns over 60 people arriving in cars, parking and people being dropped off/picked up by taxis. Residents currently manage the parking and with an influx of cars in the evening this was a big concern.

The objectors reported that they were new residents and live close to The Angel. Their concerns related to the business model being described and what was being applied for in the license. They were frequent users of yoga studios and art galleries and cannot recall them requiring licensing. They had counted 180 days The Angel would be in operation and were confused about the reference to the off licence. They also raised concerns on traffic in the area, with musicians arriving and leaving, deliveries of alcohol which would take place in the turning circle outside The Angel. Parking and taxis would put a great strain on an important part of South Street. It was also highlighted that most of the houses in South Street cannot have

noise reducing windows and one of their bedroom windows was only 50 yards away from The Angel and sleep would be affected by noise and smokers.

The Licensing Officer reported that the applicants have applied to sell alcohol on and off the premises. The Police suggested a condition that no open vessels to be taken outside because they do not want people congregating on the street and for people to take alcohol off the premises to be consumed in an appropriate area.

The objector stated that they were a professional artist and a psychotherapist working with trauma and both activities required a lot of quiet time. They live close to The Angel and was initially sympathetic to what the applicants were trying to achieve and even thought about exhibiting there. The objector felt what the applicant's say and what they actually put in practice was different and felt that the applicants were spreading themselves too thinly in terms of what they want to achieve. In the summer months the doors were left open because the venue gets too hot and the sound escapes. The objector has a small courtyard and use that for quiet time and did not want that polluted with noise and smoke. They felt that this would not be achieved if the license was granted. They were also concerned about fire safety with buildings in close proximity made from wood and raised these concerns with the Fire Service. With the increased traffic in the area wondered how long it would take for a fire engine to reach South Street.

The objector stated that his wife was due to speak but her mental health had been affected by these premises. They live across from The Angel and this venue totally unsuitable to be a licensed premises. The doors open out onto a very narrow street and the building an old hayloft was built with no sound insulation and they hear the base beat from the music. The premises surrounded by families of all ages and having a licensed premises would severely disrupt this and be extremely disruptive to their lives. They live in a quiet area however when events take place at The Angel it was not quiet and hard to connect the description of peace and creativity to what actually happens. Recently they approached a group of men smoking and swearing outside The Angel and when trying to speak nicely to them received verbal abuse and told to move home. This was an attitude which disregards the nature of the local community. A statement from the objector's wife was then read out. They felt there was a disconnect in what was being said and what was being advertised on social media. The applicants said there wouldn't be any private parties but were advertising for weddings. The door policy when a troublesome person rejected from the premise had left them fearing for safety and security of their home. In 2017 when this venue was an artist studio these issues never occurred, however since 2020 have experience a number of continued issues.

The objector lives directly opposite The Angel in a Grade II listed building with no double glazing. The Angel was the old hayloft and would require a lot of sound proofing and concerns were raised on noise, people congregating in neighbouring properties to smoke and crime and disorder.

3. Address by supporters

The supporter highlighted that The Angel was a small creative arts venue in the centre of town and within the heart of the community. A place to share creative ideas and to draw in visitors. This was a labour of love by the applicants and they make no money from this and just want to provide a beautiful safe space for

women. This was a space of calm for people to recharge and was a unique and valuable space for this town.

(The Sub Committee then adjourned, in the presence of the Lawyer, and Senior Democratic Services Officer at 13:31 pm to consider the application and reconvened at 14:20 pm.)

4. The Decision

In announcing the Sub-Committee decision, the following statement was read:

The Licensing Sub-Committee considered an application to grant a new premises license for The Angel, South Street, Totnes TQ9 5DZ pursuant to Section 17 Licensing Act 2003.

The Sub-Committee have carefully considered the application, representations from the applicant, the objectors who have submitted representations in writing and attending in person and those who support the application in the same way, and the statement of Licensing Policy and Statutory Guidance.

It is noted that the Police did have initial objections to the application but that four conditions were subsequently agreed between the applicant and Police. This led to the Police withdrawing their objections. All parties should note that the applicant has agreed to the condition that the premises will only be used for the supply of alcohol when there is a pre booked event / function taking place.

Similarly Environmental Health had objected to the application on the grounds of public nuisance but they too have withdrawn their objection due to the applicant removing live and recorded music activities beyond 11 pm such timings are therefore not regulated entertainment pursuant to the Live Music Act 2012 and no conditions can be imposed on the licence.

The Sub-Committee have decided unanimously to reject the application.

The Sub-Committee received legal advice in terms of:

- 1) The Licensing Objectives
- 2) The Legal Test to be applied
- 3) The options available to the Committee
- 4) Section 182 Guidance

The reasons for the decision are as follows:

- 1) The Committee were not satisfied that the Licensing objective of the prevention of public nuisance would be promoted. This is because A) Residential properties are in close proximity to the applicants address, B) The harm to residential amenity by way of public nuisance and C) Smoking areas will not be policed adequately and cause public nuisance
- 2) The construction of the building is unsuitable for a licensed premises as there is insufficient acoustic escape provisions.
- 3) The Committee were not satisfied that the licensing objective of prevention of crime and disorder would be promoted this is because the Committee Members were not properly satisfied by the proposals of the applicant in

connection to anti-social behaviour and hence it would not be appropriate to grant the licence.

Any persons aggrieved by this decision has a right of appeal to the Magistrates Court no later than 21 days from the date of receiving the decision notice.

The full written decision would be sent out within five working days.

The Meeting concluded at 2.26 pm

Signed by:

Chairman
