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12 July 2021

Licensing Section
Northumberland County Council
Stakeford Dept
East View
Stakeford
Northumberland
NE62 5TR

By email only to: licensing@northumberland.gov.uk

Dear Sirs,

Application by Suna Miah for a premises licence in respect of Rialto Restaurant, 1 Main Street, Ponteland NE20 9NH and land adjacent thereto

I am instructed on a direct access basis by Danieli Holdings Limited (CRN 6599929).

My client carries on in business as, inter alia, an operator of licensed premises including premises in Ponteland.

I would be grateful if you could accept this letter as my client's representation in relation to an application dated 17 June 2021 ("the Application") made by Sunah Miah ("the Applicant") pursuant to s.17 of the Licensing Act 2003 ("the 2003 Act") for the grant of a premises licence in respect of "Rialto", 1 Main Street "and land adjacent thereto ref NZ 16600 72807", Ponteland, NE20 9NH ("the Premises").

The Existing Licence

Part of the Premises already has the benefit of a licence granted under the 2003 Act, with reference number NPR/1491 ("the Existing Licence").

The Existing Licence relates to a long-established restaurant business conducted under the name "Rialto" at 1 Main Street, Ponteland NE20 9NH ("the Restaurant").

The Existing Licence permits the supply of alcohol for consumption on the premises to which it relates between 11.00-00.00 Monday to Saturday and 12.00-22.30 Sundays, with variations on Christmas Day, Good Friday and New Year's Eve. It also permits regulated entertainment.

According to its website (rialto.co.uk), the Restaurant currently trades as a "family run restaurant" with a capacity of 200 including a function room available for up to 100 people.

The Variation Application

By an application dated on its face 19 April 2021, the Applicant made an application to vary the Existing Licence ("the Variation Application").

The subject-matter of the Variation Application was similar to the subject-matter of the Application.

The Variation Application was withdrawn on 14 May 2021, and the Application appears to be made in substitution to it.

The general scope of what has been applied for in the Application

The general description of the Premises given in the Application is:

The internal area shall continue to trade in the style of a restaurant.

The external area shall provide facilities for the consumption of alcohol, entertainment and food.

The Application therefore seeks a replacement licence for the Existing Licence. The Applicant does not indicate whether or not it is his intention to surrender the Existing Licence if the Application is granted.

Internal area: the Restaurant

Insofar as the Restaurant is concerned, the effect of a grant of this Application would be:

- to add off-sales;
- to add late night refreshment as a licensable activity;
- to add the regulated entertainment of provision of live music and delete the regulated entertainment of provision of anything of a similar description to live music, recorded music or performances of dance;
- to have a terminal hour for licensable activities of 00.00 seven days a week (so, a 90 minute extension on Sundays);

- to remove the special hours for Christmas Day, Good Friday and New Year's Eve;

My client has no objection to those changes as they relate to the Restaurant (i.e. to the extent of the premises licensed by the Existing Licence).

My client would be concerned if it was intended to trade the Restaurant as a bar or a public house, on the basis that it would not promote the licensing objectives were such a long-established Restaurant to repurpose into a wet-led venue at this site. I can deal with this point shortly, since it seems to be accepted by the Applicant, who says in the Application "the internal area shall continue to trade in the style of a restaurant". My client's position is that if there is any doubt that this trading style is to be maintained, it should be protected by the imposition of suitable conditions.

The External Restaurant Area

The "external area" consists of two elements.

First, there is a small area adjacent to the Restaurant. The plan which forms part of the Application ("the Application Plan") shows two round tables with 4 seats each next to the eastern side Restaurant building, and then a further 8 square tables with 4 seats each along the eastern boundary of the Premises. There is what appears to be a barrier feature to the south dividing this area ("the External Restaurant Area") from what lies to the south.

On the basis that this is indeed a barrier, and the External Restaurant Area is only accessible by Restaurant guests, my client has no objection to the licensing of the External Restaurant Area, provided that it is traded as part of the Restaurant.

The points I make in relation to the Restaurant and conditions on the protection of a trading style are repeated here.

My client is neutral as to the hours sought in relation this area, namely:

- supply of alcohol to terminate at 22.30 Sunday to Thursday and 23.00 Friday and Saturday
- provision of recorded music to terminate at 22.30
- provision of live music to terminate at 20.30 Monday to Thursday and 21.30 Friday, Saturday, Sunday and Bank Holidays.
- late night refreshment is only permitted on Fridays and Saturdays to 23.30.

The Park

Second, there is a significantly larger external area to the south.

It is apparent from the Application that the Applicant's proposal is to trade this area as some sort of alfresco drinking park ("the Park").

The Park is currently a meadow.

The Park is substantial larger than the area currently subject to the Existing Licence.

The Park is not contiguous with the Restaurant and has separate entrances. It is presumably intended that the Park will operate independently of the Restaurant.

Indeed, one would imagine that the customer demographic for the Park will be very different from the Restaurant. Whilst the Restaurant is (in the words of the website) "both stylish and relaxed" with "intimate surroundings" which "make it perfect for a romantic evening or a family gathering", the same cannot be said of the Park. The Park features:

- a central "bierkeller" style seating arrangement of 7 long tables, each appearing to accommodate 20 benches that would accommodate at least 2 persons: so a seating provision *in this area* of at least **280**;
- a booth seating provision which is the size of a least one of the bierkeller bench/table arrangements - given the lack of detail on the Application Plan it is not possible to discern how many it would accommodate, but presumably **20** would be an under-estimate;
- 4 "servery" areas - "servery" no doubt here selected as a more palatable substitute for "bar" - the Application Plan is not of sufficiently good quality to discern the size of these bars, although 4 is a doubling of the number shown on the plan for the Variation Application;
- food stalls (it is not known whether these will have any alcohol provision);
- substantial areas at which vertical drinking can take place (and the area of the Park has been increased from that shown in the plan for the Variation Application);
- toilet provision consisting of 1 disabled toilet, gents toilet with 2 stalls, 3 urinals and 1 sink and ladies toilet with 4 stalls and 2 sinks.

Whilst the Application Plan shows the features of the Restaurant in admirably clear and comprehensive detail, the same cannot be said about features of the Park. Due to the colouring selected, it is variously hard or impossible to see the extent of the bar areas.

The Variation Application described its purpose as "To add an outside bar with food and drink service in the outside area in portable units, with regulated entertainment (live and recorded music)", with the plan to that application stating "all service units to be portable". Architects' drawings of this units were provided. It is not clear why the Applicant would want the licensing authority to have less information on the reconstituted Application.

Given the application history and the layout of the Park, it appears tolerably clear that the Applicant's intention remains to trade it as some sort of permanent outdoor festival area, with a cheap and cheerful food offering alongside a core offering of alcohol sales, supplemented by entertainment, including live music events. The construction of the units is now not clear, but it maybe that the Applicant wishes to emulate a semi-permanent "box park" style operation.

My client is not aware of any corresponding application for planning permission having been made.

The Application seeks the following hours for the Park:

- supply of alcohol from 11.00 to 22.30 Sunday to Thursday and to 23.00 Friday and Saturday;
- provision of recorded music from 11.00 to 22.30;
- provision of live music to from 11.00 to 20.30 Monday to Thursday and to 21.30 Friday, Saturday, Sunday and Bank Holidays;
- provision of late night refreshment from 23.00 to 23.30 on Firdays and Saturdays only.

My client objects to *any* licensing of the Park on the grounds set out below.

The proposed operation

Essentially this Application seeks to bolt this large alfresco drinking park to the Restaurant, to be operated independently of it.

The Application seeks the ability to trade the Park from 11.00 to 00.00 seven days a week. It is not clear from the Application whether the limitation on supply for alcohol for consumption in external areas will require those areas to be cleared of patrons - if not, then persons can carry on drinking until midnight.

The Application does not seek to place an expiry date on the ability to trade the Park: it is not as if this is some short-term operation whilst the restrictions on the hospitality sector as a result of the coronavirus pandemic are in force. What the Application, if granted, would allow is a permanent expansion beyond the Existing Licence. It is submitted that "coronavirus" considerations are not relevant to this Application.

My client has a trading presence in Ponteland. That does not debar it from making a representation in the course of a public consultation (see regulation 21(3)(b) of the Provision of Services Regulations 2009). The courts have recognised that trade objections can and do place valuable material before decision makers that they would not otherwise see: *R v. Bromley Justices, ex parte Bromley Licensed Victuallers' Association* [1984] 1 W.L.R. 585 at 589C-D *per* Woolf J.

My client's Ponteland premises operates under the name "YOLO" from 9 Bell Villas, some 150m away from the Premises, in the centre of Ponteland Village.

The Licensing Authority will of course be very familiar with Ponteland. The Local Planning Authority's "Ponteland Neighbourhood Plan" (November 2017) gives a flavour. Its "vision" is [3.2]:

Ponteland will maintain its identity as a sustainable, thriving community, accessible to people of all ages. A gateway to Northumberland, which values its rural setting, rich heritage, natural environment and open spaces. It will remain visually distinct and separate from the Newcastle/Tyneside conurbation, meeting the needs of the current population and community of the future, without compromising this distinction. The special identities of Darras Hall, the historic core of Ponteland village and the small settlements in the Plan area will be maintained and enhanced for future generations, making the Civil Parish of Ponteland a desirable place to live, work and visit.

One of the unique features of Ponteland is the provision of high-quality hospitality operations (including my client's) within this village setting. These provide a valuable community service to the residents of Ponteland, nearby Darras Hall and the wider Northumberland area. Such operations co-exist with and complement the residential community in which they are situated. They are food-led and cater to a broad age range of customers. They promote the licensing objectives whilst serving the key aim of playing an important role in the local community (see paragraph 1.5 of the s.182 guidance).

An alfresco drinking park of the type envisioned in this Application is wholly alien to the historic core of Ponteland village. If granted it would upset the established balance between residential, hospitality and other commercial and social user that has grown up over the years. In particular:

- The Park is massive in size: it is vastly larger than any other external drinking area in Ponteland.
- The park is situated in the very core of Ponteland village, next to the River Pont and the historic bridge, directly opposite both religious and residential user.
- The proposal appears to be provide temporary "box park" style accommodation for bars, food dispense and toilet provision with all consumption taking place outdoors.
- Whilst this style of operation might very well be appropriate at the right site (so, at my client's operation in the urban centre of Newcastle, "Stack"), it is wholly inappropriate in a quiet village environment.
- The proposal is plainly alcohol-led, with substantial bars being supplemented by food from stalls.

- There does not appear to be any wet-weather protection provided at the Park, giving rise to the possibility of weather-triggered mass exodus.

Given its size, style and apparent offering, it is inevitable that to recover his investment the Applicant will seek to the market the Park not to the local community but to persons seeking to have a "night out", in competition to other drinking circuits on Tyneside.

My client's fear is that the clientele attracted to the Park will significantly differ from those who enjoy its Ponteland operation and the Ponteland hospitality offering generally. In short, an operation of this nature in this location is likely to be marketed in a way that will appeal to those wishing to travel to Ponteland to engage in determined drinking. My client has well-founded fears that:

- The Applicant's proposed operation will cause crime and disorder and public nuisance in Ponteland. Not only does my client not wish there to be crime and disorder and public nuisance in Ponteland *per se*, but it anticipates that the entire hospitality sector, including it, will be blamed for any increase.
- The Applicant's clientele will seek to gain access to YOLO, causing conflict there.
- The presence of the Applicant's clientele will dissuade those who currently use the hospitality offering in YOLO from returning.
- This effect will be repeated throughout Ponteland, placing commercial pressure on operators less well-resourced than my client to reduce their standards: in other words, a vicious cycle.

My client has the following further specific concerns:

- Alcohol and open water is a dangerous mix: the Park is abutted by the River Pont, with a footbridge over the river serving as an emergency exit: it is inevitable that on hot summers days there will be an temptation for those attending the Park to play the fool by jumping in the river. This is a public safety issue.
- Pedestrians and vehicles appear to share the only access to the Park: a public safety issue. The Applicant appears to have applied more thought to access since the Variation Application, although the solution merely demonstrates the patent unsuitability of the site for the proposed operation. The Applicant has now come up with a one-way traffic system, with access coming off a roundabout, down a single track alley, running behind various commercial properties (presumably requiring works of construction) and back out through a further single track alley. A "taxi rank" is to be provided (an indication of the volume of anticipated patrons). This arrangement appears require car parking to be completely dispensed with. Such is the risk of conflict between pedestrian and vehicular user that the Applicant considers it necessary to have permanent stewarding in place: condition 17. This might be apposite for a music festival; it is not appropriate for a permanent venue.

My client's general concerns are not assuaged by the operating schedule forming part of the Application. The Applicant has not discharged the duties on him contained in paragraph 8.41 onwards of the s.182 guidance. In particular:

- Conditions 1-14 and 20 are simply standard operational provisions that any competent operator of an entertainment venue would implement as a matter of course.
- Condition 15 appears to protect the operator rather than the public.
- There is no condition 16.
- I have dealt with condition 17 above.
- Condition 18 does not approach the minimum requirements of an appropriate noise management plan for an open air entertainment venue. "Assessments" of noise and "steps to reduce the level of noise" are meaningless without objectively set parameters.
- Condition 19 is unenforceable: see *R (oao Developing Retail Ltd) v. East Hampshire Magistrates' Court* [2011] EWHC 618 (Admin) at [33-37].
- Further and in any event, the effect of s.177A(2) of the 2003 Act would be to disapply conditions 18 and 19 where music is provided in the Park (if amplified, in the presence of an audience of not more than 500 persons).

Statutory nuisance

Whilst it is a matter that impinges on my client's interests only indirectly, it is quite plain from the size of the Park, the lack of limits on the number of music events, the inadequacy of the conditions, the lack of any professionally drafted noise management plan and the proximity of residential user that the proposed operation is likely to result in a statutory nuisance. This is a matter which the Council is duty-bound to investigate by virtue of s.79(1) of the Environmental Protection Act 1990. For this reason I have copied your environmental health department into this representation: doubtless the Council will be alive to the need to properly discharge its statutory obligations.

Discussions with police

The Application refers to "discussions with the police". The Application does not set out the content of those discussions. The conditions are headed "Agreed Conditions". I do not know who it is contended agreed those conditions. I reserve my client's position on these matters. Given the weight that may be placed on "expert" agreement by responsible authorities, it is self-evidently important that full transparency of pre-application discussions and agreement be provided. I am concerned that the conditions "agreed" include conditions that are vague, unenforceable, and inapplicable during music events.

Planning

I cannot see any indication that this development has planning permission, or that planning has been applied for. The licensing authority's statement of licensing policy states at [6.11.2] that it is preferable for premises to have the appropriate planning consent in place before determining a licensing application.

Precedent

Whilst my client appreciates that the Licensing Authority determines applications on their individual merits, it would be unrealistic to ignore the reality of a grant to the Applicant being used as a precedent by other operators seeking a relaxation of conditions on licences in Ponteland. This would be an unwelcome development.

Conclusion

My client has well-grounded concerns that the style, layout and location of the Park operation will not promote the licensing objectives of the prevention of crime and disorder, public safety and the prevention of public nuisance, and indeed is wholly unsuitable for the area.

My client is concerned that a grant of this application would set (or would appear to set) a worrying precedent.

My client invites you to reject the Application insofar as it relates to the Park.

Yours faithfully,

Charles Holland
Barrister

cc: Environmental Health
Northumbria Police

