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Our Ref: 19/PRM1576/LAPRE2

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19 September 2019

Dear Ms Silva,

**Premises Licence Variation Application: (The Tropic Bar, Bicester)**

**Licensing Sub-Committee Hearing, Cherwell District Council, 13 September 2019**

I write to confirm the outcome of the above hearing.

The licensing Sub-committee ("the Sub-Committee") carefully considered the written variation application ("the Application") along with the written representation from Thames Valley Police (TVP) received during the statutory consultation period opposing the Application.

The Sub-committee also carefully listened to the representations submitted by the applicant and TVP at the hearing. In making its decision, the Sub-committee took into consideration the relevant legislation, policy and statutory guidance.

The Sub-committee noted that a representative from the Council's Public Protection department was in attendance at the hearing but had not made any objection or representations and was present only to answer questions which was not opposed by the applicant. It was further noted that no other objections/representations had been received from responsible authorities or members of the public.

The Sub-committee noted that the timings in the Application operating schedule did not accurately reflect the way in which the applicant sought to vary the premises licence. This was explained by the applicant to be due to a misunderstanding in the process. The Sub-committee was grateful for clarification during the hearing of the times the applicant sought to vary the licence as follows:

- Recorded music between the hours of 15:00 – 00:00 (Monday to Wednesday), 15:00-00:45 (Thursday and Friday), 12:00-00:45 (Saturday) and 12:00-00:00 (Sunday)
- Supply of Alcohol between the hours of 15:00 – 00:00 (Monday to Wednesday), 15:00-00:45 (Thursday and Friday), 12:00-00:45 (Saturday) and 12:00-00:00 (Sunday)

- Late Night Refreshment between the hours of 23:00 – 00:00 (Sunday to Wednesday), 23:00-00:45 (Thursday to Saturday)
- Opening Hours between the hours of 09:00-00:00 (Sunday to Wednesday) and 09:00-01:00 (Thursday to Saturday)

The Sub-committee noted that the above proposals were a reduction in licensable hours to those that appeared in the Application and further, that as a result of the notably reduced terminal hours requested, TVP was content to withdraw its recommendation that a condition be added to the premises licence as regards the employment of door supervisors. It was however noted that TVP would still encourage the applicant to undertake risk assessments and consider the need for door supervisors at busier times.

The Sub-committee noted that the objection from the police primarily resulted from one incident in October 2018 whereby police assistance had been required to remove a customer from the Premises, the details of which were to some extent disputed by the applicant. Whilst recognising TVP concerns arising from this incident, the Sub-committee considered the lack of incidents since the Premises began operating in 2017 to be commendable.

Taking into account the evidence submitted and the Licensing Objectives, the Sub-committee was content to grant the Application with the revised reduced operating schedule timings requested by the applicant at the hearing and set out above with immediate effect.

Although registered door supervisors are ordinarily expected by the Licensing Authority where licensable activities include the sale of alcohol by retail and the premises is trading after midnight on any day of the week, the Sub-committee did not consider it proportionate or appropriate for the promotion of the licensing objectives to impose a condition for the employment of door supervisors in this instance given the withdrawn recommendation of TVP and the marginal extension of terminal hour of licensable activities requested.

The Sub-committee was pleased to learn that the premises already has closed circuit television (CCTV). The Sub-committee would encourage the applicant to ensure that the CCTV at the premises is in good working order and that those using it are appropriately trained to help deter any potential disorder but also to protect the premises and its staff. The Sub-committee would further endorse the recommendations of TVP that the applicant undertake risk assessments and in doing so, consider the employment of door supervision at busier times.

As a matter of record, the Sub-Committee wish to note that during determination of the Application, an objection was received in respect of the Application (outside of the consultation period) from two residents of Hunt Close, Bicester and subsequently a complaint from the same residents. The complaint alleged that there had been a failure to advertise the Application by the applicant.

Investigation of this complaint revealed that blue notices were placed around the premises so as to give people living in the vicinity of the premises opportunity to be aware of the Application, the Application was advertised on the council's website, and an advertisement was placed in the website of a local paper (The Bicester Advertiser) which would have been reproduced in hard copy. However, the newspaper advertisement contained a defect in that while it named the company premises licence holder seeking variation, as Tropic Bar Ltd, it did not include the address of the premises.

The following legal advice was given to the Sub-Committee regarding the procedural irregularity identified in the newspaper notice—

- The Regulations do not specify a consequence for failure to comply with their terms even though they are drafted in mandatory terms. Breach does not automatically render an

application invalid. It is open to a licensing decision maker to conclude that minor irregularities do not render an application invalid – R. (on the application of D&D Bar Services Ltd) v Romford Magistrates' Court [2014] EWHC 344 (Admin). In exercising its discretion in the matter properly, the licensing sub-committee has to consider two factors. First the scale and extent of the breach, second its impact on the fairness of the licensing process and those whose interests might have been prejudiced by the breach.

- The Sub-committee must consider whether in light of the complaint anyone has been misled or disadvantaged by the failure to supply the address of the premises in the newspaper? If they are of that view then the Application should be deemed defective and the process will have to be re-started. If not, they can proceed to determine the Application as validly made.

In making its decision, the Sub-Committee took into account the following:

- There appears to have been substantial compliance with the advertisement requirements. Two of the three required forms of advertisement were complied with. The third, in the Newspaper, identified through the name of the applicant the premises in question as the Tropic Bar, being the only bar of that name in the district. This alone was sufficient to identify the premises in question. In the event of any doubt the contact information of the licensing authority and the opportunity to inspect the full Application was communicated in the advertisement.
- The complainants do not state that they, or anyone else, missed the Application because of the failure to state the address in the newspaper. The objection by the complainants (received outside of the consultation period) related to public nuisance. Such complaints can be raised at any point to the licensing authority and where necessary, will be investigated by the council's Public Protection department. The Sub-Committee recalls that there had been no representations made by Public Protection at the hearing nor had that responsible authority brought to the attention of the Sub-Committee any history of significant public nuisance complaints since the premises opened.
- There remains the opportunity for the complainants or other members of the public and responsible authorities to review the premises licence in the future which is an essential safeguard to the public interest.

The Sub-Committee concluded that there was no substantial prejudice to those who might have been interested in the Application because of the overall effect of compliance with the other required advertising formats and little, if any, evidence that the complainants (or anyone else) had in fact been prejudiced by the procedural defect. The Sub-Committee further concluded that the failure to state the address was a minor irregularity that did not render the Application invalid. The Sub-Committee therefore dismissed the complaint attaching no weight to it.

A copy of this notice has been sent to the relevant parties.

### Appeal

Any person who made relevant representations has the right to appeal this decision by giving notice to the magistrates' court within a period of 21 days beginning with the day upon which notification of the determination was given.

Any appeal should be made to Oxford Magistrates' Court, The Court House, Speedwell Street, Oxford, OX1 1RZ.

Yours sincerely



Trevor Dixon

Environmental Protection and Licensing Manager



