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West Berkshire District Council
Public Protection Partnership
Environmental Health and Licensing,
Council Offices,
Market Street,
Newbury,
Berkshire RG14 5LD

By email: licensing@westberks.gov.uk

Dear Sirs

**Watermill Theatre, Bagnor, Speen, Newbury Berkshire RG20 8AE (“the Premises”) –
Premises Licence Variation Application (ref: 09/01533QN-DPS/77-FV) (“the Application”)**

We act for clients Mr and Mrs Putter (“our clients”) that live next to the Premises who wish to object to the Application.

According to the Council’s licensing authority, the consultation period finishes on 2 August. Consequently, this representation (objection) has been made within time. Our clients’ objection must be considered a “relevant representation” for the purposes of section 18(3) and (6) of the *Licensing Act 2003* (“LA 2003”).

The Application (which should be refused):

- Is extreme and inconsiderate as it demonstrates a lack of awareness of the impact that it would cause for the local residents of a small hamlet village that currently does not (apart from the Premises) include a venue licensed to sell alcohol;
- Clearly undermines two of the four licensing objectives;
- Does not include proposed and sufficiently specific and effective conditions that would deal with the adverse licensing impact that a varied PL would cause.

In summary, the Application in the words of the current PL holder is for a:

“Theatre and restaurant with a potential of 200 audience members using the bar and restaurant, pre-show, interval and post-show. During the summer shows, we wish to sell and dispense alcohol and bar drinks from a temporary outside bar on our front or back lawns for pre-show and interval drinks to reduce queuing at the bar. Also be serving food alongside. Event reception drinks could also be dispensed outside for invite-only booked events. We would also like to extend our hours the premises is open to the public from 08.00 to 24.00 due to occasional early morning bookings in our restaurant area and outreach groups onsite.”

The Application seeks consent to increase the licensed area and to sell alcohol outdoors for fourteen hours a day, seven days per week from 10.00 until 23.30.

Our clients’ objection is focused entirely on the Variation Application and does not extend to what has already been granted on the current Premises Licence (“PL”) which cannot as a matter of law be disturbed. We would argue that if the Application was granted the combination of that along with the overly permissive effect of the current licence would create an intolerable cumulative impact for residents that live in a quiet hamlet. There would be an increase in noise nuisance and potentially an increase in traffic volume as the only access to the Premises is through the village. People entering and leaving the car park at the Premises and the overspill area 50 metres away would also create noise nuisance.

We share the view (along with our clients) that the Application does not promote the licensing objectives under the LA 2003 ¹, specifically i) the prevention of public nuisance and ii) public safety. The new operation proposed within the Application adversely changes the character of the Premises in licensing (and arguably in planning) terms.

Our clients are supportive of the aims of the Premises as a theatre with the sale of alcohol ancillary to that function. However, the Application’s broad intent fundamentally alters the character of the current use of the Premises as a theatre venue. With the grant of the Application, the Premises

¹ See section 4(2) of the Act, “The licensing objectives” a) to d) as well as section 1.7 of the Council’s Statement of Licensing Policy.

could increase its capacity indoors and outdoors and become more akin to a festival or events venue, rather than a small theatre.

The Local Planning Authority are a responsible authority for the purposes of the LA 2003 and we would suggest that it should make a representation against the Application as its grant would affect a material change of use at the Premises and would consequently require planning permission.

In order to access the Premises, patrons must travel through the village. Given that there are no proposed conditions that would prevent a capacity increase at the Premises as a result of the indoors of the Premises being used along with the outdoors, any current impact (which is already noticeable) would be exacerbated and intolerable.

The current PL allows for the same hours for the sale of alcohol, but only inside and for consumption on the Premises. That restriction contains the impact of noise nuisance within an enclosed space. It also prevents the sale and consumption of alcohol outside the theatre building. That prohibition must remain and should not be removed via the grant of the Application.

The fact that an outside bar is proposed with no limitations as to dates or times means that the adverse impact from public nuisance will occur directly from the outside area to the detriment of local residents, including our clients.

The Application includes a large area when referencing the PL plan. That has the effect of increasing the potential capacity at the venue. Although it is stated within the Application that the intention is for outdoor alcohol sales during summer shows, with a temporary outside bar, before and post show with queuing inside and outside to reduce queuing at the bar with drinks outside for invite-only booked events, there are no proposed conditions which limit the outdoor sale of alcohol to any of that.

Consequently, the outdoor sale of alcohol could occur from any number of bars from any part of the outdoor area without a capacity limit, meaning that additional patrons could attend the venue in excess of and contradicting, what has been limited within condition 3 of Annex 2 which are

meant to be conditions consistent with the operating schedule that seem to relate to the theatre building only.

No effective noise mitigation conditions are proposed within the Application. There is no detail that is included in the proposed noise management plan that would be agreed with the Council. It implies that it relates to the volume of music. That means that there is nothing preventing severe and incessant noise nuisance from occurring and being heard by residents when alcohol is being sold outdoors. Intolerable noise will be generated from conversations, glass bottles which could be combined with music and other entertainment such as plays.

No conditions are proposed outlining what the security and safety arrangements might be for events taking place outdoors along with the sale of alcohol. This omission has led to the guidance within paragraph 6.3 of the Council's Statement of Licensing Policy not being followed.

A lack of problems stemming from the existing PL does not indicate that the proposed Application relating to the outdoor area will not have a substantial adverse impact if approved. Most of the impact from licensable activities is currently contained within the theatre building.

Our clients instruct that during the COVID pandemic, licensable activities (including the supply of alcohol) temporarily held outside the Premises as a result of temporary legislation caused significant public nuisance which the relevant Council officers subsequently investigated. We are of the view that outcome demonstrates the lack of suitability for the Premises to be selling alcohol permanently outdoors.

The licensing authority should be aware that the Application is arguably not in accordance with the *West Berkshire – Statement of Licensing Policy* (Ref: C3431, published on 13 March 2018 and valid until December 2024). Our comments follow in square brackets. Specifically, via paraphrasing and extracts in italics in paragraph:

- 1.3 – *controlling any negative impacts such as increases in noise nuisance;*

[As mentioned above, the potential conditions relating to noise nuisance are ineffective.]

- 1.5 – *“By regulating activities under this legislation the Council acknowledges that a balance must be struck between the legitimate objectives of applicants and the desires of the population as a whole, and in particular those members of the public living, working or engaged in normal activity in the area concerned. Consideration will be given to these, often conflicting, positions and all views will be taken into account when making licensing decisions or determining a course of action”;*

[We are of the view that the Council when making its decision needs to accept that the Application does not and cannot strike a balance between the objectives of the applicant and the members of the public living in the surrounding area. The conflict cannot adequately be resolved and as a result the Application should be refused.]

- 2.3 – *“This policy sets out the process the Council will adopt in dealing with licence applications and will be used as a basis in coming to consistent and transparent decisions in respect of licence applications. The overriding principle adopted by the Council will be that each application is determined on its merits. Every application will be treated fairly and objectively, taking into account the four licensing objectives, the policy and the statutory guidance issued under section 182 of the Act.”;*

[Given the lack of merit within the Application for the reasons set out above and the failure to promote the licensing objectives, it should be refused and can be on a fair and objective basis.]

- 2.4 - *“Each of the four licensing objectives is of equal importance and will be considered in relation to matters centred on the premises or within the control of the licensee and the effect which the operation of that business has on the vicinity. The Licensing Authority will primarily focus on the direct impact of the activities taking*

place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.”;

[The sale of alcohol outdoors to the extent outlined in the Application, will cause a direct impact on those living, working and engaging in the area surrounding the Premises. For example, there are a number of workers employed in agriculture who go to sleep early in the evening in order to start work early in the morning.]

- 2.6 - *“When determining applications, the Licensing Authority must be satisfied that the applicant’s operating schedule (please see section 4) seeks to promote the four licensing objectives. When determining applications, the Licensing Authority must be satisfied that the applicant’s operating schedule (please see section 4) seeks to promote the four licensing objectives.”*

[The applicant’s operating schedule is deficient and provides no detail as to how the impact on public safety and nuisance will be effectively mitigated.]

- 7.1 - *“The Licensing Authority interprets ‘public nuisance’ in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour. Public nuisance could include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community.”*

[The Application will cause major disturbance that will affect the whole community that surrounds the Premises.]

- 7.3 - *“The Licensing Authority, whilst recognising the need to treat every application on its own merits, should be satisfied that the type of licensable activities proposed and hours of operation will be suitable for the location in which the premises are situated (e.g., areas of dense residential accommodation). Playing of music can cause nuisance both through noise breakout and by its effect on patrons, who become accustomed to high sound levels and to shouting to make themselves heard, which can lead to them being noisier when leaving premises. Other major*

sources of noise nuisance are vehicles collecting customers, the slamming of car doors and the sounding of horns. These noises can be particularly intrusive at night when ambient noise levels are lower.”

[The Application if granted will result in all of the examples mentioned above occurring in an area of dense residential accommodation.]

- 7.4 - *“Where premises are located near to noise-sensitive areas, e.g., residential premises, nursing homes, hospitals or places of worship, the licensee should initially identify any particular issues (having regard to their particular type of premises and/or activities) which are likely to adversely affect the promotion of the objective to prevent public nuisance. Such steps as are required to deal with these identified issues should be included within the applicant’s operating schedule.”*

[As mentioned above the proposals within the operating schedule are ineffective and deficient.]

- 7.5 – *“In considering applications, the Licensing Authority will expect to see, where appropriate, evidence that the following matters have been addressed in the operating schedule:*
 - *Measures to reduce noise and vibration escaping from the premises; including noise from music and voices whether or not amplified*
 - *Consideration of the licensed hours and restrictions on when licensable activities can take place both indoors and outdoors*
 - *Measures to control nuisance that might be associated with the use of the external areas, particularly late at night, including supervision of the areas and specified times during which food and drink will not be permitted to be consumed in the external areas.*

[As mentioned above the proposals within the operating schedule are ineffective and deficient and consequently do not address this requirement within the Policy.]

The licensing authority should be aware that the Application is arguably not in accordance with the (Secretary of State's) *Revised Guidance issued under section 182 of the Licensing Act 2003 (updated 12 January 2023)*. The licensing authority must have regard to this Guidance in accordance with section 4 of the LA 2003. Our comments follow in square brackets. Specifically, via paraphrasing and extracts at paragraph:

- 1.4 – *...the promotion of four licensing objectives is paramount at all times;*

[Two of the four licensing objectives are not being promoted.]

- 2.15 - *“The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.”*

[The sale of alcohol outdoors to the extent outlined in the Application, will cause a direct impact on those living, working and engaging in the area surrounding the Premises. For example, there are a number of workers employed in agriculture who go to sleep early in the evening in order to start work early in the morning.]

- 2.16 - *“Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living*

and working amenity and environment of other persons living and working in the area of the licensed premises.”

[Quite clearly, if the Application was granted, the living and working amenity of other persons (including our clients) would be severely reduced.]

- 2.17 – *“Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises.”*

[Putting aside the deficient noise management conditions proposed within the operating schedule included in the Application, there are no steps that could be taken that could deal with noise emanating from an outdoor event where people are consuming alcohol.]

- 2.19 – *“Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping.”*

[No appropriate conditions have been proposed that focus on the most sensitive periods – e.g., when workers retire early for their agricultural work.]

- 8.36 - *“In such cases it will not be necessary to include the garden or other outdoor space on the plan as part of the area covered by the premises licence. However, it will be necessary for the applicant to include the garden or other outdoor space on the plan as part of the area covered by the premises licence if the intention is to provide a service whereby drinks are available for sale and consumption directly from that area (i.e., the provision of on-sales). This would apply in the case of an outdoor bar or a service whereby a member of staff who is in the garden or outdoor space carries with them drinks that are available for sale (without the need for the staff member to return to the licensed premises to collect them).”*

[The applicant within the Application has failed to fulfil the requirements of this part of the Guidance.]

- 8.42 – *“Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:*
 - *the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;*
 - *any risk posed to the local area by the applicants’ proposed licensable activities;*

[The applicant within the Application has failed to fulfil the requirements of this part of the Guidance.]

We maintain that for the reasons outlined in this letter, the Application is unacceptable and should be refused by the Council or withdrawn by the Applicant. We understand that in the event that the Application is not withdrawn, the objection made by our client which is a relevant representation will trigger a hearing where the Application will be determined by Councillors. If that occurs, our clients are prepared to instruct our attendance or attend the hearing in person and speak to the detail of their objection.

Please contact Bernard Ralph in the event of any queries.

Yours sincerely

JMW SOLICITORS LLP