

**ASTORIA
37– 39 GUILDHALL WALK, PORTSMOUTH**

APPLICATION TO VARY THE PREMISES LICENCE

RESPONSE TO REPRESENTATIONS

Introduction

I am Philip Day, the solicitor who submitted this application on behalf of Invincible Leisure Limited and who will be representing the company at the hearing scheduled to take place on 7th September 2016. The intention of this document is to try to assist the sub-committee in its deliberations by outlining the submissions that will be made at the hearing and to explain additional documentation that the applicants will be referring to.

In the normal course of events, I would begin by outlining the way in which the premises operate and the variations that are sought to the licence. In this case, my “job” has largely been done for me by a combination of the report that is before you and the representations, particularly that from the police (but also from your Licensing Manager) because they set out in detail the nature of the premises and the nature of the proposed variations. I do not need to repeat what has already been said in what I must say are probably the most comprehensive representations that I have ever come across, not only in an application such as this but in any licensing application I have dealt with since the Licensing Act came into force over a decade ago.

An overview of the representations

There are of course three representations and I will in due course deal with these individually but in essence, there are two issues:-

Whether the application should be granted “in principle” given that the premises are situated in an area that is subject to a cumulative impact policy (the so called “CIZ”); and

If the application should be granted in whole or in part, what changes if any should be made to the proposed operating schedule – in plain English – what conditions should apply?

There is of course an overlap between the two aspects – the sub-committee might be satisfied that there would be no adverse effect on the licensing objectives because (in part) of the conditions that are proposed but it might be convenient to consider the two aspects separately.

The sub-committee will of course be aware of two basic tenets namely that each application must be considered on its own merits (I have in mind that by the time this application comes to a hearing, the Committee will also have heard a not dissimilar application on behalf of “Zanzi” – also situated in Guildhall Walk) and that any decision that is made must be evidence based, reasoned and capable of scrutiny should any party (including of course the Responsible Authorities) be dissatisfied with whatever decision the Licensing Authority makes.

It is therefore necessary to examine the evidence produced by the “objectors” whilst determining the application.

Attempts at mediation following the end of the consultation period

As both the Police and the Licensing Manager have said, there was a consultation process before the application now before the sub-committee was formally submitted. This took place over a number of weeks and involved meetings between those concerned and the submission of draft applications.

It is entirely right to say that the application as finally submitted did differ from the final draft that had been discussed. There was a good reason for that but at this stage in the process, it would be academic and unnecessary to rehearse history.

Suffice it to say that following the end of the consultation period, I (instructed by the applicants) sent an email to all of those who had made representations and a copy of that is attached as Annexe 1.

Subsequently, I have discussed the proposals set out in the email with both PC Rackham and Ms Humphreys. I am pleased to say that the amendments set out in that email are very largely agreed but there are a couple of exceptions.

Firstly, PC Rackham still has some concerns about the wording of the condition regarding the taxi rank. At the time of writing, he is still considering what wording might be appropriate and that will be hopefully be resolved by the time of the hearing.

Secondly, Ms Humphreys expressed concerns about the proposal to effectively close half of Astoria at 2 a.m. suggesting that rather than encourage gradual dispersal from the premises, it would simply result in customers crowding into the remaining open area and then dispersing "en masse" when the premises fully closes. In fact and as will be elaborated upon below, this has already been put to the test and has indeed led to a more gradual dispersal.

A revised version of the proposed conditions will be made available before the hearing.

Nevertheless, the police and the licensing authority as well as "Public Health" maintain their objections to that part of the application that concerns longer hours, on the basis that the premises are situated in the CIZ and that the applicants have failed to rebut the presumption of refusal.

Dealing then with each in turn:-

Public Health Team

I understand that this is the first occasion upon which statistics have been produced relating to the number of ambulance call outs where it is said that "alcohol or drugs were the main or contributing factor recorded by paramedics attending".

It is of course always useful to have information such as this but in isolation, I have to suggest that it is not particularly helpful, not least because we do not have any information regarding the number of similar call outs to areas outside the CIZ. The information also includes roads located around the CIZ itself and not simply the CIZ.

Unlike the information provided by the police, there is no indication as to the number of call outs that relate to specific licensed premises.

It is noted that the statistics cover a period of some 17 months, in other words some 517 days. The total number of calls in this entire area (which does of course include residential and student accommodation) was 71 which works out at very slightly less than 1 every 7 days. Without having much more information about the total number of calls, it does with respect, suggest that in the grand scheme of things, the night time economy area does not place a tremendous burden on the ambulance service.

It is also noted that no information has been provided regarding the number of hospital admissions.

Members of the sub-committee should also be aware that whilst “Public Health” is not a licensing objective, the management of the Astoria take health issues very seriously. All of the management team are first aid trained and there are usually 5 trained staff members present whenever Astoria is open.

Both Astoria and Lyberry have actively supported the Safe Space; at one stage it was proposed that it be part funded by members of Pub Watch, of which both premises are leading members. In the event, Safe Space is currently fully supported by the NHS.

The Police representation - statistics

The police representation is supported by statistical evidence which members of the sub-committee will have seen. I have inputted all of the information regarding the Astoria into a spreadsheet, a copy of which is attached (it is difficult to read unless printed on A3!).

The first worksheet simply duplicates the information but with an abbreviated description of the incident and then a final column in which I have inserted a comment. However, I suggest that members pay greater regard to the second and third worksheets.

The second sorts out the data into chronological order with a blank line to separate different months. This sheet also includes further information regarding Temporary Event Notices (see further below). The third and final sheet sorts the incidents into “types” – e.g. all the ASB incidents are grouped together.

Dealing with that final sheet first, I would be the first to admit that the “comments” are very much my subjective summary but I wanted to try to put some matters in context, the most obvious being the number of occasions when customers who have either been refused entry or quite properly removed from the premises have gone on to allege that they have been assaulted. This is then recorded as an assault even though subsequent police investigations have found that no assault has actually taken place at all.

In that regard, members might care to note that the Astoria is equipped with a 37 camera CCTV system and that all door staff are also equipped with Body Worn Video cameras (“BWV”).

Similarly, if one person assaults two or more people, this is recorded as two or more separate incidents.

There are a small number of occasions when an incident is “booked against” the Astoria when the premises have in fact been closed. This might be for example because the City CCTV system operative has observed an incident taking place near or outside the Astoria (even

though the premises is closed) and has logged the location as being the Astoria or possibly, a simple mistake has occurred.

PC Rackham comments on the statistics on page 4 of his representation and very fairly points out that the Astoria is responsible for just 2.1% of the calls for service in the whole of the CIZ over a 24 hour period but this rises to 4% when looking at a smaller time frame of 8 p.m. until 6 a.m. and that in the whole of the CIZ, the Astoria is responsible for just 1.1% of the total of violence incidents over a 24 hour period.

If one accepts that some of the reported assaults were not in fact assaults at all, that latter figure would probably fall further.

This also has to be taken in the context of the size of the Astoria and its opening hours. According to the Council's Statement of Licensing Policy, within the CIZ (or Special Policy Area as it is referred to in the relevant part – Appendix B at page 34), there are a total of 20 licensed premises in the area (although some have closed since the policy was last updated) which can accommodate "in excess of 10,000 patrons".

The Astoria is described by the police as having a capacity of 1,000 persons although the fire risk assessment indicates a safe capacity of approximately 1,200 persons. It is one of the largest venues in the CIZ but unlike a number of others, including in particular the Student Union and The Guildhall itself, it is open 5 days a week, closing on Sundays and Wednesdays unless there is some sort of special event.

Given that on any way of looking at the numbers, the Astoria accounts for well in excess of 10% of the total capacity (and far more if that is adjusted to take into account the relative opening times and days), the percentage of incidents attributed to it is very considerably below what might otherwise be expected.

Perhaps more significantly, despite the number of incidents, there is not a single occasion when it is said that members of staff have not acted other than entirely appropriately. This is important because with any large venue, catering as it does for the student population and those of similar age, it is a virtual inevitability that incidents will occur. Indeed, if there are no reported incidents, one has to question whether this might be in part accounted for by a failure to report matters.

It is submitted that what really matters is not so much that an incident occurs (such as someone who is drunk being refused entry) but the way in which staff deal with the incident and respond to it. The Astoria's record in that regard is second to none.

All three representors – "the policy question".

It is incumbent upon an applicant for a new licence or, in this case, for extended hours on an existing licence within the CIZ, to rebut the presumption of refusal by demonstrating through their operating schedule, that granting the application will not have a negative cumulative impact on one or more of the licensing objectives (para 11.6 on page 13 of the statement of Licensing policy).

In this case, the applicant has set out its argument (in summary) in section M of the application and has proposed changes to the existing conditions and new conditions, all intended to promote the licensing objectives. As already noted, both the police and the licensing authority (as a responsible authority) have broadly welcomed these changes and agree that they are

positive steps. Following further discussions, we are very close to agreement on what changes should be made to the conditions should members be minded to grant the application.

It is however very difficult to prove a negative – how can one ever be sure that granting longer hours would not have a negative effect?

The short answer to that is to put it to the test by giving a series of Temporary Event notices that have the effect of extending the opening hours (and hours for licensable activities) at the Astoria to either 4 a.m. or in some cases to 5 a.m. Details of the TENs given for 2016 are included in the second worksheet on the spreadsheet (the one that is in chronological order). (Please note that a further series of TENs were given in 2015 but these have not been annotated onto the schedule).

It is worth noting that some of these TENs were given late (i.e. less than 10 clear working days before the event) and had there been an objection, these would have been in effect refused without any hearing. Of the majority that were given with more than 10 working days notice, not one attracted any form of counter-notice or objection so that in theory, none of the conditions applying to the underlying premises licence would apply during the extended hours.

In reality, the premises operated as if all of the conditions were in force but also operated as if there was a condition that one or other “zone” be closed at 2 .a.m. with the bar(s) shutting, the music in the area(s) being turned off and the lights being turned up. The effect of this was not to “drive” customers towards the areas that remained open (although some customers would inevitably have done that) but to encourage a more gradual exodus from the premises – counts kept by door staff demonstrate that to be the case and will be made available if necessary at the hearing.

It is also interesting to note that on the vast majority of occasions that a TEN was in place, there were no recorded incidents – indeed, it would appear that the only relevant incidents are those on Saturday 19th March at 02:36 when a male that had been ejected refused to leave, ignored a dispersal order served on him and was conditionally cautioned; then on Saturday 26th March at 02:07 when a male that had been ejected assaulted a member of the door team and finally at 03:03 on Sunday 17th July when a male inside the premises apparently bit another male on the neck.

Conclusion

The Astoria is undoubtedly a popular venue with a good reputation and excellent management practices. Great care was taken in drafting this application to propose conditions which further promoted the licensing objectives – I do not propose to detail or even list those in this submission but they will be referred to at the hearing.

One of the original ideas behind the Licensing Act 2003 was that extending licensing hours and staggering the same so that different venues closing at different times would reduce the issues that used to arise when every pub in a locality closed its bar at 11 p.m. and every late night venue closed at 2 a.m.

It is however accepted that when venues have different closing times, there is a risk of “migration” from one venue to another. Accepting the proposal by the police that there should be no admission to the premises after 2 a.m. coupled with the obvious vigilance of the door team regarding refusing admission to persons who are already drunk will address those issues

and the experience of the premises in operating under Temporary Event Notices (usually on the busiest student night – a Friday – but the TEN would be for the Saturday morning) clearly demonstrates that granting the application as it now stands amended would not have any negative effect on any of the licensing objectives.

Finally, it is of note that the Police in particular keep detailed logs of incidents attributed to different venues in the locality. If there were a sudden increase in incidents attributed to the Astoria occurring during the longer hours, it would appear that the police would be able to demonstrate that that was the case. This in turn would mean that they would have the evidence that they might need in to support a review, notwithstanding the assertions made elsewhere to the effect that it is often not possible to attribute incidents occurring in the CIZ to any particular premises. If members are minded to grant the application and it transpires that the licensing objectives were undermined as a consequence, there is no reason why the decision could not in effect be reversed.

The sub-committee is therefore invited to grant the application.

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