

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Tuesday, 28 May 2019 at 10.00 am in the executive meeting room, the Guildhall, Portsmouth

Present

Councillor Claire Udy (in the Chair)
Tom Coles
Benedict Swann

23. Appointment of Chair

Councillor Claire Udy was appointed Chair.

24. Declaration of Members' Interests

There were no apologies for absence.

25. Licensing Act 2003 - The Alchemist, R02 to R03, Central Square South Building, Gunwharf Quays, PO1 3TW

Present

Rebecca Ingram, Solicitor
Anthea Hassiakos, Operations Director (Alchemist)
Simon Potts, Managing Director (Alchemist)
Councillor Rob Wood, ward councillor

The Chair welcomed those present and outlined the procedure the Sub-Committee would follow. The council's Legal Advisor emphasised that only those who had submitted representations within the statutory timeframe could speak. All material relied on at the meeting has to have been disseminated in advance. When speaking representatives need to adhere to the points made in their written representations. However, some additional material has been produced today by the applicant and residents which all parties have agreed can be considered.

Councillor Rob Wood was attending in order to represent residents ("other persons") who had registered to speak at the meeting.

The council's case

The Principal Licensing Officer introduced the report which was an application for the grant of a new premises licence under Section 18 of the 2003 Licensing Act. The application was being considered by the Sub-Committee as one representation in favour and thirty-nine representations against had been received. Environmental Health confirmed on 10 May that the most recent complaints about noise in the area (Bar 38 and The Licquorist) were in 2013.

In response to questions from members, the Principal Licensing Officer gave the licensing hours for neighbouring premises. Closing times range from

11.30 pm to 3 am depending on the day of the week; the casino has the latest closing time of 6 am daily.

The applicant had no questions for the Principal Licensing Officer.

In response to questions from residents who had made representations, the Principal Licensing Officer and Legal Advisor clarified that:

- Anyone can apply for a licence and it is granted until representations are made and then a hearing is held.
- If an area becomes saturated with a certain type of establishment then the licensing authority can apply a policy limiting applications to the area; however, there is no Cumulative Impact Zone (CIZ) for the area around the Alchemist. Demand for a CIZ is usually led by the police, the leading authority on crime and disorder.
- When a CIZ is applied there is a rebuttable presumption that any additional licences in the zone will be refused. The burden is on applicants to show granting the licence will not cause problems.
- As there is no CIZ in this area the onus and evidential burden is on objectors to show that granting the licence would cause problems. The meeting can only consider the application for the Alchemist and not the licences of other premises.
- CIZs were last reviewed in 2017 and there is one in the Guildhall Walk area.
- Additional conditions can be added to a licence.
- The Sub-Committee can only consider this application and not discuss other premises or policies.

In response to a question from the ward councillor the Principal Licensing Officer clarified that the licensing objective of "Protection of children from harm" usually applies to the sale of alcohol. Harm from noise and smoking comes under "Prevention of public nuisance."

The applicant's case

Presenting the case for the applicant, Rebecca Ingram, Solicitor, included the following points:

- The Alchemist started in Manchester and has been trading since 2011; it now has 14 sites in the UK in leisure, retail and residential districts, including some in cumulative impact zones (CIZ). Branches trade without giving concern for crime and public nuisance.
- The meeting is to consider a new licence application and not to discuss licensing policy, other premises or whether there should be a CIZ.
- The Alchemist offers a unique experience of food, drink, atmosphere and quality of customer service. Mandatory staff training covers age verification and health and safety. Career progression is good and staff retention is high; the company is in the Sunday Times Top 100 companies.
- The Alchemist is not a high volume vertical speed drinking establishment that is associated with disorder. Tables and chairs take up 70% space. The food, drink and style of service attract discerning customers (mostly aged over 25) who want to enjoy the environment. Food is available all day. The inventive individually made cocktails are the Alchemist's USP.

The material circulated today shows the type of customer the Alchemist attracts.

- The proposed hours are for a bar and restaurant, not a club, and are a reduction in the hours requested in the original application. The hours proposed are in fact less than the hours granted in the unit's existing licence.
- The company understands that residents are concerned but branches in similar mixed high value residential / leisure areas such as Newcastle and Media City in Salford have had no negative impact on residents. There have been no complaints from Environmental Health since 2017. The Managing Director has met Gunwharf residents. The company is confident that issues will not arise due to the style of the operation and changes made to the previous application.
- With regard to noise PCC will install a noise limiting device and live music has been removed from the application. Use of all three terraces will be restricted after 11 pm. Drinks will not be allowed in the smoking area. The discerning nature of the Alchemist's clientele dictates their behaviour so dispersal is not a concern. 8 to 11 pm tends to be the busiest time and with longer hours customers leave gradually of their own accord. Staff assist with dispersal, for example, encouraging people to wait inside for taxis and drawing attention to notices.
- The company has a Purple Flag award for excellence in the night-time economy; the police have no concerns; it has commissioned covert exercises to see if there are concerns; a PhD researcher has found no negative impact; the Nottingham branch was allowed to extend its hours despite being in a CIZ.

In response to questions from members, the applicant clarified that:

- The Alchemist has a strong food offering during the day; in the evening there is more activity in the bar. Liquor accounts for 60% of sales, food for 40%. Takings for individual bar staff can be up to £2,000 per hour. The kitchens are open until 11 pm and the last meal bookings are taken at 10.45 pm.
- The Alchemist does not offer multi-drink deals or happy hours. Service takes longer as cocktails, which cost around £8.50 each, are individually prepared.
- The Covent Garden premises, which is in a CIZ, has lesser hours than those proposed for Gunwharf. The Alchemist prefers a longer terminal hour in order to spread out dispersal.
- Premises in Newcastle and Leeds are closer to residential areas than in Gunwharf; in Liverpool the Alchemist trades from the grounds of a hotel.
- To prevent public nuisance the noise limiter cannot be tampered with, staff supervise smoking areas, and staff are inside and outside to actively manage dispersal.
- The company takes its social, economic and governance seriously and has good relations with local authorities in the 11 cities where it operates.

Questions from the "other persons" / representatives / objectors

In response to questions from John Miller, a representative, the applicant clarified that:

- The Alchemist operates in a range of venues, not just student areas, and customers are mostly aged over 34. For example, the terrace of the Westgate branch overlooks an older residential area and has been operating for 20 months with no problems. The location of the Oxford branch is demographically comparable to Gunwharf.
- The company carries out business research on proposed venues. It had investigated a number of venues and identified Gunwharf as the place to be as it has shoppers, residents, workers, tourists; the residential area was an attraction. The premises has two floors and an outside area.

In response to questions from Mr Dan Goonewardene, a representative, the applicant clarified the following points:

- Drinks would be served from 11 pm to 1.30 am. There are no off-sales apart from when customers might take home an unfinished bottle of wine from a meal.

In response to questions from Graham Jenkins, a representative, the applicant clarified that:

- The company has been discussing arrangements with Aqua for booking taxis at the rank by the M & S Outlet.
- The noise limiter will be set to a level with regard to how the business trades and will take into account people coming and going through the doors. Environmental Health will assess the way the business operates. There will not be two sets of doors open at once.
- The responsible authorities are not concerned about the Alchemist.

In response to questions from Graham Bland (representing Stan Chard, an objector), the applicant clarified that:

- It was unlikely the average £8.50 cost of cocktails would lead to the Alchemist becoming part of the late night drinking circuit. Customers would not leave after one drink as the Alchemist is a more aspirational venue; it is a destination venue with a better standard of offering.
- When asked if the company had visited residents at 1 am the applicant said they had asked about problems at existing premises and had received unusually positive feedback. The company was sympathetic to residents' concerns, had invited them to a meeting and had spent time in the area in the evenings.

In response to questions from Councillor Wood, ward councillor, the applicant clarified that:

- Customers are encouraged to come in for a drink once dining finishes; there is no last entry condition. The venue is dictated by price point and measures to maintain order include: Challenge 25; doormen from Thursday to Sunday; a designated premises supervisor; compliance training for staff.

Councillor Wood advised he was representing: Neil Fryatt, Miranda Goonewardene, Vanessa Wakefield, Margaret Earnshaw, Alan Batt, Susan Blacklin, Sue Barnes, Peter Webber, John Wingrove, Clive Clifford, Nicholas Booth, Paul Birdseye.

The meeting adjourned from 12 to 12.20 pm for a break. The Chair reminded those present that they must not discuss the application with members of the Sub-Committee outside the meeting room.

Objections

John Miller, a resident of Gunwharf for 15 years, made the following points in his objection:

Gunwharf's vitality is part of its attraction as a place to live but it has become increasingly overcrowded. There are concerns over crime, disorder, public safety, anti-social behaviour and particularly noise. Neither premises nor Land Securities (managing agent of Gunwharf) seem able to improve the situation. It is worse in the summer as there is no air-conditioning in the flats so windows have to be kept shut. The Alchemist would aggravate an already intolerable situation.

There were no questions from members.

In response to questions from the applicant John Miller acknowledged the Alchemist was a well-run operation but the proposed location is unsuitable. Nearer Tiger Tiger or the Cosy Club would be more suitable.

Graham Jenkins, a resident of Gunwharf for 15 years, made the following points in his objection:

- There has been reasonable co-existence between residential and commercial activity in Gunwharf but there is growing nuisance, particularly along Canalside, which is used as a rat run between establishments.
- With regard to dispersal it is unclear how customers can be encouraged or made to leave in a certain direction.
- The no off-sales policy is incongruous with having no drinks outside.
- The smokers' area is insufficient and smokers cannot be contained.
- Although the Alchemist's case is well presented residents feel they are suffering the cumulative effect of public nuisance and it is reckless not to consider this effect. Land Securities are reckless in contributing to the foreseeable nuisance.
- Minutes of a Portsmouth City Council meeting (21.11.2018) expressed concern about dispersal from the Cosy Club and that is situated 300 metres from residents.
- A conversation between Mr Jenkins and magistrates showed the majority of cases of affray come from Gunwharf not Guildhall Walk. The application is an accident waiting to happen.

There were no questions from members nor the applicant.

Graham Bland, a resident representing Stan Chard (a resident who had made a representation), made the following points in his objection/statement:

- The Gunwharf residents' committee believes 100% that a cumulative impact assessment is long overdue. The council does not understand crowd control and does not want to take initiative.
- Councillors should visit Gunwharf at 1 am to see what it is like. The application is good but in the wrong location.

There were no questions from members nor the applicant.

Dan Goodewardene, a resident of Gunwharf for seven years, made the following points in his objection:

- The first part of the objection showed a short video clip of the Canalside area taken between 1 to 1.30 am. Two slides had to be omitted as evidence not served in time cannot be considered.
- There are no crime and disorder problems in the day but according to police crime information there has been a sharp spike in violence and sexual offences. There is anti-social behaviour including urinating, vomiting, noise, and drug dealing beneath bedroom windows.
- The Alchemist intends to serve drinks between 11 pm to 1 am which is the time residents are most concerned about. There will be disturbance from the smoking area.
- The terrace is 38 metres from residents. The gap between blocks funnels noise into the rest of the development. The decision on the Cosy Club took into account the distance from residents.
- The main dispersal time is 1.30 to 2 am but security staff do not move people on.
- If there is a licence for off-sales it spills into other areas.
- Residents are concerned Gunwharf may go the same way as Guildhall Walk and that other premises may become bars. The Legal Advisor reminded those present that what happens at other venues is irrelevant to this application.

There were no questions from members nor the applicant.

Ward councillor's statement/objection

Councillor Rob Wood, a ward councillor, made the following points in his statement/objection:

- As a ward councillor, he supports residents, including 61 other residents whose representations could not be considered as they had not been made in time.
- The council has a duty of care to protect residents from something that will impact them. The large venues in Gunwharf have an impact on footfall and have increased since they were built. Customer behaviour is unpredictable.
- Case work shows there are problems so he requested a deferment in order to carry out a cumulative impact assessment which can be used empirically elsewhere.

There were no questions from members nor the applicant. The Legal Advisor said a deferment is not feasible as it takes a long time and the Sub-Committee needs to consider the Licensing Policy as it is now.

Questions from the Sub-Committee

In response to questions from the Sub-Committee, the applicant clarified that:

- No trees would be removed.
- After 11 pm smoking would be in an enclosed area.

- Open containers of alcohol are not taken outside. The application can be tightened up to say they are not taken outside at all except in a delineated area, for example, diners taking home unfinished drinks after a meal.

There were no questions from the applicant.

Objectors' summing up

Graham Jenkins, summing up on behalf of the objectors, said:

- The Sub-Committee needs to consider what is reasonable for residents to endure.
- Although residents support much of the Alchemist's application they would be very disappointed if a cumulative impact assessment was not carried out.
- The application is an accident waiting to happen. The area is going downhill fast as has been seen in other areas of Portsmouth.

Applicant's summing up

Rebecca Ingram, summing up for the Alchemist, said:

- There are some misconceptions about the application. There is already a greater licence in place than what is sought today.
- Noise at 3 or 4 am is not associated with the Alchemist as customers will have gone home by then. It is a sad indictment if the Alchemist is seen as trouble. It has a demonstrably different impact than other establishments. Objectors recognise it is a positive offering.
- Door staff will actively manage behaviour and dispersal. Overtly stag and hen parties will be refused entry.
- The noise limiting device is robust both when doors are open and shut.
- Fewer than 10% of the clientele are smokers. Dispersal will be well managed by an experienced team.
- With regard to issues with other venues the decision has to be made based on the Licensing policy as it is now. Refusing the application is not the answer to existing problems. The Alchemist could raise standards.

The Sub-Committee adjourned from 1.30 to 2.30 pm in order to reach their decision. The Chair reminded those present that they must not discuss the application with members of the Sub-Committee outside the meeting room.

The Sub-Committee resumed at 2:50pm.

DECISION

In the matter of the Licensing Act 2003 for the grant of a premises licence - The Alchemist, R02 to R03, Central Square South Building, Gunwharf Quays, PO1 3TW

The Licensing Sub-Committee has considered very carefully an application for a premises licence for the proposed "The Alchemist" at Central Square South Building, Gunwharf Quays. Due regard has been given to the Licensing Act 2003, statutory guidance, the adopted statement of licensing policy, the Human Rights Act and representations of all parties to the hearing - both written and given orally at the hearing today.

All the representations before the Sub-Committee have been received from residents; one in favour and thirty-nine objecting. The objection focusses generally upon the licensing objectives of the prevention of public nuisance and prevention of crime and disorder. Existing premises create concern amongst residents in relation to late night noise and disturbance. The fear expressed is that an additional premises will add to the issues already experienced. The Sub-Committee heard that this location is not in a cumulative impact zone and accordingly no special policy applies to the application which must be considered on its merits in the usual manner.

It was noted by the Sub-Committee that no representation had been made by any of the responsible authorities but notably Environmental Health and the police.

In light of consideration of all the above evidence the Sub-Committee has determined to grant the premises licence as applied for subject to amendment of the following conditions (both located in Section C of the Operating Schedule, headed "The Prevention of Public Nuisance"):

- Condition no.8 is amended to read as follows: "The first floor terrace and the ground floor remote terrace shall cease to be used at 22:00 daily. The ground floor terrace shall cease to be used for drinking and/or dining at 22:00 daily. After this time, this area (the ground floor terrace) shall be used for smokers only, and smokers shall not be permitted to take drinks into the area with them."
- Condition no.1 is amended to read as follows: "Noise from amplified music or voices at the premises shall not be such as to cause a noise nuisance to occupants of nearby premises."

The amendment of condition 1 is in order to make the condition clearer and thereby enforceable.

Reasons

The Sub-Committee listened carefully to the concerns of residents and acknowledged genuine concern regarding levels of disturbance caused by premises already operating nearby. However, the Sub-Committee had to consider the extent to which the application before it would lead to issues of public nuisance and/or crime and disorder and whether, in light of that assessment, it would be appropriate to refuse or restrict the proposed licensable activities.

The Sub-Committee was impressed by the professional operation of the applicant and the evidence of successful operation elsewhere in the country in similar locations. The operating schedule, including conditions relating to: CCTV, door staff, staff training, refusals, the area to be taken up by tables and chairs (a minimum of 70%), Pub Watch, the Business Crime Reduction Partnership, noise, the use of a limiting device, the closing of doors, smoking and dispersal policies etc. provided considerable reassurance by evidencing the experience and

proposed mode of operation by the applicant. In short, the risks associated with this type of premises are considered to be low and by restricting to use of outdoor areas to 10 pm the potential for noise nuisance to residents is reduced to an acceptable level - so far as it might emanate from the proposed premises.

Consideration was given to amendment of the off-sales condition as proposed but this was not felt to be necessary given that the effect of the condition remains the same; the limited scope for alcohol leaving the premises was explained and accepted.

Residents expressed concern that the premises may change in time or otherwise not be run in accordance with the scheme outlined today. By way of reassurance it should be noted that a licence, when granted, is not set in stone and may be the subject of review proceedings.

A review may be brought by residents or by responsible authorities if the grant of the licence does lead to additional issues attributable to this venue. On review, steps can be taken to address concerns where evidence supports that action.

Residents raised cumulative impact and the concern that the area ought to be reviewed with a view to implementing such a policy in this area. The Sub-Committee accepted legal advice, given during the course of the hearing, that the policy as currently in force had to be applied to today's decision. It must also be stressed that consideration of this application is not a review of nearby premises.

It was found that the applicant had engaged in constructive dialogue and had amended the previously proposed scheme to take account of concerns. It is recommended that residents and the applicant continue to engage in constructive dialogue going forward.

Residents are advised to report issues of concern to the police and Environmental Health, as appropriate, in future to ensure concerns are recorded and may be used if review is necessary for these or other premises.

There is a statutory right of appeal against the decision available to all parties to the hearing. Appeal must be made to the Magistrates' Court within 21 days of formal notification. Formal notification of the decision will set out that right in full.

Councillor Claire Udy
Chair