

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Tuesday, 30 July 2019 at 9.30 am in the executive meeting room, floor 3 of the Guildhall, Portsmouth

Present

Councillor Claire Udy (in the Chair)

Councillors Leo Madden
Lee Mason

Apologies for Absence

Benedict Swann and Linda Symes

42. Appointment of Chair

Councillor Udy was duly appointed as chair.

43. Declarations of Members' Interests

There were no declarations of members' interests.

44. Licensing Act 2003 - Application for grant of a premises licence - Marmion House, 89 Marmion Road, Southsea, PO5 2AX

The procedure for Applications with representations by "Other Persons" was followed.

Derek Stone, Principal Licensing Officer, presented the report of the Licensing Manager. The representations from local residents objecting, and local business owners in support, were set out in Appendix C, and there had been no representations from Responsible Authorities. Mr Stone had spoken with the applicants who had confirmed that they were creating an internal waste storage area. He drew members' attention to the licensing objectives and the options open to them.

The committee members asked questions regarding the time that the neighbouring Bangerz n Brewz licenced premises was open to; this was up to 22.00 for the sale of alcohol during the week. The other nearby premises of Gisors had now closed.

Questions were then asked by residents ("other persons"). The adequacy of the planning application notification was referred to but the Licensing Manager was not able to comment on the planning notification.

Mr Stone clarified that this site was not within a Cumulative Impact Area (areas designated at saturation point with licenced premises) in the city.

Applicants' Case

Jasmine Ryan and Craig Emery outlined their plans for Marmion House and set out their background in the catering and entertainment trade. They had tried to liaise with those who had raised concerns and objections to discuss their plans. Their investment included fitting a new kitchen and providing seating for approximately 40 diners. Their customers would have to leave the premises by 10.30pm with alcohol being served up to 10pm. They would provide different menus for different parts of the day, with breakfast, children's and an evening bistro menu. It was not their intention to have large parties and diners would be encouraged to leave in a way to respect neighbours.

There would also be sound-proofing between properties including the ceiling at the toilet area that had flats above. The music would be low level background music, with restrictors put on their equipment. The main entrance would be on Marmion Road; the side door would be used mainly as a fire door, and after 7pm they would ensure the door was kept closed. Guests would not be able to sit outside (the width of pavement prevented this). It was hoped that many patrons would walk and taxis could be called from within the restaurant.

Bins would be stored within the building with restricted collection and delivery times. Smoking outside would be monitored, a sand bucket provided and regular sweeping. Drinks would not be permitted to be taken outside. Staff would be fully trained and drunk customers would not be tolerated.

The building was within a Conservation Area and needed renovation and up to 10 jobs would be created. This would bring diversity to the road.

The applicants offered to ensure that music would be turned off at 10pm and volume restrictors applied. They were happy to have on-going contact with residents.

Members then asked questions regarding the child-friendly nature of the establishment and the type of alcohol offer. It was reported that there would be a small selection of drinks which would not be at low prices as this would be ancillary to the eating. There were 4 places at the bar where people could eat plus the 36 covers outlined on the submitted plan; it was noted that the bar itself had been reduced in size.

Residents then took the opportunity to ask questions of the applicants, which included:

- If there would be tables placed outside - it was reiterated that the pavement was too narrow for this so they would not be applying for permission.
- How the address of the application had been advertised as there was a greater frontage along Victoria Road South

Other Persons

The opportunity to put forward their views was taken by the following residents (who had made representations included in Appendix C of the report):

- i) Melissa Wain - stating there are already 55 licensed premises within 5 minutes' walk; it is more of an A4 use than A3 and would be more of a bar than restaurant; concern about the glass frontage predominantly along Victoria Road South; waste storage causing infestations; noise of bottle collections; double yellow lines outside the premises so lack of parking; noise from diners and music with doors being opened; noise from smokers outside and those waiting for taxis; there is not a market for pre-show dining; support was from those not living in the area.
- ii) Helen Fage & Steve Fage - as the landlords of the flats above the premises they were seeking assurances as to the adequate solution for noise insulation as this would affect their tenants and business. They were also worried about the extraction fan.
- iii) Kate Jones - she had been unaware of the planning application and lived behind the premises her concerns included: potential disturbance with the noise of those coming to and from the restaurant, especially if doors were left open for ventilation; the glass would not insulate against noise within; there may be live music; there was already disturbance (and odours) at night caused by Bangerz n Brewz which made it difficult to sleep, especially for shift workers.
- iv) Sally McNally's concerns included the change to the character of the area; the difficulty in understanding the different planning and licensing policies; abuse already suffered from taxi drivers when asked to move off drive entrances; there should be assurances given on how the soundproofing and fans would be managed.
- v) Judith Smyth, speaking as a resident, endorsed the views of her neighbours and her concerns included the advertising of the licence as Marmion Road only; it was a lovely building in a Conservation Area which would be hard to sound-proof; there would be further noise generated as well as taxi doors and music at night; a café use only would be welcomed but alcohol served in the evening was a worry; the fire door would be open near her bedroom windows; it could create a precedent; it would be hard for residents to sleep at night.

Ben Attrill, Legal Adviser, advised the Sub Committee that new grounds of representation should not be added at this stage, and financial viability was not a consideration. The panel members were given a copy of the planning permission for their information to see the attached conditions.

In questions to other persons, the inclusion of some of the further premises within 5 minutes' walking was queried by members. Councillor Mason stated that he had visited one of the flats above approximately 10 years ago (so this was not prejudicial) so was aware of the layout. There were no questions raised by the applicants.

Summing Up

Derek Stone, Principal Licensing Officer, reminded members that there had been no representations from Responsible Authorities; there are early closing times under the planning permission; there are review provisions, should they be necessary, as a safeguard.

Other Persons/Residents - the main concern was noise and anti-social behaviour at night; adjoining properties needed to be protected from noise attenuation; it was not the right site for an alcohol licence.

The applicants reiterated their desire to have a well-run business which would not cause problems in the area so the measures they were taking included: turning off the background music at 10pm, patrons would leave by 10.30pm; bin storage inside restaurants was common practice; they were seeking a high quality extraction system which would run through the eaves and have noise reducing mats and be disguised; they were not opening until late and were not planning live music as there was little space to accommodate this; there would be sound proofing between the toilet area and flats above.

It was reported that the insulation measures had to be to the satisfaction of the Planning Officer under the planning permission.

In accordance with procedure the parties to the hearing left the room whilst the Sub Committee reached its decision.

Decision

The meeting reconvened, the parties invited to return and the Legal Adviser read out the Sub Committee's decision:

"The Licensing Sub-Committee has considered very carefully an application for a premises licence for the proposed premises at Marmion House, 89 Marmion Road, Southsea, PO5 2AX. 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 and leading to today's hearing have been received from residents, landlords and/or businesses; namely 18 in favour and 6 objecting. The objection focusses generally upon the licensing objective of the prevention of public nuisance. Existing premises create concern amongst residents in relation to late night noise and litter. The fear expressed is that an additional premises will add to the issues already experienced, particularly late night noise. 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.

The Applicant confirmed that they were willing to adopt a voluntary policy of terminating amplified noise at 10.00pm and the installation of a noise limiter at the premises.

In light of consideration of all the above evidence the Sub-Committee has determined to grant the premises licence as applied for.

Reasons

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

In objection the Sub-Committee heard:

- that there are too many premises close by,
- insulation would not or could not prevent noise escape
- the noise of patrons in drink would not be acceptable
- residential premises above would be materially affected by noise
- additional noise from car doors slamming and litter would ensue
- planning precedent would not assist with other applications under consideration
- extraction will cause nuisance

However, the Sub-Committee accepted legal advice that in relation to the content of the objection planning issues generally could not be accepted or considered as relevant (e.g. issues relating to change of use, availability of parking etc.). It was also made clear that this application must be considered on its own merits and on the basis of the evidence before the Sub-Committee today and any decision does not set a precedent in licensing terms.

The Sub-Committee was impressed by the experience and professional approach of the applicant. The proposal is for a restaurant with limited bar provision (the bar now being smaller than shown on plans) and with licensable activities ceasing at 22.00 hours at latest. It was noted that the planning permission requires insulation to be installed and that the extraction system must be approved by the Council. There is no objection from Environmental Health in relation to potential noise escape and the Sub-Committee heard that the extraction system was being professionally installed, venting to the roof and with noise attenuation measures.

Residents expressed concern that the premises may change over time or otherwise not be run in accordance with the operating schedule 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.

The applicant has engaged in constructive dialogue and has amended the application to take account of concerns. It is recommended that residents and the applicant continue to engage in constructive dialogue going forward.

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."

Full written notification of the decision and reasons would be sent to all parties.

The meeting concluded at 12.05 pm.

Councillor Claire Udy
Chair