

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Friday, 3 July 2020 at 10.00 am held virtually

Present

Councillors Dave Ashmore
John Ferrett
Benedict Swann

8. Appointment of Chair

Councillor Ashmore was elected as chair for this meeting. He welcomed everyone to the first virtual meeting of the Licensing Sub Committee necessitated by the COVID-19 restrictions and explained how the meeting would work and explained the procedure being followed (for hearings where representations are from "other persons" i.e. residents). Introductions were made by those present.

9. Declarations of interest

There were no declarations of members' interests.

10. Licensing Act 2003 - Application for variation of a premises licence - Keppels Head Hotel, 24-26 The Hard, Portsmouth, PO1 3DT

Derek Stone, Licensing Officer, advised that this application had originally been scheduled to come to a meeting on 23 April however had been adjourned twice due to the restrictions in place due to the COVID-19 pandemic. The application for variation needed to come to the sub committee hearing due to representations received from the Chief of Police, Hampshire Constabulary and three local residents ("other persons") objecting to the proposal. He advised the committee that the applicant had now withdrawn the extension to its opening hours as applied for in the original application. The new bar, to be known as the Nut Bar, would be for private functions and operate with the existing opening hours as detailed in the existing premises licence. The Licensing Officer had been advised by the applicant that the maximum capacity for the basement bar is 60 people. Following this change to the application, the representation from Mr Greenberg had been withdrawn as he was now happy with the new proposed hours.

There were no questions from any of the parties present on the Licensing Officer's report.

Applicant's case

Mr Lim explained the reason for the variation was to add a bar downstairs for private functions which would minimise noise in the hotel bar upstairs. He handed over to Jeanette Warren, the Licence holder.

Ms Warren explained that the applicant would like to move all events that previously took place in the upstairs bar, which they presumed were the cause of the noise complaints, to the new bar in the basement. The new bar is fully soundproofed and would only be used for private functions. The upstairs bar would be for guests of the hotel only and would therefore be much quieter. All staff will be fully trained and will operate the Challenge 25 policy. The hotel already has one CIA accredited doorman working for them who would be in attendance for all private events being held. Ms Warren explained she already works for the applicant at the Lady Hamilton pub, which has an accredited licence. She has good rapport with the client base there and she was not aware of any noise complaints.

Ms Warren said that it was anticipated that the private events would be restricted to those over the age of 25, which they feel is responsible and is in line with the Challenge 25 policy. The premises will not be operating any deals on alcohol as the applicant wants this to be a successful private event functionality for the purpose of weddings and charity events for example that add to the local community. The premises will no longer use the Nelson's Bar for live music or events. They feel 11pm close for the bar be much more respectful to the local community.

In response to a question from Councillor Swann, Ms Warren said that the licensing policy states that any staff working behind a bar must be suitably trained to understand legal responsibilities for underage drinking.

In response to a question from the legal advisor regarding the soundproofing, Mr Lim said that they had removed the old ceiling and installed 36 packs of 100ml Rockwool insulation to fill the gaps between the wood frame on the ceiling. They have also installed 15mm soundproofed plasterboard followed by fire rated plasterboard. The new bar is below ground.

PC Rackham asked the applicant why they had said the correct measures were in place to promote the licensing objectives, when they were in fact not as they failed the test purchase. Ms Warren explained that she was not on board with the premises at the time, but understood that they had not got the correct measures in place. The person who had served the 15 year old had been a member of the Lim family who was not employed by the premises and was helping out. Ms Warren explained that she had a personal licence since 2008 and was happy to help Mr Lim ensure that all the measures are in place to meet the licensing objectives. The bar training book and Challenge 21 policy requirements had not been met at the time of the test purchase. Mr Lim added that it was partly his fault as he had been busy getting the business up and running, to which he apologised. They had passed the test purchase carried out by the police on 7 March.

PC Rackham said that following the submission of the application, Hampshire Police had tried to engage with the applicant via email, a copy of which is in

the agenda pack, but had not had a response until written representations to the application had been submitted by the Police. Mr Lim said he did not think he received this email. In response to a follow up question, Mr Lim said he did receive the follow up emails from PC Rackham and did respond to these.

In terms of training, Mr Lim explained there was now a training book with a record of all staff being trained for the sale of alcohol and Challenge 25. Also the book where anyone under 25 trying to buy alcohol is challenged. Mr Lim confirmed each individual had received specific training which was recorded on the training record. Each staff member will sign to say they have received training. Mr Lim showed the committee an example of the training book via the camera. The Challenge 25 policy delivered to staff has been delivered by Mr Lim and Ms Warren and some have been booked onto a personal licence course. Staff will be provided a copy of the Licensing Act and Licensing objectives. Ms Warren would like to schedule staff meetings every month to continue they are up to date with regulations to ensure there is no repeat of a failed test purchase.

Mr Powell raised a question about the doorman positioning and access. Ms Warren said that there would not be street access to the bar. The doorstaff already works for them and is CIA accredited. He will be positioned at the greeting point, downstairs to entrance to building. The premises has CCTV in place for the whole of the building and the doorman will be in and out of the crowd to help if any problems arise. If there is any violence and disorder outside the premises it would be the licence holder's responsibility to inform the police. There is a designated courtyard adjacent to the building at the back of the Nelson's bar which will be used as a designated smoking area. It is not the intention to have people smoking outside the front of the premises.

Dr Sharpe queried whether the outside courtyard to be used as the smoking area would be directly underneath the bedrooms of neighbouring residents. Ms Warren confirmed that it would be directly underneath. He also asked about the doorstaff. Ms Warren confirmed there is currently one member of staff working for them at the moment but if it is felt more door staff are needed they are happy to oblige.

Responsible Authorities case

PC Rackham explained that since the application had been submitted, the applicant had amended the closing hours from 02:00 hours to 23:00 hours. The applicant has stated that the bar will be restricted to 60 people and will only be used for private functions. Therefore the portion of the police objection around the late night impact of the premises and the impact crime and disorder, is now assuaged. Hampshire police still have concerns about how the premises will comply with the requirements of the Licensing Act 2003.

After receiving the application, the police wrote to the applicant to discuss conditions that would support the premises in promoting all of the licensing objectives. These include conditions around CCTV and their Challenge 25 policy. This process is normal for all premises applications and helps the police to understand what the applicant hopes to achieve. He said it was very disappointing that no response was received from the applicant. The

applicant stated earlier that he had not received the email however he felt it was strange that this email was not received, yet others sent to the applicant were received. Their system did not indicate there was a problem with the email getting through. The only time that the applicant had responded to issues was when the police had made representations to the application.

On 16 February 2020 the police performed a juvenile test purchase at the premises where a 15 year old test operative was able to buy alcohol at the premises and no challenge was made by the applicant. No training records were in place at all detailing age verification policies. There was no age verification policy or age verification signage displayed at the premises. This is against what the industry recognises as best practice and against how the applicant stated how their business was run in their application. The applicant had stated they will do Challenge 25 and make repeated references to that within their application, but that was not the case. Mr Lim stated that he was 'too busy' and was more concerned with other matters. This was cause for serious concern for the applicant's ability to run a business that promotes the licensing objectives.

Following the test purchase failure, the police provided the applicant with measures they could implement to prevent the sale of alcohol to children via email. This was the email that Mr Lim did receive and had acknowledged. Despite the concerns raised, the severity of the incident and the fact that the police had spoken directly to the person who sold the alcohol to the child, who he understood was a family member of Mr Lim, no formal response was received until the police raised representations to the application.

The applicant has since stated that they have improved measures with an age verification document, which was provided by the police and is required by law. The applicant had not used any of the Challenge 25 signage provided to them. The training is still not individually documented which raises concerns about inadequate training to prevent the sale of alcohol to children. PC Rackham said he had concerns that the passing of the second test purchase was more through luck than judgement. When asked what training had been provided, there was just a short list that did not go into detail. The applicant stated there were measures in place to protect children from harm however in reality these were not in place. This directly led to the sale of alcohol to a child which is an offence. This casts doubt on the ability of the applicant to operate a safe premises compliant with the relevant legislation.

PC Rackham said that changes have been made to the application and the applicant had put measures in place to improve matters. If the committee are satisfied with those measures and are minded to approve the licence, the Police request that the conditions outlined in their representations be put in place to be able to hold the licence holder to account should the applicant fail to achieve the licensing objectives.

There were no questions from members, the applicant, Mr Powell or Dr Sharpe.

Mr Attril asked the applicant whether he could confirm that he had seen the proposed conditions as mentioned by PC Rackham and asked if he would be

happy to implement these if the application was granted. The applicant confirmed that he had seen the conditions and would be happy to implement these.

Other Persons case

Mr Powell

Mr Powell was concerned as a resident living in between the Lady Hamilton pub and the Keppels Head Hotel with people spilling onto the street creating noise and disturbance. He was concerned that this will increase the number of people standing outside on the street blocking the thoroughfare. He also raised concerns with antisocial behaviour and who will manage that.

There were no questions from any party for Mr Powell. Ms Warren explained there would be signs in place to encourage customers to leave as quietly and promptly as possible. She anticipated that for many of the private functions such as wedding parties, the majority of people would be staying in the hotel. The bar would not be opened as a social bar where people would overspill onto the street.

Dr Sharpe

Dr Sharpe explained his main concern was noise levels being a shift worker. As a neighbouring property, he had not been made aware of the external courtyard which would be used as a smoking area. This is very close to his bedroom window and was very concerning.

There were no questions from members or PC Rackham.

Mr Lim explained that the courtyard would only be used if it was appropriate. If smoking guests need to go outside onto the street, this would be managed by the door staff and this would be monitored to ensure there is no disturbance on the public footpath.

Mr Powell said he was really concerned about this and said if the designated area is not used for smoking people will spill out onto the street. He strongly requested that a process/escalation is included as it was not clear what would happen if people spilled out onto the street, particularly as there is a bus stop outside. He was not clear who would be responsible for managing this. Ms Warren said they had raised a concern about the bus stop being right outside, and had been in touch with the Local Authority to ask if the bus stop could be repositioned, however this had not been possible.

Summing Up

All parties were given the opportunity to sum up. Mr Powell, Dr Sharpe, PC Rackham and Mr Stone had nothing further to add.

Ms Warren summed up by saying that the reason for the variation in licence is to take away the noise to the downstairs bar which is soundproofed. The bar

upstairs already has a licence and is not soundproofed. They are trying to work with neighbours to stop the noise pollution to them.

Mr Attrill asked PC Rackham is he would be happier to see an amendment to condition 2 to require training to be put to the Police for approval before implemented so they are satisfied of the details of the training. PC Rackham said that would be agreeable. Should the committee decide to impose that as a condition it may also be worth liaising with Trading Standards as the area lead for training matters. Mr Attrill did not see any issues with that. Ms Warren on behalf of the applicant confirmed that they did not have any objection to adding in that condition.

Decision

The Sub Committee has considered very carefully the application for variation of a premises licence at the Keppels Head Hotel. It gave due regard to the Licensing Act 2003, the Licensing Objectives, statutory guidance and the adopted statement of licensing policy.

The Sub Committee considered the relevant representations, both written and given at the hearing, by all parties. Human Rights legislation has been borne in mind whilst making the decision.

The Sub Committee noted that there had been a representation from the Police and three representations from residents leading to the hearing. A residential representation had been withdrawn following negotiation - meaning that two were considered today. The Police had proposed conditions, which were confirmed as agreed by the applicant during the course of the hearing. The application had sought to introduce a new, additional, bar at the premises for private functions with an extension of hours until 2.00am. The proposed operating schedule was amended before the hearing to reduce the terminal hour for all licensable activities at the new bar area to 11.00pm on any day.

After having heard all of the above evidence the Sub Committee determined to grant the proposed variation, subject to conditions proposed by the Police and amended as follows and as discussed during the course of the hearing.

Condition 2 of the proposed conditions put forward by the Police shall have the following wording added as a final paragraph:

Documentation showing the material to be used in the above training, including any testing, and the recording procedures to be adopted for such shall be presented to and approved by the Police and trading standards before the proposed area is used for any licensable activity.

Reasons

Residents' objections were focussed upon late night noise and the combined impact of existing premises. Whilst it was noted that the proposed hours were reduced concerns remained in particular with regards to anti-social behaviour and use of smoking areas - being close to residential properties and upon a pavement already affected by a bus stop close-by.

Concerns were raised by the police regarding an underage sale and the Sub-Committee heard that despite having indicated that measures were in place it was later found that they hadn't in fact been adopted as would be expected. Also, poor detail as to the extent of training and steps implemented remained an issue.

Underage sales are a serious concern and a failure to promptly implement positive steps to fully address such issues is a concern. However, on balance this was not felt to be sufficient reason to refuse the application at this stage. Issues regarding training could be addressed by way of condition.

In reaching this decision the following factors were taken into account:

- The proposed additional bar shall be used for private events only - where those attending may also be staying at the hotel.
- The additional bar will effectively transfer existing events from the current bar to the new bar downstairs which has been soundproofed and has no direct external access.
- The new bar will be limited to a 60 person capacity only.
- Two doorstaff will be employed and on duty whilst licensable activities including live or recorded music are undertaken in the new area (as set out in police conditions and agreed during the hearing).
- The proposal has reduced the hours of operation to an 11.00pm terminal hour.
- Conditions regards training were agreed and have been imposed to require prior approval before implementation and use of the new area

Whilst residents remain concerned about the proposal, it was felt the application as amended and with the full set of conditions attached by the police would mean that the proposal was now acceptable. There is, however, a right to review a premises licence where issues arise, for example, if the responsible authority or a resident in the vicinity has evidence of the conditions not being adhered to - and action can be taken where such evidence supports it.

There is a right of appeal for all parties to the Magistrates' Court. Formal notification of the decision will set out that right in full.

The meeting concluded at 11.10 am.

Chair