



Notification of decisions by the Licensing Sub Committee

14 September 2020

If you want to know more about a proposal, please contact the officer indicated. You can also see the report(s) on the Council's web site at www.portsmouth.gov.uk

| | WARD | DECISION | OFFICER CONTACT |
|---|------|---|--|
| | | <p>Licensing Sub-committee Decision Meeting - 10 September</p> <p>The Sub Committee made the following decisions:-</p> | <p>Joanne Wildsmith Democratic@Ports mouthcc.gov.uk</p> |
| 3 | | <p>Licensing Act 2003 - Application for grant of a premises licence - Old Pier Hut, Unit 10, South Parade Pier, South Parade</p> <p><u>Decision</u> The Sub Committee has considered very carefully the application for a premises licence at the Old Pier Hut. It gave due regard to the Licensing Act 2003, the Licensing Objectives, statutory guidance and the adopted statement of licensing policy.</p> <p>The Sub Committee considered the relevant representations, both written and given at the hearing, by all parties. Human rights legislation and the public sector equality duty has been borne in mind whilst making the decision.</p> <p>The Sub Committee noted that there had been representations from residents (a total of 36) and a local ward councillor (also representing 5 of the 36 residents) raising concerns broadly in relation to the licensing objectives of nuisance, crime and disorder and the protection of children from harm. No formal representations had been made by responsible authorities. In particular it was noted that neither the police nor environmental health had raised any concern with the application. The application was confirmed as being for a fast-food takeaway premises on the East side of the pier and to allow the provision of off-sales of alcohol. The pier has five licensed premises. It was established that the premises is currently operating and conducting non-licensable activities and that TENs had been utilised</p> | <p>Derek Stone Principal Licensing Officer Tel: 9268 8462</p> |

| | WARD | DECISION | OFFICER CONTACT |
|--|------|--|-----------------|
| | | <p>without reported issue.</p> <p>After having heard all of the above evidence the Sub Committee determined to grant the proposed application in the terms sought.</p> <p><u>Reasons</u></p> <p>The Sub Committee heard evidence raised by residents raising strong concern in relation to the availability of alcohol at this particular location. Strong fears were expressed including but not limited to the following issues:</p> <ul style="list-style-type: none"> - Public nuisance - Protecting children from exposure to alcohol - Planning permission for construction and use of a decking area - Noise from the pier, arcade and rides - The potential for late night disturbance and anti-social behaviour - including from large groups of drinkers and drinking on the beach - A potential for return to a late night economy in the area - The impact upon property prices - A potential ruination of the atmosphere of the area - The impact upon Covid safe-distancing and behaviours if alcohol is more readily available - The proximity to residential areas - It being a family area - Lack of toilet provision / distance to public toilets - Parking - Increased waste - Public safety where alcohol is mixed with swimming <p>It is understood from the residents' representations that a flyer entitled "drinking on the beach" had been disseminated. There was also very clear confusion in the representations as to the applicability of planning issues and the potential use of the decking area. Legal advice provided during the course of the hearing and reaffirmed during private deliberations,</p> | |

| | WARD | DECISION | OFFICER CONTACT |
|--|------|---|-----------------|
| | | <p>made it clear that use of the decking area, noise from other premises at the pier (e.g. arcade), planning issues, parking, the impact upon property prices, potential precedent, the "need" for additional premises etc. cannot be taken into consideration whilst the Sub Committee is determining the application.</p> <p>The applicant in evidence given today made it clear that the premises is a small, food led premises. Alcohol is provided as an entirely ancillary provision. The operator is an experienced food business operator. It was stressed that nothing in the representations raises concerns about his ability to run the premises. The applicant is often on site himself and acts as "front of house" and manages social distancing which was not a concern or particular issue during what is arguably the busiest period of the year and during a period that has seen an increased use of the area due to the virus.</p> <p>It was noted that the premises has been selling alcohol under temporary event notices (TENs) during that August period. This had not led to any issue or concern being raised by any of the responsible authorities and was not something specifically mentioned in residential representations.</p> <p>The premises intends to sell a small selection of wine and beer which is decanted into plastic cups. Picnic tables now do provide some seating for the premises but it was noted that this still remains off-premises given the area licensed for the sale of alcohol. Consumption of alcohol is not a licensable activity.</p> <p>As no representations had been received and in accordance with the report of the Licensing Officer (page 5 para 9.12) - it was accepted that weight should be given to the responsible authorities as experts in their field.</p> <p>Whilst residents' fears are accepted as real it was apparent to the Sub Committee that much was based upon speculation as to how the premises might function rather than how it actually had operated (in particular in accordance with TENs utilised throughout August). Legal advice was accepted during the course of the hearing and during deliberations that any decision ought to be based primarily upon evidence, if it exists, and which in this</p> | |

| | WARD | DECISION | OFFICER CONTACT |
|--|------|---|-----------------|
| | | <p>case the premises could provide as to issue-free operation.</p> <p>It was clarified by the applicant's solicitor that there was no current intention to construct or use the decking that created much concern amongst residents. Legal advice was provided that the application as it appeared had to be considered and not potential changes that might or might not occur to the area or the management of the premises. In this respect the legislation is permissive in the first instance, unless there is credible evidence to warrant or make restriction of the licence appropriate.</p> <p>However, residents can very much be reassured that there is a suite of powers to deal with premises if a licence leads to the licensing objectives being undermined. Not least is the power for residents or responsible authorities to bring review proceedings where steps can be taken to restrict the licence, impose conditions or, in extreme circumstances, revoke the licence when evidence shows issues result from licensable activity.</p> <p>The Sub Committee heard that the business is likely to operate seasonally despite flexibility of the licence.</p> <p>The Sub Committee very carefully considered imposing conditions / restrictions in relation to the following matters:</p> <p>Alcohol being only allowed as ancillary to food CCTV provision Reduction of hours to 9.00pm Alcohol to be decanted to plastic containers</p> <p>However, whilst acknowledging the attractiveness of these proposals it was accepted that in light of the balance of evidence that the Sub Committee had heard it was not appropriate to restrict the licence at this stage. If issues arise then these are things that may well be reconsidered. As the applicant had clarified the extent of alcohol provision would be small and mainly accompanying food then this would be accepted at this time. However, should the premises change its approach then steps can be taken to address this as and when it is necessary. In short, if the residents' fears are realised and, for example, large quantities of alcohol are sold without food and this leads to an undermining of the licensing</p> | |

| | WARD | DECISION | OFFICER CONTACT |
|---|------|---|---------------------------|
| | | <p>objectives then steps can and will be taken if appropriate.</p> <p>Whilst it was noted that an offer had been made in negotiation with parties, with regards a 9pm cessation of the sale of alcohol, it was accepted that this had been made entirely on a conditional basis and current evidence, particularly taking into account the lack of representation from responsible authorities and the successful use of TENs did not warrant such a restriction at this time.</p> <p>There is a right of appeal for all parties to the Magistrates' Court and formal notification of the decision will set out that right in full.</p> | |
| 4 | | <p>Licensing Act 2003 - Application for grant of a premises licence - Highland Express Convenience Store, 121 Highland Road, Southsea, PO4 9EY (to be heard from 2pm or later)</p> <p><u>Decision</u> The Sub Committee has considered very carefully the application for a premises licence at the Highland Express Convenience Store, 121 Highland Road. It gave due regard to the Licensing Act 2003, the Licensing Objectives, statutory guidance and the adopted statement of licensing policy.</p> <p>The Sub Committee considered the relevant representations, both written and given at the hearing, by all parties. Human rights legislation and the public sector equality duty has been borne in mind whilst making the decision.</p> <p>The Sub Committee noted that there had been representations from residents, with the majority having signed a petition. Residents are raising concerns broadly in relation to the licensing objectives of nuisance and crime and disorder.</p> <p>After having heard all of the above evidence the Sub Committee determined to grant the proposed application in the terms sought.</p> <p><u>Reasons</u></p> <p>Residents raised, amongst others, the following issues by way of objection:</p> <ul style="list-style-type: none"> - Public nuisance - fears reference noise and | Derek Stone (as above) |

| | WARD | DECISION | OFFICER CONTACT |
|--|------|---|-----------------|
| | | <p>loitering</p> <ul style="list-style-type: none"> - Parking - Waste (during the course of the hearing) - Need / necessity of additional alcohol sales premises - Impact upon families and children's sleep - Noise / lack of soundproofing <p>It is understood from the oral representation given at the hearing that residents object to a convenience store with such extensive hours of opening and sale of alcohol.</p> <p>The applicant in evidence given today made it clear that the premises will be a small convenience store and it will be 6-8 weeks before the store opens. There has been substantial investment to purchase and further to fit out the store. The shop will provide employment. The applicant already owns and runs a Costcutter store in Southsea which has opening hours until 2am on certain nights.</p> <p>The applicant stated that people purchasing alcohol after leaving other licensed venues / premises is not something he experiences at his other store.</p> <p>The aim of the applicant is to provide a convenience store where customers are able to purchase all their groceries in one go, including alcohol.</p> <p>The applicant reassured the Sub Committee that the fact he has another store means he is well aware of the measures that can be undertaken in the event that his premises is the cause of nuisance or crime and disorder. The applicant is aware that if granted and taken away this would have a massive impact upon his business given the level of investment and reduction in trade.</p> <p>Whilst it was acknowledged by the Sub Committee that there are a number of stores offering alcohol at similar hours, that commercial "need" is not a relevant factor when making licensing decisions.</p> <p>Statutory guidance, issued in accordance with s.182 of the Licensing Act 2003 states (para 10.15) that shops should normally be able to sell alcohol at hours the business is normally open unless there is good reason not to.</p> | |

| | WARD | DECISION | OFFICER CONTACT |
|--|------|--|-----------------|
| | | <p>The Sub Committee noted that there were no representations from responsible authorities and accepted the applicant's assertion that due weight had to be given to that fact given that responsible authorities are noted being experts in their field.</p> <p>It was confirmed that following consultation, police confirmed they are happy with the proposed hours but not later.</p> <p>Whilst acknowledging the fact that the premises may cause noise to adjacent properties the Sub Committee was restricted to consideration of the application only (i.e. the sale of alcohol at the premises) and not whether the store can open as a convenience store generally. As a result the Sub Committee was mindful that many of the issues were not strictly limited to the proposed licensable activity (i.e. noise, waste etc.). Also, other matters fall strictly outside the permitted areas of consideration for the Sub Committee (such as need and parking etc.). The general principle of whether a convenience store could open at this location was not a matter to be decided by this Sub Committee.</p> <p>The application indicates that CCTV will be provided at the premises and it was confirmed during the hearing that this shall cover internal and external areas. This will assist with monitoring queueing (Covid concerns) and homeless people if present.</p> <p>Training will provided to staff at the premises and a refusals log shall be maintained - to show staff are making appropriate challenges to those appearing to be underage. This will be available for inspection by the police or the licensing authority.</p> <p>Beers, wines and spirits shall not be sold at the store if they exceed 6.5% abv and the applicant shall operate a challenge 25 scheme.</p> <p>The Sub Committee was also reassured by the assurances of the applicant during the hearing that rubbish / waste shall not to be stored outside of the shop (not to the rear so as to cause a fire hazard and not outside the front of the store other than for commercial waste collection and on the day of collection).</p> | |

| | WARD | DECISION | OFFICER CONTACT |
|--|-------------|---|------------------------|
| | | <p>It was noted that the applicant would have wished to ask questions surrounding the petition - of the person collecting signatures as well as those that signed. Residents should be reassured that there is a right to commence a review of the premises licence where issues arise as a result of the licensable activity at the premises (the sale of alcohol) and that this can result in swift action to address problems that arise where evidence shows it is appropriate.</p> <p>Residents are reminded that if noise is an issue there are other means of enforcement through the Environmental Protection Act 1990 and environmental health should be contacted where there are concerns. Likewise the police if there are issues regarding crime and or disorder. Ward Councillors can assist residents where concerns arise.</p> <p>There is a right of appeal for all parties to the Magistrates' Court and formal notification of the decision will set out that right in full.</p> | |