

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Thursday, 10 September 2020 at 10.00 am (virtual meeting)

Present

Councillor Claire Udy (in the Chair)

Councillors Leo Madden
Lee Mason

17. Appointment of Chair

Councillor Udy was nominated by Cllr Madden and appointed as Chair for the meeting.

18. Declarations of Interest

There were no declarations of members' interests.

19. Licensing Act 2003 - Application for grant of a premises licence - Old Pier Hut, Unit 10, South Parade Pier, South Parade

Mr Wallsgrove explained that he would be representing the applicant (Mr Anik) as his solicitor.

Mr Stone, Principal Licensing Officer, presented the Licensing Manager's report and he reported that of the 36 residents who had made representations 10 had replied to say that they were not attending and 5 had asked Councillor Symes to make representations on their behalf. There was a clarification from Ms D Sait who said her objection was regarding the decking, which it was explained was not linked to this application.

Members' questions covered the lack of objections from Responsible Authorities, which included the police, Environmental Health and Public Health. It was established that the hut had been operating to serve food and non-alcoholic drinks with tables and chairs outside (as evidenced in the pictures). The decking had been part of a completely separate planning application. Mr Stone confirmed that consumption of alcohol itself is not a licenced activity but the sale of it is. The applicant had successfully operated under four Temporary Event Notices over the summer weekends in August.

There were no further questions of the Principal Licensing Officer.

Mr Wallsgrove then presented the **applicant's case**, stating that Mr Anik is an experienced operator (having other restaurants in the area), and that the sale of alcohol during the temporary periods in August had not led to problems. There were 6 tables for a maximum of 24 persons if needed. No responsible

authority had submitted objections. Some of the representations cited the decking which was not linked to the Old Pier Hut (it had planning permission applied for by the owner of South Parade Pier) so should not form part of consideration of this licensing application. There were other units on the pier that were, however, licensed to sell alcohol for off sales but were not currently operating in this way. He reiterated the suitability of his client to manage the sale of alcohol.

Questions were asked of the applicant's representative by the panel members. It was reiterated that Mr Anik had not been involved in the separate application for decking. Whilst the application was for all year trade, it may be operated seasonally. The previous conversation between Cllr Symes and Mr Anik was examined regarding opening hours running until 9pm rather than 11pm; Mr Anik had offered to cease the sale of alcohol at the earlier time if objections were withdrawn, so as to get the licence approved earlier for summer trading, but this had not been agreed to by Cllr Symes. Mr Wallsgrove felt there was no evidence to suggest why hours should be cut to 9pm and the application was, as stated, with opening hours until 11pm. He explained that negotiations with objectors was common practice to see if a compromise could be reached that would not necessitate a committee hearing (which was confirmed by the Legal Adviser). There were agreed conditions with the police as within the operating schedule (e.g. no high strength beers). Mr Wallsgrove explained the operation of the food kitchen and the intention was that there was the ability for people to consume alcohol with their food, which they could have at the tables or take away.

Councillor Symes, speaking for residents, asked about the two licensed premises which were already leased. Mr Wallsgrove responded that the pier owner could change the arrangements should he wish to in the future. He also explained that the sale of alcohol was not ancillary to the sale of food (there would need to be grounds for this to be enforced by condition) and the drink was decanted into plastic glasses, so large quantities were unlikely to be requested; so far only a minority of customers had requested alcohol only. Cllr Symes also asked about social distancing arrangements; Mr Anik as the manager would ensure this was adhered to and large groups waiting were not expected as it was fast food being served.

Other persons

Councillor Symes made the case for the objecting residents and recounted how Mr Anik had contacted her to ask her to withdraw her objection and she had not agreed to do so. Concerns included drinking in public places, lack of social distancing at the tables, the distance to public toilets, the need for measures to tackle crime such as CCTV, protecting children from harm - there would be consumption of alcohol on the beach and pier which had been purchased from the hut. There would be an impact on nearby residential properties due to noise. She quoted the "Hope and Glory" case. She believed this would have an excessive impact on residents so the application should be refused.

Members did not ask questions but commented on social distancing was as an issue.

Mr Wallsgrove asked if the residents had mentioned any specific problems arising from the alcohol sales in August. Cllr Symes said they had reported noise, not specifically from this premises, but she was concerned there was cumulative impact. He asked her if she had sent a leaflet to residents - she confirmed that a leaflet from her and the ward councillors had been sent on issues affecting them. It was pointed out that this had included the decking which was irrelevant to this application, as confirmed by the Legal Adviser to the committee. Mr Attrill advised the committee that this separate planning permission should not form part of the committee's considerations, nor should the value of properties or the matter of parking.

Summing up

Councillor Symes had said all she wished to but was concerned that this would become a stand up bar, and she and the residents wanted an earlier closing time than 11pm.

Mr Stone had nothing to add on behalf of the Licensing Manager.

Mr Wallsgrove, on behalf of the applicant, reiterated his main points: there were no objections from Responsible Authorities, there had been no adverse effects on the licensing objectives from the temporary permissions in August, and the residents had the right to review. There was no need to make alcohol ancillary to food as there was no evidence to support this and it was not requested by the police. Alcohol was available at a nearby shop for those who just wanted alcohol without food. Mr Anik was a responsible operator and the conditions were outlined in the operating schedule.

The panel, legal adviser and Democratic Services Officer then met privately for members to deliberate. The decision would be made available to all parties as soon as possible but there was a second hearing that afternoon. The two applications would be considered separately.

Decision

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.

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. 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 without reported issue.

After having heard all of the above evidence the Sub-committee determined to grant the proposed application in the terms sought.

Reasons

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:

- 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

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, 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.

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.

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.

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.

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.

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 case the premises could provide as to issue-free operation.

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.

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.

The Sub-committee heard that the business is likely to operate seasonally despite flexibility of the licence.

The Sub-committee very carefully considered imposing conditions / restrictions in relation to the following matters:

- Alcohol being only allowed as ancillary to food
- CCTV provision
- Reduction of hours to 9.00pm
- Alcohol to be decanted to plastic containers

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 objectives then steps can and will be taken if appropriate.

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.

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.

20. 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)

Derek Stone, Principal Licensing Officer, presented the **Licensing Manager's report**. The application had resulted in 11 representations (there was some duplication of these and the petition) and for information two further representations had been circulated to the panel members from Mrs Warren and Mrs Jones.

Questions were raised by members, including the notification process - it was confirmed that this was in order and would not be a ground for refusal. It was also confirmed that there had been no objections raised by any of the Responsible Authorities.

A resident ("other person"), Ms D Staker, wished to raise concerns and was advised by the Chair that she had the opportunity to do so after questions to the relevant parties.

Mr Wallsgrove the applicant's solicitor had no questions of Mr Stone.

Applicant's case - Mr Wallsgrove presented the case on behalf of Mr Uthayatharan (also referred to as Kumar), outlining the plans for this small convenience store, which would take 6-8 weeks to fit out if approved. The unit had been empty for months and would provide employment. The applicant is an experienced operator, owning a convenience store in Outram Road. The premises licence and the late hours were essential to convenience retail operation, and the use would be subject to review if there was evidence to support it. He pointed out that the Responsible Authorities had not submitted objections; they had discussed the hours with the police who did not raise concern but did not want opening later than midnight. There would be due diligence measures, such as CCTV and staff would receive the appropriate

training to make alcohol sales challenges. The applicant expected there to be a local customer base rather than customers driving there.

Mr Wallsgrove responded to the mention of rubbish and emergency exit by Ms Staker, which were not linked to the licensable activities. He asked Mr Kumar to outline the rubbish storage arrangements, with wholesalers taking back packaging and storage inside and a commercial collection of waste. Only a few people had signed the petition and it was not known how many had been approached by the organiser.

Questions were then asked by members who asked about soundproofing to protect the flat above and storage areas on the plan. The noise issue would be a matter for environmental health. It was also asked if there had been complaints regarding the other shops owned by the applicant. The applicant had helped the police with queries regarding incidents outside with access to CCTV. The planning use was clarified as permitted development from Class A1 to retail use.

In response to a question from Mrs Staker (for residents) Mr Wallsgrove confirmed on behalf of the applicant that rubbish would not be stored outside. Mrs Staker also raised problems with the lack of soundproofing but raised no further questions.

Other Persons

Mrs Staker stated that she was also representing the other 2 objectors. She raised problems of noise, being in a residential area with children living adjacent, the concerns of rubbish storage and fire safety, the 18 hours opening time was too long for a residential setting, especially with the sale of alcohol.

Mr Wallsgrove confirmed the operating hours as set out in the operating schedule of 6am until 12 midnight. He raised no questions of Mrs Staker nor did the Principal Licensing Officer.

None of the parties took the opportunity to sum up after Mrs Staker said she had nothing further to add and left the virtual meeting.

The chair thanked everyone for their participation and explained that the decision would be made during private deliberations, in the presence of the Legal Adviser and Democratic Services Officer, and circulated to all parties as soon as possible.

Decision

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.

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.

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.

After having heard all of the above evidence the Sub-committee determined to grant the proposed application in the terms sought.

Reasons

Residents raised, amongst others, the following issues by way of objection:

- Public nuisance - fears reference noise and loitering
- 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

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.

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.

The applicant stated that people purchasing alcohol after leaving other licensed venues / premises is not something he experiences at his other store.

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. 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. 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.

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.

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.

It was confirmed that following consultation, police confirmed they are happy with the proposed hours but not later.

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.

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.

Training will be 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.

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.

The Sub-committee was also reassured by the assurances of the applicant during the hearing that rubbish / waste shall not 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).

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.

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.

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.

The meeting concluded at 3.35 pm.

Councillor Claire Udy
Chair