

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held virtually on Wednesday, 2 September 2020 at 10.00 am

Present

Councillor Claire Udy (in the Chair)

Councillors Dave Ashmore
Linda Symes

Apologies for Absence

14. Appointment of Chair

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

15. Declarations of interest

There were no declarations of members' interests.

16. Licensing Act 2003 - Application for grant of a premises licence - Wellington, 62 High Street, Portsmouth, PO1 2LY

Derek Stone, Principal Licensing Officer, introduced his report and explained that the previous owner had become insolvent on 10 March 2020, shortly after which, all bars, clubs and restaurants had to close because of Covid-19. Although a licence automatically lapses when the licence holder becomes insolvent, if action is taken within 28 days the licence can be reinstated under Section 50 of the Licensing Act. The lapse, in this case, was only discovered when pubs re-opened on 4 July and the premises had a new owner, otherwise the existing licence would have transferred without any changes. In the meantime the premises has been relying on TENs (Temporary Event Notices). The application has come before the Sub-Committee as there have been four valid representations from neighbouring residents.

Mr Stone pointed out that there had been issues in the past, including a noise abatement notice served in 2010. The previous Designated Premises Supervisor (DPS) left in January 2019. There are ongoing discussions between Environmental Health and the applicant which aim to address concerns raised in representations, in particular that the garden is closed between 10 pm and 9 am and that noise from equipment should not exceed 50db LAeq (5 Min). Mr Stone reminded members that they must have regard to the four licensing objectives.

There were no questions for the Principal Licensing Officer from members or the applicant.

In response to a question from Mr Owens, the Principal Licensing Officer explained the conditions that have been agreed with the police (a responsible authority) around CCTV, staff training, maintaining a refusal log, Challenge 25 and checking ID. The other representatives did not have questions.

Applicant's case

Mr Wallsgrove asked the committee to consider the following points:

- It is a difficult balancing act between the needs of trade with residents' peaceful enjoyment of their properties. He acknowledged residents had experienced problems in the past; however, there is a new owner and the premises will be managed professionally. Issues occurring before July 2020 cannot be commented on when considering the current application.
- The Wellington is a small pub with about 50 seats with a good food offer and mix of customers; it is not a vertical drinking establishment. The applicant (Tommy Ware) and his Operations Manager Mr Hudson are very experienced in the licensed trade. The applicant requests the same activities and hours as the previous licence but it will be better regulated. Some conditions in the previous licence may be unenforceable.
- Neither the police nor the representations have raised concerns over crime and disorder. The police had no concerns with the TENs licences in July and August.
- The applicant has agreed to manage the garden in line with the noise abatement notice issued in 2010. The proposed closure between 10 pm and 9 am is a reasonable balance between the needs of residents and those of the Wellington.
- Members should attach weight to the view of the police, who are responsible authorities and experts in the field.
- Food odours are not relevant to the application as the applicant is not applying for provision of late night refreshment (food provided after 11 pm). It is better that food and alcohol are provided by the premises rather than customers bringing their own.
- The applicant is working with Environmental Health to resolve issues around noise from the extractor fan. Environmental Health have the powers to issue a noise abatement notice.
- Environmental Health have already agreed a condition for the condenser.
- Photographs of waste outside the Wellington are not of the current premises so cannot be considered today. A condition could be imposed around waste although Environmental Health have not requested one. Waste is currently collected on Tuesdays and Fridays and the wheelie bins are returned to the bin store at the back of the premises after it has been collected.
- The member of staff making noise on the premises in the early hours of the morning after it was closed has since been dismissed for gross misconduct.
- Finally, members were reminded that the licence could be reviewed if there were any issues.

There were no questions from members or the Principal Licensing Officer.

Questions from other persons

Mr Dewhurst said the colour of the façade had been painted three times in the last month and that the photographs showed the situation with waste under the new management. Wheelie bins had been left out for a week and he had reported the problem to the council. On the hottest day of the year eight sacks of leaking rubbish had been left out.

Mr Owens said he had seen bins outside the Wellington for two or three days at least, including a filthy blue bin full of bottles and glasses, while it was under new management.

Mr Wallsgrove was not aware of any allegations of noise and waste and can only take instruction on what is in the representations. The applicant cannot respond to new information. The problems could have been raised directly with the owner or Environmental Health but the latter had not received complaints. The applicant had offered to accept some conditions in an attempt at mediation and to avoid a hearing.

The Legal Advisor suggested it would be appropriate for Mr Hudson to explain the situation with waste collection.

Mr Hudson said the bins were stored at the back of the premises in an enclosure by the side of the kitchen in the top left hand corner. He acknowledged there had been some issues with waste collection during lockdown and the Bank Holiday.

The Sub-Committee agreed to adjourn in order to read a copy of an email sent from Mr Wallsgrove to each of the four people who had made representations. Mr Owens said he had not received this email but had subsequently seen it. The email contained details of the conditions agreed with the police and Environmental Health, and further conditions the applicant was willing to offer to address residents' concerns.

The Sub-Committee adjourned from 10.50 to 11.10 am.

After reading the email members suggested keeping the conditions described as they seemed reasonable and would ameliorate the situation for residents.

The Chair and the Principal Licensing Officer advised that the report pack was published on the council's website and that anyone who makes a representation is notified of publication.

Mr Yeates queried the link between the previous DPS and the current applicant as a search at Companies House indicated a connection between TW Assets and RITS Ltd (Restaurants In Touch Southsea); it seems the applicant acquired the property one year and four months ago. He queried why there was a gap between the date of the insolvency and the start of lockdown.

Mr Wallsgrove said there was no connection between the applicant and the previous licence holder; the applicant and his company were not involved with the premises before 4 July. If the applicant had been involved with the premises he would not have let the licence lapse. The premises was sublet to Karen Lunn, who was responsible for managing the premises. The applicant has used the same address at Companies House for his companies; a postal address can have several companies registered to it.

The Legal Advisor pointed out that Mr Wallsgrove is a legal advisor, not a witness. Although Mr Ware had the leasehold of the premises he had no control over running the premises at the time. This is a similar situation with many licenses in Portsmouth where the owner has nothing to do with managing the premises.

The Legal Advisor explained "shadow licences" where someone has a legal interest in a building but is not concerned with running the premises. Mr Wallsgrove noted this is the situation with Mr Ware and South Parade Pier; units on the Pier are sublet to someone else who is responsible for their management. Mr Ware did not have a shadow licence for the Wellington.

Mr Hudson confirmed that the DPS for the Wellington is Carl Inman, who has over 20 years' experience in the licensed trade, including ten with Young's Brewery.

Other Persons' case

Mr Dewhurst's representation

Mr Dewhurst started his representation by saying an exchange of correspondence with Mr Wallsgrove did not mention closing times; residents were prepared to mediate but not the applicant. Mr Dewhurst's representation covered four areas of concern:

- Garden - He would like to see the cloth canopy in the garden replaced as it helped reduce noise.
- Condenser - He would like a condition to cover noise from the condenser.
- Waste - He is happy with conditions set by the applicant relating to waste but he would also like the pavement to be kept clear and empty bins to be moved when rubbish has been collected.
- Opening hours - The proposed opening hours do not take into account the close proximity of around 30 dwellings, including some where young families and the elderly live. Opening until 1.30 am on Friday and Saturday will attract people after other premises have shut. He urged the Sub-Committee to consider reducing opening hours by at least one hour.

In response to a question from members the Legal Advisor confirmed that only the written representations submitted to the Sub-Committee are admissible today; account cannot be taken of possible views from neighbours.

There were no questions from the applicant.

Mr Owens' representation

Mr Owens made his representation. He was concerned the premises are not run in a proper manner and agreed with the conditions relating to waste management.

There were no questions from members or the applicant.

Mr Spraggs' representation

Mr Spraggs made his representation. As well as summarising points already made in his written representation he suggested the premises should not try to be something it is not. He also requested there should be no music in the garden and that music in the premises should be at a reasonable volume.

In response to a question from members the Legal Advisor explained that the legality of the installation of the extraction fan was a planning matter so it is not in the Sub-Committee's remit to make decisions about it. He reminded members that cooking fumes ought not to be taken into consideration as the applicant is not applying for provision of late night refreshment. Noise or smells caused by food preparation before 11 pm are not related to a licensable activity. If the applicant wanted to provide late night refreshment he would have to apply for a licence variation and come before the Sub-Committee. However, as cooking smells can be a nuisance they can be dealt with by Environmental Health.

In response to a question from Mr Yeates, the Legal Advisor explained that as smells from cigarette smoke are very closely linked to alcohol consumption they have sufficient nexus to a licensable activity (the sale of alcohol) so conditions could be imposed if they are reasonable.

Mr Yeates' representation

Mr Yeates made his representation. As well as summarising points already made in his written representation he said that the proposed opening hours of 1.30 am were inappropriate because of the premises' residential location and the position of the garden; the use of the garden should be further restricted.

In response to a question from the Chair, the Principal Licensing Officer gave the opening hours of neighbouring establishments:

- Duke of Buckingham - open 1000 to 0030 hrs; alcohol served up to 2400 hrs Monday to Sunday.
- Dolphin - alcohol served from 1000 hrs up to 2400 hrs Monday to Saturday and up to 2330 hrs on Sunday. Closing time Monday to Saturday is 0030 hrs.
- Sally Port - alcohol served from 1000 to 0030 hrs Monday to Sunday.
- Monk's Bar - alcohol served from 1000 to 2400 hrs; shuts at 0030 hrs.
- Bridge Tavern - alcohol served up to 0100 hrs Friday and Saturday and shuts at 0130 hrs. Spice Island has similar hours with alcohol served up to 2400 hrs and shuts at 0030 hrs; hours are longer from May to September.
- Still & West - alcohol served from 1000 hrs up to 2400 hrs Sunday to Thursday and up to 0100 hrs Friday and Saturday.

Mr Dewhurst noted that the Bridge Tavern, Spice Island and the Still & West were surrounded by more open space and requested that the Sub-Committee bear this in mind.

There were no questions from the applicant.

Summing up

In his summing up, Mr Wallsgrove made the following points:

- The Wellington has had its opening hours for 15 years and if there was evidence of people going there after other premises shut this would have been in the representations.
- There is new management and ownership.
- The responsible authorities have not raised objections. The Sub-Committee are urged to attach weight to the fact the application had not attracted representations from the responsible authorities.
- Residents can request a review; this was last done in 2009. Within six weeks of any issues arising the licence could come back to the Sub-Committee.
- Food smells are not relevant to this application but the applicant understands the importance of this matter to residents and is working with Environmental Health.
- Mr Hudson is more than happy to meet residents and discuss concerns, especially over food smells.
- The applicant offered to accept conditions with regard to waste in an attempt to avoid a hearing but no representations were withdrawn.

The Principal Licensing Officer had nothing to add.

The Chair informed the Sub-Committee that the decision would be emailed to everyone concerned later that day.

The meeting ended and the Sub-Committee went into exempt session to determine the application.

The meeting concluded at 12:05 pm.

All parties shall receive written confirmation of the decision and reasons.

In the matter of: Licensing Act 2003 - Application for a premises licence - Wellington, 62 High Street, Portsmouth, PO1 2LY

Decision

The Sub-Committee has considered very carefully the application for a premises licence at the Wellington. 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. In

addition to evidence within the report pack an email sent to residents by the applicant's solicitor was also considered during a short adjournment.

The Sub-Committee noted that there had been representations from local residents in relation to nuisance including noise and cooking smells, waste issues and crime and disorder. Legal advice, provided during the course of the hearing was accepted that nuisance associated with cooking could not be considered given that late night refreshment was not part of the proposed licensable activities applied for.

The application was confirmed as being for the sale of alcohol and provision of recorded music at the premises. No formal representations had been made by responsible authorities and it was noted that conditions had been agreed with the police and environmental health - those being relatively standard conditions agreed with the police reference CCTV, training, refusals etc (as set out in the report) as well as closure of the garden at 22.00 hrs and limiting the sound from the condenser unit as agreed with environmental health.

After having heard all of the above evidence the Sub-Committee determined to grant the proposed application, subject to the conditions proposed by the police and environmental health and agreed by the applicant and subject to a reduction in the proposed hours of operation. Namely, that on Friday and Saturday nights both the sale of alcohol and the provision of recorded music shall cease at 00.00 hrs (midnight) and the premises shall close at 00.30 hrs the following day. In addition the Sub-Committee determined that the condition wording proposed by the applicant by way of negotiation and relating to waste at the premises be imposed along with the following additional wording:

Bins shall be returned to the storage area as soon as reasonably practicable following collection and at the latest by the end of the day of collection.

Reasons

The Sub-Committee is required to conduct a balancing act between the rights of residents living close to and affected by the premises and the new premises licence holder who wishes to establish a new business.

Whilst it was accepted that many of the issues were longstanding and could be attributed to poor historic management of the premises, the Sub-Committee was required to weigh up risks posed by the proposed licensable activities moving forwards and make a value judgement based upon the evidence presented today and relevant to the licensing objectives. It was noted that licensing is a risk management process that is preventive in nature - as pointed out by the representation of Mr and Mrs Dewhurst, residents living in very close proximity to the premises, who point to paragraph 2.18 of the statutory guidance.

It is understood that an application, if made in time, to transfer the licence could have averted the hearing. However, that did not occur and the application was made and representations properly submitted. The licensing authority is therefore duty bound to properly consider the fears of residents in

relation to proposed licensable activity moving forward. It is acknowledged that much of that fear is rooted in the history associated with the premises and previous management. The Sub-Committee, in normal circumstances, would have attached weight to representations accordingly. However, the more recent issues evidenced at the hearing relating to ongoing concerns with waste management and, perhaps more concerning, the evidence of nuisance caused by late night noise at the premises including the breaching of Covid guidance / regulation on 18th July and the taking of drugs - what is considered likely to be cocaine and the inhaling of gas on the evening of 24/25th July this year indicates that there are valid concerns in relation to the ongoing management. This is despite the Sub-Committee hearing that a very experienced DPS and management team are now in place and irrespective of whether they were in place at the time of the reported incidents. The fact that the Committee heard during the course of the hearing that those responsible were promptly sacked clearly indicates the control that the new management had over the property at the relevant time.

The Sub-Committee was greatly encouraged to hear that the new management were taking steps to address longstanding issues - not all of which are strictly relevant to the licensing objectives (e.g. issues over access to or damage to a party wall or cooking smells, due to late night refreshment not being provided), and acknowledged the agreed conditions and positive action generally - including engagement and negotiation with residents, but still had concerns about the extreme proximity of residential property and the potential for noise nuisance late at night, particularly given the Sub-Committee heard that residents relied on windows facing the courtyard for ventilation. Photographs and a plan presented to the Sub-Committee clearly show the confined space within which the courtyard and surrounding residential properties are located and accordingly the risk of late night disturbance from noise emanating from the premises (even if windows and doors are closed as set out in the operating schedule) is considered to be sufficient to make a reduction in hours appropriate.

The Sub-Committee very carefully considered the financial impact upon the business but considered the rights of residents to expect a period free from noise to allow sleep was also a valid consideration. The hours imposed were considered an appropriate balance to manage the risk to the licensing objectives. Residents' evidence that the premises are in a very unusual setting was accepted, given its extreme proximity to residential properties.

It was noted that both the police and environmental health had not made representations following agreement on conditions. The Sub-Committee was referred to paragraph 9.12 of the statutory guidance and the expert nature of representation received from responsible authorities in relation to their field of work, it being stressed that an absence of representation ought to be interpreted as endorsement. However, nothing in that part of the guidance seeks to detract from the validity or weight of residential representation when validly made. In light of all the evidence it had heard the Sub-Committee was satisfied that residents' concerns were valid and that an appropriate balance ought to be struck.

Mention was made in relation to an acoustic awning or canopy that had been used in the past and the applicant is strongly advised to consider reimplementation of the same or similar to help minimise potential noise nuisance in the future. Likewise, the applicant is recommended to continue positive dialogue with residents and to continue working with environmental health to resolve odour issues / air pollution affecting neighbours.

Whilst it has been mentioned during the course of the hearing and it is repeated here that should any issues arise as a result of the grant of this licence there is a power to commence review proceedings. Where evidence shows problems arising from licensable activities at the premises further steps can be taken to control licensable activities, or in extreme circumstances remove the licence altogether.

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 12.05 pm.

Councillor Claire Udy
Chair