

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Wednesday, 13 January 2021 at 10.00 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

1. Appointment of Chair

Councillor Udy was elected as chair. 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.

2. Declarations of Members' Interests

There were no declarations of members' interests.

3. Licensing Act 2003 - Application for grant of a premises licence - Delaneys, 77B Castle Road, Southsea, PO5 3AY

Derek Stone, Principal Licensing Officer, introduced his report, noting that the applicant had been granted three TENs (Temporary Event Notice) in December 2020. Representations against the application had been made by Environmental Health and two residents. Four representations had been received in support. There had been no objection from the police to the application.

In response to a question from Councillor Mason, the Principal Licensing Officer said that the licensing authority had never issued maps showing the location of those who had made representations in relation to the premises as part of the report pack. However, the representations against the application had been received from residents living above the premises; those in support lived in the same road.

There were no questions for the Principal Licensing Officer from the applicant, the responsible authority (Environmental Health) and those who had made representations.

Applicant's case

Belinda Delaney asked the committee to consider the following points:

- The intention is to enhance Delaney's current offering rather than change it greatly. As well as continuing to offer breakfast, brunch, lunch, cakes, savouries and tea (takeaway as well as eat-in) she would like to offer supper on Fridays and Saturdays, staying open until 9 pm, and possibly Sundays from 10 am to 3 pm, although Sunday opening has not been very viable in the past.
- The premises will not be used as a pub, bar or live music venue. The granting of a licence would allow beer to be offered with lunch, prosecco with tea and wine with supper.
- There are other licensed premises nearby in the same road.
- As well as the four representations already received in favour of the application an additional one was received from a neighbour opposite though it was too late to be considered.

Questions from members

In response to questions from members, the applicant explained:

- The closing time of 2300 hours was given on the application on the advice of the Licensing Office as it would cover one-off events and save making a separate application each time.
- One-off events are very rare. The proposed 0100 hours closing time on New Year's Eve is not set in stone and can be decided nearer the time. So far the premises has not opened over Christmas; it used to close for about ten days over Christmas. The premises is not in a main shopping area so Christmas opening was not very viable.
- Mr and Mrs May's flat is over no.77 Castle Road but its layout has a walkway across the two properties and the bedroom is over the premises' kitchen. The applicant has spoken to Mr and Mrs May, the landlord and a soundproofing company. It will take about two to three days to remove the kitchen ceiling and put wrapping around joists which should provide sound protection. In addition, the applicant intends to have a door to the kitchen (there is an archway at the moment). Once food has been prepared there is no need to be in the kitchen so there should not be issues moving forward.
- The premises has the same landlord as Mr and Mrs May's flat and the adjoining building.
- There is no intention to open until 2300 hours. The time of 2300 hours was stated on the application on the advice of the Licensing Office. The Principal Licensing Officer confirmed that the Licensing Office's advice was correct as it saves making separate applications for individual events. 2300 hours is not unreasonably late and the number of TENs issued is limited.
- The applicant had not been given any opening times under planning regulations and has not been told the premises cannot stay open until a certain time. The landlord has no issues with being open until 9 pm though a later closing time would probably not be appropriate. He is happy with the proposed soundproofing measures. So far the premises has not been open much after 5 or 6 pm.

In response to a question from the Legal Advisor, the applicant said when the premises had three TENs in December 2020 it offered alcohol alongside supper evenings (two or three courses) on Fridays and Saturdays. There had

been no complaints and staff had done their best to be quiet and courteous. A colleague had spoken to Mrs May to check everything was OK, which she said it was. This was the also the case the following week. Supper had been served until 8.30 pm, the premises shut at 9 pm and staff left around 9.30 to 10 pm when they had finished clearing away.

In response to a question from the responsible authority, the applicant said that the mezzanine is under another flat and is at the front of the building and continues through the building as a second floor. The floor above the premises, apart from the Mays' kitchen, is open space. The premises has the mezzanine at the front which is underneath the lounge of the flat above.

There were no questions from the Principal Licensing Officer or the other persons.

Other person's case

Mrs Janet May's representation

Mrs May made a representation, which covered the following concerns:

- The main concern is trading hours and noise, particularly when clearing up and around the kitchen and going in and out of the back door. The Mays' bedroom is above the kitchen. Even with doors and windows shut every word can be heard. Mr May has to get up at 4 am for work.
- Once a licence has been granted then the premises could stay open later, particularly in the summer with lighter evenings, and may be open later seven days a week. The application should maybe have been restricted to earlier hours. Even with a closing time of 9 pm the premises could be open until 9.30 to 10.30 pm because of clearing up.
- The premises should be soundproofed anyway. Mrs May is currently working from home which is difficult because of the noise.

Questions from members

In response to questions from members, Mrs May said there is noise from open windows giving onto the backyard as well as from inside, for example, noise from putting rubbish and bottles out and phone calls. Their bedroom window is above the back door. [On 21 December the Sub-Committee had received an audio recording made by Mrs May]

In response to a question from the Legal Advisor, Mrs May said Mr Coath, who had made a written representation against the application, lives at the back of the building above the Mays. Another resident, who lives in a flat at the front of the building, is elderly and does not want the stress of being involved in the process.

There were no other questions for Mrs May.

Mr Peter Howell's representation

Mr Howells made his representation. He has lived in Castle Road for seven years and has used the premises for many years. He cannot comment on noise pollution as he is some distance from the premises. He recently worked with the applicant on the refurbishment and knows the team; they work very hard to consider how residents and local businesses feel. The proposed

soundproofing may help resolve issues. The premises has contributed to the historic hub of Castle Road. It will be a major problem if businesses are allowed to leave.

There were no questions for Mr Howells.

There was an adjournment from 10.42 to 11 am due to technical issues.

Responsible authority's case

Richard Maidment, Principal Regulatory Services Officer, made a representation with the following points:

- Problems are caused when licensed premises are structurally attached to residential dwellings. The residents took their flats on the understanding they were living above a café.
- The Live Music Act allows the playing of live or recorded music on a licensed premises until 2300 hours seven days per week. It has to be assumed the permission will be used.
- Premises with hard surfaces and few soft furnishings create noise, for example, chairs scraping on the floor and talking. Noise travels through the structure as a vibration and re-appears as airborne sound in the premises above, especially at night with the noise of sweeping up and moving furniture.
- The smoking ban means customers move outside and when inhibitions drop due to alcohol they are exuberant and noisy.
- The building is late Victorian or Edwardian so is likely to have poor sound insulation. The mezzanine is a particular concern as its height makes improving the sound insulation of the ceiling very difficult; the ceiling would need to be lowered by at least 150 mm to install an acoustic ceiling.
- As the outdoor seating area closes at 1800 hours rather than 2100 hours this is no longer a concern.
- There have been problems with a new development in Palmerston Road with shops on the ground floor and flats above as the ground floor restaurant turned out to be more of a drinking establishment. Residents on the upper floors have complained about the noise from customers as it can be clearly heard and is like having a party in their rooms. Despite serving a noise abatement notice and reducing the noise by a third there are still complaints but there is no more headroom to make further structural improvements. Further attempts to deal with noise at the premises have been halted due to Covid-19.
- An establishment in Castle Road similar to Delaney's is a continual source of complaints about live bands and customers shouting. Noise abatement notices have been served. The most recent complaint was in August 2020 about customers yelling and singing outside the bar.

Questions from members

In response to questions from members, the Principal Regulatory Services Officer explained:

- Officers have not been able to inspect the premises due to Covid-19 which is why paragraph 1.2 in the representation states that sound insulation "is likely to be poor" with "probably no more than a single layer of plasterboard." However, from the recordings submitted by Mrs May it

sounds as if there is a single layer of plasterboard between the two properties.

- The guidance issued by The Institute of Acoustics mentioned in paragraph 2.2 is guidance and not regulations. Building regulations would not apply as it is an existing structure.
- Based on experience, particularly with the new development in Palmerston Road, it is possible to reduce noise with soundproofing, especially when retrofitting, but not remove it completely. Noise from patrons can be reduced more than from music. Having licensed premises next to a residential dwelling is a major concern.
- Although the outside area shuts at 1800 hours the noise from customers smoking outside is a concern; this is a widespread problem.
- Under the Live Music Act the playing of live or recorded music on a licensed premises is allowed until 2300 hours seven days per week and it has to be assumed this permission will be used.
- The extraction system has its own noise control issues and the increased intensity of the cooking process is a concern. An extraction system will require planning permission and a possible discharge at a high level but it is feasible.
- Even if there was insulation and an extractor fan in operation there are still concerns about the level of insulation that is possible because of the mezzanine. Based on previous experience, there are serious concerns about having a licensed premises attached to a residential dwelling. The application is likely to lead to a statutory nuisance.
- He is not aware of any planning applications for change of use. It is a grey area between drinking establishments and restaurants. There is historically no planning restriction on opening times due to the building's age. A closing time of 2100 hours would be acceptable. If there are no historical problems there would probably be no objections to a TEN; the TEN process is meant to be a "light touch."
- The Legal Advisor confirmed that the Sub-Committee could change the times requested on the application though the applicant could appeal.

There were no questions from the Principal Licensing Officer.

Questions from other persons

Mrs May said that a closing time of 9 to 10 pm would still be a problem as she and her husband go to bed around 9 to 10 pm.

Mr Howells asked if the landlord, knowing that the ground floor is used commercially, was responsible for soundproofing the premises and ensuring the upper floors are liveable when letting them. The Principal Regulatory Services Officer said this would be in the terms of the lease. The Legal Advisor said there may be some legal recourse for breach of contract surrounding enjoyment of the premises. It is ultimately a private matter between the landlord and tenants and not for the Sub-Committee to determine.

The applicant said if she wanted to open on New Year's Eve she could apply for a TEN. The Legal Advisor assured Mrs May that the Sub-Committee would listen again to the recording she had made. Although the recording was made

above the kitchen area (where soundproofing is intended to be installed), not the mezzanine, the Principal Regulatory Services Officer said the structure was likely to be the same throughout the property.

Summing up

The Principal Licensing Officer had nothing to add.

In her summing up, Mrs May made the following points:

Mr Howells does not live above the premises so does not have to endure existing or future noise. Her final concern is the hours as closing up to 10 or 10.30 pm is still not acceptable, especially on weekdays. She requested the Sub-Committee to listen to the recordings she had made.

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

He understands Mrs May's point. It would be nice to reach a happy medium between a small honest business being able to trade and residents being able to live in the area.

In his summing up, the Principal Regulatory Services Officer made the following points:

- The current operator is very professional and has good intentions but the next one could take full advantage of the opening hours. If hours are restricted he would still like to see soundproofing measures. He asked if it would be possible to remove the mezzanine from the licensed area. The Principal Licensing Officer said consumption of alcohol was not licensable activity but he thought there would be no difference if customers were drinking alcohol or other drinks on the mezzanine.
- The Principal Regulatory Services Officer said that any conditions such as not having speakers on walls or their size or output are suspended until after 2300 hours. The Legal Advisor confirmed that any conditions imposed would have no effect due to the implications of the Live Music Act 2012.
- The Principal Regulatory Services Officer reiterated he was very nervous about having licensed premises attached to a residential dwelling and wanted to prevent future problems.

In her summing up, the applicant made the following points:

- The premises has had a tiled floor for 15 years and during the refurbishments she has tried to remove noise issues and empty, echoey sounds. There are foam-padded seats, fabric lampshades and throws. The mezzanine has a rug and built-in upholstered seats so there is no scraping of chairs. She is looking into installing acoustic panels. Bottles will be put in the bin during the day, not at night or first thing in the morning.
- Capacity is about 30 people and Castle Road is not the busiest area in the city. Apart from the clientele at Monty's there do not seem to be problems with other establishments in the road. She wants to make a nice addition to the current offering, for example, prosecco with an early evening supper, so it is unfair to compare the premises to Monty's. Delaney's is more like the Parade Tea Rooms.

- There is no intention of having live music. Sonos speakers are mounted on brick walls at either side of the property and there are none on the mezzanine level.
- The food is home-made dishes that are currently offered such as cakes, chilli and wedges. It is not a big industrial kitchen; it has an oven, griddle and electric hob. The extractor has been there for 15 years with no problems.
- Customers smoking outside is a problem with other venues. However, there will be in-house staff training on how to deal with customers and notices asking customers to respect neighbours.
- She is more than happy to proceed with soundproofing. She does not want the Mays to be under stress nor for staff to tiptoe around. The premises will be run in the same competent, responsible and respectful way as it is now. It would be unfair not to grant the licence. She thanked the Sub-Committee for their time and consideration.

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

- Monty's - open 1000 to 2330 hrs Monday to Saturday (close at 2345 hrs); open to 2300 on Sunday.
- Ning's - open 1000 to 2300 hrs Monday to Saturday.
- Pie & Vinyl - 1100 to 2300 hrs daily.
- Barley Mow (pub) - open to 0100 hrs on Friday and Saturday.
- Mayfair - open until 0130 hrs (close at 0200 hrs).
- Hole in the Wall - open until 0000 hrs Friday and Saturday; 2300 hrs on Sunday.
- Parade Tea Rooms - open 0800 to 2100 hrs.
- Brewhouse - open to 0100 hrs Friday and Saturday.
- Guiseppe's - open 1000 to 0000 hrs Monday to Saturday; 1200 to 0000 hrs Sunday.

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 11.45 am.

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

Decision

The Sub-Committee has considered very carefully the application for a premises licence at Delaney's. 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 a representation from a responsible authority (Environmental Health) and three residents objecting to the grant of the licence due to concerns about noise / prevention of public nuisance.

Representations were also received in support of the application from residents.

After having heard all of the above evidence the Sub-Committee determined to grant the proposed application, subject to limiting the proposed hours as follows:

- The sale of alcohol shall cease at 21.00 hrs. on Thursdays, Fridays and Saturdays
- The sale of alcohol shall cease on Sundays, Mondays, Tuesdays and Wednesdays at 17.00 hrs.
- The opening hours for the premises shall have a terminal hour of 21.30 hrs. on any day (save for New Year's Eve) and opening hour as applied for
- The proposed hours for New Year's Eve as set out in the application are granted as applied for.

Reasons

Objection from residents (two of the three objecting attended the hearing) focussed upon the existing poor sound insulation and the level of sound already interfering with enjoyment of their property. Fears were expressed in relation to sound from both within and outside the premises (e.g. patrons outside and use of bins etc.). A recording submitted showed that voices could currently be heard from the kitchen area of the premises. Previous complaint about building works at the premises were not taken into consideration by the Sub-Committee as they do not relate to the proposed licensable activity and the impact that this might have. Past experience tended to show a lack of regard for neighbours and did not give confidence for future operation. A bedroom is located directly above the kitchen area of the premises and noise levels are already unacceptable.

Environmental Health expressed concern regarding the grant of a premises licence where residents' properties are structurally joined and expressed concern that with an 'on licence' in place, music (recorded or live) might be provided until 23.00. Concern was raised over reverberant sound within the premises, particularly clearing up at the end of the evening.

The smoking ban could lead to noise nuisance outside from patrons smoking outside.

It was stressed that the premises is within a densely populated area and was built in the (likely) Victorian area - with, as a result, the likelihood of very poor insulation between floors.

Regards the mezzanine floor it was stated that this would be very difficult to address with sound proofing due to need to reduce height of ceiling. Similar issues with same type of premises locally were outlined. It was confirmed that being able to hear conversations suggests very limited insulation and experience from other similar premises is that insulation can only ever partly address concerns. An extraction system would be required for increased cooking at the premises.

The applicant outlined their intention not to run terribly differently to the existing operation save for extending hours to provide an early evening supper menu. At other times it would allow a glass of prosecco or beer with food. Advice had been sought on reducing noise from the premises and steps that would be taken included insulation to the ceiling above the kitchen area and installation of a door to that area. Fixed seating had been installed to prevent sound from moving furniture. Rugs, throws, soft furnishings etc. had been used to absorb sound within the premises and acoustic panels could be implemented moving forward. Advice is being sought regarding insulation and would also include consultation on other measures that could be implemented. The premises had utilised three temporary event notices (TENs) in the run up to Christmas. There was no intention to provide live music or loud amplified music at the premises, simply background music from speakers mounted on brick walls adjoining commercial rather than residential premises. Bottles would only be emptied to outside bins at reasonable hours (mid-morning) and access to bins generally would be monitored to avoid disturbance. The premises has a maximum capacity of 30 and the intention is not to create a bar or pub but to allow alcohol to accompany their existing operation. In relation to cooking and use of the kitchen it is not anticipated that there will be any intensification and certainly not a move to industrial use. The early evening suppers would be from a limited menu. Notices would be displayed at the premises which was envisaged to run in a similar manner to a tea room rather than bar. The premises have had no warnings or enforcement action to date and will be run in a respectful and competent manner.

The Sub-Committee noted that there is a right, for all parties, to bring the licence back for review if there are any issues undermining the licensing objectives resulting from the licensable activity at the premises. If nuisance persists residents are encouraged to liaise with Environmental Health and report the matter promptly. In this respect residents can be reassured that if the premises changes hands or changes the nature of the operation, or indeed fails to implement the steps indicated and this leads to public nuisance, the matter can be brought back to the licensing authority for action to be taken.

The Sub-Committee balanced all of the above issues and determined that in the first instance the applicant be granted the ability to operate in the manner described and implement the steps proposed to reduce the impact of sound and nuisance upon residents in close proximity. Accordingly it was considered appropriate to grant the licence with the timings as set out to balance the interests of residents with those of the business.

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 11.45 am.

Councillor Claire Udy
Chair