

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-Committee held on Thursday, 5 August 2021 at 2.00 pm in the Council Chamber, second floor, the Guildhall, Portsmouth

Present

Councillors Scott Payter-Harris
 Dave Ashmore
 Jason Fazackarley
 Charlotte Gerada (observer)

26. Apologies for absence.

No apologies were received.

27. Appointment of Chair.

Councillor Dave Ashmore was appointed Chair.

28. Declarations of Members' Interests

No interests were declared.

29. Licensing Act 2003 - Application for grant of a premises licence - Notios Greek Bar And Cafe, 92 Osborne Road, Southsea, PO5 3LU

Present

Mr Kitchen, deputation
Hakem Arabbetou, applicant

Derek Stone, Licensing Officer
Tracy Blair, Legal Advisor

The Licensing Officer introduced the report and in response to questions from members, he clarified the following points:

- There were no representations from the police.
- A colleague in the licensing department forwarded the email correspondence for printing (shown on page 31).

In response to a question from members, Mr Arabbetou explained that:

- The premises had been a jewellers for 4-5 years. As far as he was aware, it had not been a licensed venue.
- There would be approximately 6 staff and 20-25 customers at any one time.
- There is no outside smoking area.
- The offer is fast food and includes pork or chicken and chips.

There were no questions from the applicant to the licensing officer.

There were no questions from Mr Kitchen to the licensing officer.

Hakem Arabbetou included the following points in his representation:

- He had held a personal licence since May 2015 for the other businesses he runs in Southsea.
- He had no issues or complaints regarding these premises.
- Notios at 37 Marmion Road is a bar and restaurant whereas this premises in Osborne Road will be a bar and café. It will therefore have a different style.
- The bar would sell three types of Greek and Turkish beers and Greek and middle Eastern wines to be consumed with food.
- Kingsely is four doors away. The whole zone is a licensed area with restaurants and bars.
- He accepts that it is not everyone's cup of tea.

In response to questions from members about how he would mitigate any noise disturbance, Mr Arabbetou explained that:

- It will not be a nightclub. The music would be medium not high as customers would want to relax.
- There is a lot of concrete in the building.
- There is insulation as there is in his other premises.
- He heard music and saw smoke from other venues when he was at the premises.
- If the music was turned on too loud by accident, it would be turned down.

In response to further questions from members, he explained that:

- He will not sell drinks with an alcohol content above 6.5%
- All the building work had been signed off.
- The CCTV covers the front of the premises.
- He would train the staff. If a customer was over the limit, you can see that and they would not be served. Records would be kept of people who had been refused service.
- He would not employ a doorman unless there was an event in the area. Staff would be indoors serving food and drink. He does not employ door staff at his other premises.
- When asked to explain his dispersal policy, he explained that they would control any noise, arguments and fights inside and outside as much as they can. They would not have groups of 5-6 men arriving together. There would probably be a maximum of four women together.
- Notices would be displayed asking customers to respect the neighbours and leave quietly.
- There is a taxi rank on the other side of the road.

In response to a question from members, the Licensing Officer explained that he could not 100% confirm that there had been no complaints regarding the other venues. Some may have been made to the Planning Department. They are not on his radar as a cause of possible concern.

In response to questions from Mr Kitchen, the Licensing Officer explained that the Sunday Post premises did not have planning permission for the change of use to a bar that had been carried out. Enforcement and advice had been given. Licensing Services were not consulted or informed of these changes.

The Legal Advisor noted that each application is determined on its own facts and the committee is not concerned with planning breaches. The Planning Authority had the opportunity to make representations but chose not to.

Mr Kitchen included the following points in his representation:

- He owns and has tenants at 94 and 100, Osborne Road which are directly above Notios.
- This premises had been a Kodak camera shop, a lingerie shop, a jewellers and a café/ restaurant.
- The owner does not have the right planning permission for this change of use.
- The residents' entrance is adjacent to the premises entrance so they have to pass customers congregating outside.
- People using the ATM and the bus stop will be affected. The latter will become smokers' hub.
- The applicant put the licensing application notice in the premises window but then closed the shutter so it was not visible.
- All four licensing objectives are affected. The CCTV does not play a role in preventing crime it just records it if it is maintained and located correctly. There will be no door staff. The applicant did not explain what the supervisor would do. There would only be a note on the wall requesting customers to leave quietly. What area would the outside lights cover?

The kitchen is not shown in the plan that was submitted as required by the 2005 regulations.

Mr Kitchen informed Building Control that work had started with authorisation and that the contractor was using the residents' extractor fan and causing a fire risk. An enforcement notice was subsequently imposed prohibiting the use of the kitchen by Building Control because of the absence of an extractor fan.

There are no measures to limit public nuisance caused by noise from the premises to the bedrooms directly above. How many decibels would the music be set at? There would not be less noise from a restaurant. There would be noise from people coming in and out chatting and standing outside smoking.

The premises is managed by Nesbit & Co. When Mr Nesbit visited, the contractor gave a fake name and telephone number.

They are requesting a licence to sell alcohol which will cause further issues with drunk people.

The lease only permits this building to be used as a shop or financial services.

The committee noted that the use of the extractor fan was a planning issue and the alleged breach of lease was not in this committee's remit.

The Legal Advisor advised Mr Kitchen to report any noise concerns to the Environmental Health department.

In response to questions from members, he explained that:

The tenants could no longer access their home from the back of the building. He was not aware of any problems that the tenants have had with other premises nearby.

Members explained that the Planning Department and the Licensing Authority work separately. A licence could be granted even if a premises did not have planning permission for a licensed premises.

In response to questions from Mr Kitchen, Mr Arabbetou explained that:

- In excess of £35,000 was spent on the kitchen including a chimney extractor that is not attached to the building. Any vibrations would be felt on the outside staircase which is two metres away from the building.
- His brother was responsible for the planning application. Mr H is here solely about the licence application.

Summing up

Mr Kitchen asked the committee to note that he was not satisfied with the following points: health and safety, CCTV, the supervisor's role, the lack of door staff, the lack of the kitchen on the plan, the fact that the entrance is next to his tenants' front door. He was also not confident that any noise disturbance would be minimised.

Mr Arabbetou explained no drinks would be taken outside. He also asked why the tenants were using the back exits and slamming gates when the others were using the front entrance.

The Legal Advisor interjected to explain that this issue was not relevant to this hearing. She also added, in response to a question from Mr Kitchen about the lack of specific detail in the floor Plans provided by the applicant, that the committee would not usually see such detail in a premises licence application plan.

The committee adjourned to deliberate at 3:10pm.

The meeting resumed at 3:55pm.

DECISION

Full notification of the decision will be issued to all parties to the hearing - including those that have made written representations only.

The Sub Committee has considered carefully the application, representations of all parties - both written and oral, the Licensing Act 2003, the licensing objectives, statutory guidance, the adopted statement of policy, the Human Rights Act and the Equality Act.

The Sub Committee noted the operating schedule for the application and the applicant's intended operating schedule in Appendix A, which refers to staff training, CCTV, lighting and a challenge 25 scheme.

No representations from any of the responsible authorities have been received in relation to the application but notably no objection was received from the police or environmental health. The Sub Committee accepted advice that the absence of objection from a responsible authority must be accepted as endorsement given the statutory scheme requires grant of a licence absent any objection and the guidance confirms each responsible authority is the expert for their relevant field.

This fact does not however detract from the validity or weight of the objections raised by other parties when validly made.

The application attracted objections from 3 parties.

Having heard all of the above the Sub Committee has determined to grant the premises licence as applied for but subject to the following amended conditions:

- 1) The sale by retail of alcohol to be limited:
Sunday 12:00 until 22:00
Monday to Thursday 11:00 until 22:00
Friday and Saturday 11:00 until 22:30
- 2) The playing of recorded music to be limited to the same hours described above.
- 3) A prohibition on the taking of alcoholic and other drinks from the premises in open containers for consumption outside the premises.

The Sub Committee accepted legal advice that the grant of a licence does not set a precedent as each case is determined on its merits. Further, that extensive powers of review exist in the event that the premises causes issues or undermines the licensing objectives in the event that the licence is granted.

REASONS

Objection to the application focussed, generally but not exclusively, upon the following issues:

- Proximity of residential properties including those with young children and the potential of obstructed access to those properties
- The risk of alcohol related noise, crime and disorder
- Increased risks to public safety
- Noise nuisance from the playing of music
- Fire safety concerns for residential properties above the premises
- There being no need for additional premises in the area
- Planning classifications / permissions
- An increase in rubbish and waste

The sub-committee had the opportunity to hear from Mr Kitchen in respect of his representations. Mr Kitchen was able to expand upon the written representations submitted previously.

The Sub Committee accepted legal advice given during the course of the hearing that commercial need and planning issues were not relevant to the licensing objectives and could not be taken into account. It noted that the Planning Authority and Fire Service both had the opportunity to make representations but have chosen not to.

The applicant gave detail concerning the application and in particular the Sub Committee noted that the applicant has experience in running a number of licenced premises in the local area and would be selling a limited range of alcoholic drinks.

The Sub Committee has to balance the interests of the proposed business as set out in the operating schedule and clarified during the hearing and the rights of residents living in close proximity. The sub-committee was required to weigh up risks posed by the proposed licensable activities and make a value judgement based upon the evidence presented today and relevant to the licensing objectives.

The conditions imposed were considered appropriate given the potential for a business serving alcohol to create issues and undermine the licensing objectives and will serve to prevent a disproportionate impact upon residents. Residents can be reassured that in the event that the premises does change in nature or operate in a manner that undermines the licensing objectives and relevant evidence supports it, the premises licence may be brought back before the Licensing Committee for review. Steps can be implemented at that stage including additional conditions or restrictions or indeed revocation of the licence in extreme cases and where proportionate and appropriate.

There is a right of appeal for all parties to the hearing to the Magistrates' Court.