

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-Committee held on Wednesday, 27 April 2022 at 2.00 pm in the Council Chamber, Guildhall, Portsmouth

Present

Councillor Claire Udy (in the Chair)

Councillors Dave Ashmore
Benedict Swann

16. Appointment of Chair.

Councillor Udy was elected as chair. She welcomed everyone 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.

17. Declarations of Members' Interests.

There were no declarations of members' interests although in the interests of transparency Councillor Udy said she has a friend who works in Pie & Vinyl in Castle Road.

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

Derek Stone, Principal Licensing Officer, introduced his report, explaining that the matter had been referred to the committee following receipt of relevant representations from other persons. On 13 January 2021 the Sub-Committee granted a premises licence with reduced hours. The application for variation seeks to extend the hours permitted for alcohol sales on Friday and Saturday from 2100 to 2230 hours. There have been no representations from the responsible authorities. The Principal Licensing Officer had consulted Richard Maidment (Principal Regulatory Services Officer) in Environmental Health. No formal complaints have been made to Environmental Health. The applicant extended trading hours with a Temporary Event Notice (TEN) ten times since the licence was granted but seven occasions were cancelled due to Covid. A map of nearby premises and a list giving their hours for opening and selling alcohol was tabled.

Questions from members

In response to a question from members, the Principal Licensing Officer advised that when Delaneys want to open later under a TEN they submit an application to the Licensing Office who advertise it then give formal notification when granted. The notice is put in the window of the premises. If it is a late TEN the police or Environmental Health can object and the application is rejected.

There had been one complaint about the seating outside the premises but this was because of a misunderstanding. The applicant then extended the hours for the pavement (amenity) licence. The outside seating will still be removed at 2100 hrs despite the application to extend trading hours. There have been complaints about other nearby premises but no formal action has been taken. One of the premises has recently changed hands.

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

In response to a question from the Legal Advisor, the Principal Licensing Officer said two objectors live above the premises, some directly opposite and one further down Castle Road. However, some supporters live opposite.

Applicant's case

- Ms Delaney said the business has struggled with having to close at 9 pm as it means the "dining window" is only 1.5 hours. Some customers have cancelled bookings when they find that they have to leave at 9 pm. Extending the hours would make use of the dining facilities. At the moment the premises is empty of diners and more attractive to drinkers. However, the business does not want to be a bar. It also serves breakfast and lunch.
- Ms Delaney had approached Mrs May to say why she wanted to extend the hours. Ms Delaney wants to work with Mrs May and come to an amicable arrangement.
- Ms Delaney has a business to run and has waited over a year to see if she can work with the current opening hours. The chef is left hanging around for a handful of diners. The premises' potential is not being fulfilled as a restaurant as other nearby premises are, for example, Giuseppe's and Ning's. The low number of diners also means produce is wasted.
- Ms Delaney had invited Richard Maidment to view the premises, including the mezzanine, which provides a whole floor between the neighbours (Mr Roberts and his mother) and the diners and music. There is an office, beauty and storage room upstairs. Only Mrs May's bedroom is above the premises. Ms Delaney had paid more than £2,000 for soundproofing to create extra layers. She realises Mrs May works from home in the bedroom and starts work early (around 8 am) which is why she is not applying for extended hours on Thursday. There has been a lot of correspondence between the applicant and Mrs May, who has a lot of expectations, some of which are a little unreasonable. Running a business is not unreasonable. There would be some noise if Mrs May was working in an office. The kitchen door has always been open for the 16 years Delaney's has been trading. Ms Delaney has started to install extra soundproofing to ensure minimal noise from the mezzanine.
- Some supporters live closer to the premises than some objectors.
- The road closure in Castle Road is a struggle and has harmed the takeaway side of the business. Bearing in mind the opening hours of nearby premises, it would be really unfair not to grant the extra 1.5 hours and would single out a small business trying to survive.

Questions from members

In response to questions from members, the applicant explained there is no noise meter but the music is at a level where people can have a conversation

and not shout. It is a nice level to talk and dine. There is only recorded music, no live music.

The Principal Licensing Officer confirmed that all other premises in Castle Road have to remove their outside seating by 2100 hours.

Questions from other persons

In response to questions from other persons, the applicant explained:

- The applicant acknowledged many people were in favour of the Castle Road closure but it affected the business immediately as people cannot just drop in. It was open for takeaways during lockdown but the road closure meant business dropped off literally overnight. The applicant's brother, who is in construction, started on refurbishment straightaway so that the premises became more of a restaurant than a café and takeaway business. The applicant can supply business figures if requested.

Other persons' case

Mrs May said she had already made a representation and a lengthy objection and only added that there was no support for the application from people who live directly above, below or around the premises. She asked how many people lived above the nearby premises in the circulated list.

Pamela McGuinness made a representation, which covered the following concerns:

- There is no confusion about the tables outside but people congregate outside and there is sometimes noise, for example, on Burns Night, which prevents sleep. What counts as reasonable is a difference of opinion and if people have to get up early or not. Ms McGuinness has to get up at a reasonable time. Her daughter works shifts and has to wait for licensing hours to finish before she can sleep. Castle Road is a small, narrow residential road.
- The mezzanine floor is underneath Mrs Roberts' room. The lady is in her eighties and cannot listen to the television because of the noise coming up. At night she has to wear earplugs. This situation is quite upsetting. The application is not conducive to the area.

Questions from members

In response to questions from members, the applicant explained

- There is generally only one customer who smokes and goes outside. However, if customers smoking outside were noisy staff would ask them to be quiet and respect the neighbours. She has prepared a map of where objectors (with no personal information) live which the Legal Advisor said can be shown if all parties agree.
- In response to a question from the Legal Advisor, Ms McGuinness said that most of the noise on Burns Night was music rather than raised voices. Ms Skilling said playing bagpipes was a tradition on Burns Night and would not be all the time. Ms McGuinness said although it may be an infrequent occasion this is what the experience is for her late at night. The applicant said she had explained her plans for Burns Night to Mrs May. She is aware bagpipes could be loud so had asked the piper to do a sound test to decide whether to pipe in each guest or wait until all of them had

arrived. The piper would then pipe in the haggis. On Burns Night the piper arrived at 7 pm, played for about 20 minutes, piped in the haggis about 8.15 pm then left around 8.30 pm.

- In response to questions from members, Ms McGuinness said life in Castle Road is difficult since the road closure so she has not officially complained about nearby premises. Monty's is problematic because of the bottomless brunches and she has to go out and see where the noise is coming from. Sometimes noise comes from Delaneys. Noise depends on where the bar is in a premises. For example, Ning's and Pie & Vinyl have a small bar. There is a very little problem with Ning's and Pie & Vinyl; the latter have usually gone by 6 pm. Ms McGuinness can differentiate between premises. The applicant said Pie & Vinyl may extend their hours to 10 pm and they sometimes have live music and events. Asked if there was disruption from Pie & Vinyl on Saturdays, Ms McGuinness said most attenders on record store days were sober and courteous. If there is music it is in the day though she complained when the amplifier was brought outside.
- Monty's has just changed hands. It is noisy and has been horrendous in the past but the clientele were better quality on a recent Saturday. However, the more people drink, the louder they talk. The music at Monty's on occasion can be loud. At Ning's there is either no or very quiet music. The applicant said Monty's play music. Delaneys has a long bar with one side dedicated to tea and coffee. The counter has cakes and sausage rolls as well as wines and spirits. The business is more than a bar but is turning away restaurant trade. The current licensing hours have the opposite effect in that people are coming in just for drinks on their way to somewhere else. There is a cocktail special offer at the moment as business is a struggle but they try to be considerate and not promote drinking.
- The Principal Licensing Officer said the Licensing Office had not been involved with Monty's recently but if there were complaints they would investigate them and, if necessary, review the licence. The process for reviewing licences as set out in the 2003 Licensing Act is an important part of protecting the community. The Chair reminded representations of their power to have the licence reviewed. She noted there could be concerns in the summer when more people sit outside.

Summing up

In his summing up, the Principal Licensing Officer reiterated that he had checked with Environmental Health and no recorded complaints had been received about Delaneys since the licence was issued in 2021, despite a representation from Environmental Health for the application in 2021. Officers are satisfied there is not a statutory noise nuisance. However, it is easy to complain. There is an out of hours service who issue a unique reference number and they visit the premises. It has to be proved there is a statutory noise nuisance.

In her summing up, Mrs May said she had hesitated several times about making a complaint. She cannot record her business conversations when she is working at home but was not aware that the recording equipment can be

turned on and off. The misunderstanding that it would have to be on for two weeks was why she hesitated.

In her summing up, Ms McGuinness said the noise has been a problem for some residents, especially when they have to get up early.

In her summing up, Ms Skilling said she was a resident of Castle Road and it feels like Delaneys is being singled out and let justice be served.

In her summing up, the applicant said she wants to give people an enjoyable evening. The business is struggling and is not fulfilling its potential. She is not a greedy owner and is paying the chef out of her own money from her motorhome business. She would feel singled out if the licence was not extended when there are 13 other businesses in the area with longer hours. Mrs May had mentioned noise in the day but the extended licence is for the evening. Environmental Health had listened to the music at different volumes and gone upstairs. The applicant does not want big rave-ups, just for diners to have a nice evening.

The Chair informed the Sub-Committee that the decision would be emailed to everyone concerned later that day. The Legal Advisor reminded those present that they must not discuss the application with members of the Sub-Committee outside the meeting room during the break for deliberation.

The meeting ended at 3.02 pm and the Sub-Committee went into exempt session to determine the application.

The Sub-Committee resumed at 3.45 pm.

Decision

The Sub-Committee has considered very carefully the application for variation of a premises licence at Delaneys. 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 the application sought an extension in hours for the sale / supply of alcohol at the premises on Friday and Saturday evenings until 22.30 hours and with the premises closing at that time also. There had been representations from residents (a total of 28) with 8 objecting and 20 in support. Those objecting raise concerns broadly in relation to the licensing objectives of public nuisance and crime and disorder. 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 premises are run as a café / restaurant and had installed acoustic insulation. Neither the police nor environmental health had any reported incidents on record. The Sub-Committee was referred to the right of review as a protection for residents in future.

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 listened very carefully to residents' concerns - particularly those living above or adjacent to the premises and has had to balance those concerns against the interests of the business. In doing so it has had to determine the extent of the impact that the proposed variation might have upon the licensing objectives of the prevention of public nuisance and crime and disorder. The Sub-Committee has had to take account of the fact that no representation has been received from the police or environmental health and therefore the inference being that their professional position is that the proposal is not considered likely to undermine the licensing objectives. Weight has to be attached to that position on the basis that both are considered the lead in their respective fields.

This is a very small premises seating in the region of 31 patrons downstairs and 12 upstairs. The applicant indicated that business is generally food-led but that current time-limits actually have the effect of reducing diners which is a cost due to overheads and wasted produce. It was suggested that the relatively small increase in hours would increase the number of diners and reduce those merely drinking. That certainly is the aim.

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. Action can also be taken separately by environmental health in relation to statutory noise nuisance, if reported.

The premises are encouraged to continue close liaison with residents and to do what they can to monitor noise levels - particularly music so that it does not cause a nuisance.

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 3.50 pm.

Councillor Claire Udy
Chair

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