

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-Committee held on Monday, 16 May 2022 at 2pm in the Council Chamber, third floor, the Guildhall, Portsmouth.

Present

Councillors Scott Payter-Harris
Dave Ashmore
George Madgwick

20. Appointment of Chair.

Councillor Scott Payter-Harris was appointed Chair.

21. Declarations of Members' Interests.

No interests were declared.

22. Licensing Act 2003 - Application for variation of a premises licence Marmion House, 89 Marmion Road, Southsea, PO5 2AX

Mr Stone, the Principal Licensing Officer introduced the report and informed the committee that Ms Fage was not able to attend the hearing. She had submitted an amended representation which was tabled.

A list of the nearby licensed premises' opening hours and hours when alcohol sales are permitted were also circulated.

In response to a question from the committee, Mr Stone explained that the Licensing Department had no concerns regarding the premises.

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

Ms Ryan, the applicant made the following points in her representation:

- The main purpose for this application was to increase revenue, so that they can retain their staff.
- Customers have complained about being asked to leave at 10pm.

Craig Emmery, co-owner of Marmion House added that they allow two hours per booking, which means that if a table is booked at 7pm it cannot be used again when it is vacated at 9pm. If alcohol sales were to be extended to 22:30 or 23:00 there would be time for two sittings.

In response to questions from the committee, they explained that:

- The flat is above the back end of the restaurant. The staircase is above the toilets.
- In the front, when a wall was removed to build the kitchen, a bricked-up doorway to the upstairs flat was found. This was soundproofed and filled in. It is now in the top of the roof next to the extraction unit.
- The front part of the restaurant has a flat roof onto which the flat's window looks out.

- The Temporary Event Notices had been used for New Year's Eve, Ms Ryan's birthday and at the request of a special customer.
- The glass bins are moved inside to the front of the restaurant to be emptied.
- Staff call taxis for customers so that they do not have to hang around outside the premises.
- If customers were noisy leaving the premises, they would be spoken to.

The committee noted that:

- The application was very thorough, and the licensing objectives had been considered.
- There were no representations from responsible authorities.
- The list of operating hours for nearby premises was helpful, but the committee would determine what weight to give it.

Mr Stone read out the reputation that had been submitted by Ms Fage:

I would like to object to any increase in licence extended hours at Marmion House.

In the application under d) The prevention of public nuisance it states that 'they have insulated correctly to ensure minimal disturbance to the flat upstairs and have had no complaints thus far'.

This is incorrect.

As part of the original planning application for the proposed restaurant, the sound insulation was to be tested prior to its opening. It has not been tested and therefore they are in breach. The noise from the industrial extraction unit in the roof space abutting my property (picture of the doorway), caused the previous occupants to vacate the property.

On two occasions I have requested a return visit from the sound engineer, but these requests have been ignored.

I have now spent several thousand pounds of my own money trying to better insulate my property, although I can still hear the noises from below which will only be exacerbated through an extension of the licence.

The statement that glass bins will continue to be emptied inside the building to ensure neighbours aren't disturbed. They disturb these neighbours.

I believe it is assumed that 60d (my property) is above/ adjacent to part of Marmion House. In fact, two of the bedrooms are partly inside Marmion House.

I have attached some pictures to highlight. Directly outside the window of one of the rooms and from the patio doors of another is the flat roof. This means the walls and floors below the window and doors are inside Marmion House. The picture taken inside Marmion House while it was being renovated shows a doorway. This door leads directly into one of my bedrooms.

Having had a furniture store below us for over 20 years, a 56 cover, busy, loud restaurant was never thought to be an approved alternative.

Any licence extension is just going to cause additional disturbance to what is a residential area. The more alcohol consumed, the more noise customers make. There would be noise until nearly midnight Friday and Saturday nights if the licence was increased to 11pm, and Sunday night we'd be disturbed until 11.30pm. Functions and Live music would also not be appropriate for this building or area either, and will have a negative impact on my right to a peaceful existence.

The Chair noted that as the committee does not deal with planning matters, the paragraph regarding the testing of the sound proofing would be disregarded.

In summing up, Ms Ryan asked the committee to note that she is looking to extend the hours for the customers' benefit and so that staff can be retained. They had not received any complaints about noise from this premises. They had done everything that they need to do.

In summing up, Mr Stone stated that the applicant had reduced the hours they requested for alcohol sales following consultation. All applications are sent to the responsible authorities; they had raised no objections to this one. The applicant seeks to work with the community to ensure they can coexist in harmony.

The committee went into exempt session to deliberate.

When the hearing resumed, the Chair read out the decision.

In the matter of: Licensing Act 2003 - Application for variation of a premises licence - Marmion House, 89 Marmion Road, Southsea

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

Decision

The Sub Committee has considered very carefully the application for variation of a premises licence at Marmion House. 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 before it today sought an extension in hours for the sale of alcohol at the premises from 10:00 hours daily until 22.30 hours Sunday to Thursday and 23:00 hours Friday and Saturday. The current premises licence permits alcohol sales from 12:00

hours to 21:30 on Sunday and 12:00 hours to 22:00 hours Monday to Saturday.

This matter is before the subcommittee today following a relevant representation being made by Mrs Fage, the owner of a residential property situated above the premises, who objects to the extension in hours. The representation raises concerns in relation to the licensing objectives of public nuisance. 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 restaurant and sound proofing works have been carried out.

Neither the police nor environmental health have reported any 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 considered very carefully the concerns raised on behalf of 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, in particular the prevention of public nuisance. 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.

The restaurant is situated on the corner of the street and has a maximum of 52 covers. A small number of tables are situated in an area under the upstairs residential flat.

The applicants seek to extend the opening hours in order to help sustain their business and maintain staffing levels.

The sub committee heard that the applicants have built up good relations with many neighbours, have engaged in negotiations to vary the current application so as to seek shorter hours than originally applied for and have taken on board concerns about the noise generated by glass bins being emptied. The sub committee notes that the applicants have adopted a practice of emptying the bins inside and towards the front of the premises and it hopes that this will continue.

Mrs Fage and indeed all residents living in the locality of the premises can 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 liaise with residents and to do what they can to monitor noise levels on an ongoing basis.

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 3:20pm.