

## LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-Committee held on Monday, 5 September 2022 at 4pm in the Council Chamber.

### Present

Councillor Scott Payter-Harris (in the Chair)  
Dave Ashmore  
Benedict Swann

#### **48. Licensing Act 2003 - Application for grant of a premises licence - Barcode, 50 Osborne Road, Southsea, PO5 3LT**

##### Present

Mr Andrew Aquilina, the applicant.  
Mr Kay Adu, the applicant's business partner.

Richard Maidment, Principal Regulatory Services Officer

Mr Danny Faulkner, resident.

Derek Stone, Licensing Officer  
Ben Attrill, Legal Advisor

The Licensing Officer informed the committee that after speaking to the resident and the Regulatory Services Officer, the applicant had revised the hours requested as follows:

##### *Sale of alcohol:*

Sunday - Thursday: 12:00 until 22:00.

Friday & Saturday: 12:00 until 23:00.

Christmas Eve: 12:00 until 00:00

New Year's Eve: 12:00 until 00:30.

The premises would close 30 minutes afterwards.

Live music and late-night refreshment are no longer required.

Recorded music would be played in accordance with the revised sale of alcohol hours.

In response to a question from members, the revised hours were clarified.

There were no other questions.

##### Mr Aquilina included the following points in his representation:

He is happy to reduce the hours to please the neighbours.

He is not looking to have the same type of clientele as the Drift Bar. The atmosphere would be more like the Chambers in Kings Road. Food would be served until 19:00. It would not be a loud, late-night bar.

He has 17 years' experience of working in bars in the city. He has always wanted to work with residents.

In response to a question from the Legal Advisor, Mr Aquilina explained that on Christmas Eve alcohol sales would stop at 00:00 and on New Year's Eve at 00:30. The premises would close half an hour later.

There were no other questions.

Mr Faulkner included the following points in his representation.

A number of years ago, late night economy premises moved to the Guildhall Walk. However, Palmerston Road is pretty full now and is expanding into Osborne Road. He asked the panel to consider how many premises are needed there.

He is currently in dispute with Pizza Go Go regarding drunken clientele being very noisy when leaving their premises up until 03:00 every night.

There were no questions.

Richard Maidment included the following points in his representation:

In light of the changes, he has no problem with the application. He circulated some proposed conditions for the panel to consider.

The applicant indicated that he had seen them and would be happy for them to be imposed on his licence.

1. Other than associated with the use of a Pavement or Highways Amenity Licence, no bottles, glasses or drinking receptacles of any kind shall be used for the consumption of beverages immediately outside the premises.
2. All doors and windows shall remain closed after 23:00 hours.
3. Bottle bins shall not be emptied outside the premises between the hours of 21:00 and 07:00 hours.
4. Any external floodlight fittings shall be angled below the horizontal plane or provided with shields to ensure there is no spillage of light or visible glare to residents beyond the boundary of the licensed premises.
5. Deliveries and waste collections for the premises shall only take place between 07:00 and 21:00 hours.
6. Within 28 days of the licence being granted or any future transfer of the premises licence, the licence holder shall submit a noise management plan to the local authority detailing measures to monitor and control noise levels associated with the operation of the venue. Upon approval these measures shall be implemented in full.

Mr Faulkner expressed concern about the rear doors that open onto the carpark.

Mr Aquilina stated that he is not looking to keep them open. These are fire doors and will be closed at all times. In response to a question from the panel, he said that he would be happy to have if a condition were to be put on his licence requiring the doors to be kept closed.

The Chair noted that the residents have the power to have the licence reviewed if issues arise.

There were no further questions.

The Legal Advisor explained that the commercial need for a premises in this area is not a matter for the panel to consider. If an area were to reach saturation point, members could consider the potential cumulative impact of an additional premises licence being granted.

The council has policies for some areas where a presumption for rebuttal is in place for new applications and variations. Although this is not one of these areas, concern for the number of premises there can be brought up.

There has been a relatively low number of residents' objections and a significant movement from the applicant and the panel must attach appropriate weight to these points.

In response to a question from the panel, he explained that a Cumulative Impact Zone could be imposed on this area if the police brought evidence of significant crime and disorder issues.

In summing up, the applicant asked the resident present to come and see them at the premises if he had any concerns in the future.

Mr Faulkner, Mr Maidment and Mr Stone had nothing further to add.

The panel adjourned to deliberate at 16:45.

At 17:16 the meeting resumed and the decision was read out.

### **Decision**

**The Sub Committee has considered very carefully the application for a premises licence at Barcode. 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 the prevention of public nuisance licensing objective and the prevention of crime and disorder objective.**

The applicant had amended the application in light of the representations, reducing the hours sought and agreeing conditions proposed by Environmental Health.

After having heard all of the above evidence the Sub Committee determined to grant the proposed application, subject to imposing the agreed conditions and noting the amended application and amended hours as follows:

- The sale of alcohol shall cease at 22.00 hrs. on Sunday to Thursday, with the premises closing at 22.30
- The sale of alcohol shall cease on Friday and Saturday at 23.00 hrs. with the premises closing at 23.30
- The opening hours for the premises shall have a terminal hour of 01.00 hrs. for New Year's Eve with the sale of alcohol ceasing at 00.30 hours
- The proposed hours for Christmas Eve ceasing at 00.00 (midnight) for sale of alcohol and the premises to close by 00.30.
- Late Night Refreshment is no longer required as this shall cease by 23.00 hrs.
- Live music is also removed from the application
- Recorded music shall be in line with the hours for the sale of alcohol.
- Conditions as agreed with and submitted by Environmental Health during the meeting relating to: use of receptacles outside the premises, closing of external doors and windows after 23.00 hrs [noting the rear doors shall remain closed at all times licensable activities are taking place save for emergency escape], external lighting, deliveries and collections, requirement for provision and approval of a noise management plan and for those measures to duly be implemented.

### Reasons

Environmental Health expressed concern regarding the grant of a premises licence where residents' properties are structurally attached. The age and structure of the building were a concern in the absence of a noise management plan or indication of measures to be implemented. It was unclear whether sound insulation could even be installed given the premises are not purpose built. No mention had been made in the application as to how noise control, smoking, waste collection, litter or lighting were to be managed. The Sub Committee noted the consultation response from Environmental Health advised that planning permission might be better sought first but accepted that the application nonetheless had to be determined on its merits and as presented, irrespective the planning permission. Further, planning issues such as change of use (as raised by residents) cannot be considered by the Sub Committee.

Objection from residents focussed upon the existing nature of the area given the number of licensed premises. The Sub Committee accepted advice that commercial need could not be considered. Existing premises, it was stated, already cause issues of noise from those in

**drink, including shouting and swearing and associated antisocial behaviour such as vomiting and urinating. Rear doors at the premises present an apparent risk of noise nuisance from sound escape from live or recorded music.**

**Before the meeting had begun the applicant had confirmed an amendment to the application, namely a reduction in hours to those originally applied for and agreement had been reached with Environmental Health in relation to conditions.**

**In light of this the resident that had attended (and living to the rear) was satisfied that the application was now acceptable but feared potential change in the future operation of the premises.**

**The applicant outlined their intention to run a relaxed venue which will be food led. It is not the intention that this be a loud, late night bar. 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 light of the agreement reached between the parties present (noting and fully considering the written representations from those residents not in attendance). 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.**