

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-Committee held on Monday, 22 August 2022 at 3.00 pm in the executive meeting room, floor 3 of the Guildhall, Portsmouth

Present

Councillor Scott Payter-Harris (in the Chair)

Councillors Dave Ashmore
Daniel Wemyss

Also present

Premises Licence Holder

Mr Jon Wallsgrove, Solicitor representing the Applicant
Mr Matthew Becker, Applicant
Mr Matthew Brydon, Manager of the premises

Other persons

Ms Jacqueline Ford, local resident
Mr Mohammed Ahmed, local resident

Officers

Mr Ben Attrill, Legal Advisor
Mr Derek Stone, Principal Licensing Officer
Mrs Karen Martin, Local Democracy Officer

Apologies for Absence

None.

42. Appointment of Chair

Councillor Payter-Harris was elected as chair for this meeting. He welcomed everyone and outlined the procedure that would be followed. Introductions were made by those present.

43. Declarations of Members' Interests

There were no declarations of Member's Interests.

44. Licensing Act 2003 - Application for variation of a premises licence - Deco, 128 Elm Grove, Southsea

The Principal Licensing Officer introduced the report, informing the Licensing Sub-Committee that the Applicant was seeking:

- An extension to the sale of alcohol currently Monday to Sunday 09:00 until 00:00 to Sunday to Thursday 09:00 until 01:00 and Friday and Saturday 09:00 until 03:00 hours.
- An extension to late night refreshment provision currently Monday to Sunday 23:00 until 01:00 to extend this until 03:00 on a Friday and Saturday.
- An extension to opening hours currently Monday to Sunday 08:00 until 01:00 hours to Sunday to Thursday 08:00 until 01:30 hours and Friday and Saturday 08:00 until 03:30 hours.
- Additionally, the seasonal variation will extend until 03:30 hours on Bank Holiday Sundays.
- The removal of four existing conditions.
- A change to the SIA licensed door staff on Fridays and Saturdays to cover the extended hours.
- Plus the introduction of an ID scanner from 21:00 hours on Fridays and Saturdays which was agreed with the Police before the variation application was submitted.

The Principal Licensing Officer also informed the Licensing Sub-Committee that:

- The Applicant had operated to the proposed hours under Temporary Event Notices (TENs) over four weekends.
- The applicant has detailed in the operating schedule the steps intended to support and promote the Licensing Objectives (Appendix A of the report).
- The current licence is attached as Appendix B to the report.
- The variation application was advertised as required by the Licensing Act 2003.
- The pub has traded as Deco since October 2005 under its present owner.
- The pub originally traded as the Elms and was constructed in 1936, replacing an earlier tavern of the same name that had existed since at least the mid-19th century.
- In 2006, the Licensing Sub-Committee approved a variation to the Premises Licence to extend its hours of operation to the current permitted hours.
- There have been no representations from any of the Responsible Authorities.
- Relevant representations have been received from Councillor Judith Smyth local ward councillor, concerning the potential for noise and suggesting a closure time of 01:00 hours.
- In representations from other persons, local residents have described the late hour applied for as likely to cause a general noise nuisance in the area and make reference to general noise, nuisance and anti-social behaviour.
- A few representations mentioned smokers outside Deco and the noise from motorcycles starting up and leaving at closing time.
- There are four support representations, two from residents in very close proximity to the premises.

The Principal Licensing Officer reminded the Licensing Sub-Committee that in determining the variation application, it must have regard to the promotion of the Licensing Objectives, the Licensing Act 2003, the council's statement of Licensing Policy, current statutory guidance and other relevant matters. He explained that after having regard to the representations, the Sub-Committee may take such steps, if any, as it considers appropriate for the promotion of the Licensing Objectives. The Officer also explained that the Licensing Act 2003 allows for the Review of a Premises Licence where there is evidence, and this provides protection for the community.

In response to questions, the Principal Licensing Officer informed the Licensing Sub-Committee that:

- He was not aware of any instances of anti-social behaviour linked to the premises, although there is a premises next door which has seen some anti-social behaviour.
- He did not have information about issues relating to litter or glass bottles.
- The Responsible Authorities had not made representations and that although there had been a report of rowdy customers at the Deco in March this year, this was an isolated report and the pub is subject to regular routine inspections.
- In his view, the Deco is well managed and the DPS attends Pub Watch meetings.
- The Police and Licensing Authority were consulted before the Applicant applied for the variation in hours and there had been no issues or complaints arising for the longer hours operated using TENs.

There were no questions from the Applicant.

Ms Ford, local resident, commented that the Police were contacted two weekends ago about the premises and there had been other incidents when Police have been contacted although she was not sure how these were logged.

The Principal Licensing Officer suggested that these complaints related to the premises next door.

Mr Ahmed arrived for the hearing at 3.15pm.

The Applicant's Case

Mr Wallsgrove, solicitor representing the Applicant, presented his statement to the Licensing Sub-Committee, including the following points:

- The four existing conditions the Applicant wished to be removed were historic (condition numbers 1, 6, 11 and 13) and are either a duplication of statutory obligations or onerous and unnecessary. Their removal would not impact the premises' ability to promote the Licensing Objectives.
- It was proposed to add two conditions relating to SIA door staff, which the applicant has voluntarily employed on Friday and Saturday nights, and a condition relating to the use of an ID scanner.

- If the variation application is not granted, the applicant asks that these additional conditions are not imposed.
- The property was purchased by Mr Becker in 2005, and his customers are usually local residents, as well as some students who live locally, and of a mixed age group.
- It is an alternative venue and when it closes at midnight around two thirds of his customers (70-100 people) move on to other venues.
- With this application Mr Becker wants to offer people who enjoy his style of venue the opportunity of staying there.
- This will relieve pressure on other venues and encourage a gradual dispersion of patrons between 12 midnight and 03.00 hours and result in less noise.
- Some representations mention increased risk of anti-social behaviour, but Mr Becker says that incidents of anti-social behaviour over past 17 years has been low and the result of the occasional rogue customer rather.
- This minimal risk is offset by the presence of SIA door supervisors.
- The rare incidents of anti-social behaviour relate to the premises next door and the applicant has provided the Police with CCTV footage to help with their enquiries.
- The applicant consulted with the Licensing Authority and the Police before putting in his application. During the meeting, Sergeant Rackham informed the applicant that two residents from next door have been moved on and that the Police had no objections to the application. Sergeant Rackham suggested formalising the voluntary employment of SIA door staff for Friday and Saturday evenings and suggested the ID scanner as it is a deterrent to anti-social behaviour.
- The applicant had trialled the later hours relating to the application over the Jubilee weekend and via TENs on the weekends of 18-19, 25 June 2-3 July and 8-9 July.
- The residents making representations because of the application had written in after those events and made no mention of incidents.
- No complaints were received at the premises and all weekends passed without problems as the events were managed effectively and there was gradual dispersion of patrons.
- Therefore, there is credible evidence before the Licensing Sub-Committee. In granting the variation, that the conditions will promote the Licensing Objectives.
- The representations also mentioned noise from people and music. There has never been issue of noise from music at the venue and Environmental Health has not raised any concerns.
- About noise of people outside the venue, about 7 years ago the premises used the garden and as there were some noise issues, Mr Becker took the decision to close it.
- Now, smokers stand outside the premises and are not able to take drinks outside with them.
- Mr Becker takes issue with the idea of large numbers of people outside because of the premises.
- The variation application was properly advertised and saying that it was not undermines the credibility of representations.

- S182 guidance states that the Licensing Sub-Committee should attach weight to representations from the Police and Environmental Health responsible authorities regarding crime and disorder and noise. As such representations have not been received, the Sub-Committee should note this fact.
- Mr Becker has a proven track record as a responsible Premises Licence Holder for 17 years and he is here to stay. His customers have asked for later hours and gradual dispersion will benefit the local community unlike the current situation.
- Residents have the power to seek a review of the licence if what they fear takes place, so the applicant was asking for a 'light touch' approach as the legislation allows.

Questions by the Sub-Committee

In response to questions, Mr Wallsgrove informed the Sub-Committee that:

- The venue has live music once a month, otherwise it plays recorded music and this finishes at 23.00 hours regardless of the closing time.
- Routine police inspections have not revealed any issues relating to noise outside the premises. Sergeant Rackham conducted a routine inspection the week before he met with the applicant, and he had not noted any issues with noise from within or outside the premises.

There were no questions by the other persons present.

There were no questions from the Principal Licensing Officer.

The Objector's Case

Ms Jaqueline Ford, local resident objecting, made the following points to the Licensing Sub-Committee:

- She was speaking on behalf of a group of neighbours in Albany Road and they had no issue with the pub which they recognised was managed well.
- The issues relate to noise and anti-social behaviour outside the venue, particularly in relation to people who congregate outside. Sometimes this can be as many as 30 on both sides of the road.
- The management of the Deco tries to stop people taking drinks outside but residents find bottles outside which they believe come from the pub.
- Residents are concerned about anti-social behaviour. They are aware that these may be related to Kingsway House and the Old Library but believe that the extra hours will add to the issues.
- People from those establishments have also been known to take drugs.

The Chair noted that there had been no reference to drugs in the representations and asked those speaking to restrict their comments to the points already raised through the written representations.

Ms Jaqueline Ford continued:

- The number of people congregating late at night in the area increase feelings of being unsafe in the area.
- Not all the conditions on the licence currently have been followed.

- Representations about the advertisement of the application were made in good faith and it should not mean that the Sub-Committee does not trust what residents say.
- She had lived there for 30 years, the pub was there and she expected noise in the city but she and other residents hoped that noise would abate after midnight.
- She did not know how the applicant could say that two thirds of his customers go to the Fat Fox or One Eyed Dog when the Deco closes.
- The applicant did not make any effort to consult with residents before making the application despite saying that it is a community pub.
- The objectors were supported by Councillor Judith Smyth and residents believe that the current licence is sufficient.

Mr Ahmed, local resident objecting, made the following points to the Licensing Sub-Committee:

- He lives with his mother who is disabled because of a stroke; she lives downstairs and overlooks the pub.
- Ms Ford has said all that needs to be said and he would like to add that employees of the pub park in residents parking places and people congregate in the residents car park and urinate there.
- The issues of noise and anti-social behaviour had been going on for years.

The Chair noted that he thought there had been no reference to urinating in the car park in the representations, but it was noted that it was, and he apologised.

Ms Jaqueline Ford commented that she had phoned in a complaint (to the pub) recently about music noise and they had said it would stop in half an hour. Although it was longer than half an hour, it did stop. She added that the recent hot weather had made music noise from the pub worse as the windows were open. She wanted to present a fair and balanced position.

Questions by the Sub-Committee

In response to questions, Ms Ford informed the Sub-Committee that:

- Unless one was keeping constant watch it was not possible to say how often incidents of urinating take place but she had seen someone do that and then go back in to the pub.
- Residents were concerned about the prospect of the noise up to 03.00 hours.
- Residents have been tolerant and that there are already other venues patrons can go to if they want to be out very late at night and that it would be better to contain the noise there rather than extend it to the Deco as well.

In response to questions, Mr Ahmed informed the Sub-Committee that:

- Confirmed that he had seen people urinating in the car park and that they seemed to come from the pub and other premises nearby.

Questions by the Applicant

In response to questions by Mr Wallsgrove, Mr Ahmed informed the Sub-Committee that:

- He could see the front door of the pub from his premises; although he had seen people urinating in the car park he had not seen them going back into the pub.
- He did not believe the problems with anti-social behaviour emanated from the pub alone.

The Legal Advisor enquired about the extent of anti-social behaviour, noise from the congregation of groups, noise from vehicles including motorcycles and issues relating to the disposal of bottles and litter.

Mr Ahmed informed the Sub-Committee that he was not aware of issues relating to bottles and litter. About people congregating in the car park he had not seen them coming from the pub, but he had seen people coming out of the pub, getting on motorbikes and into cars before revving their vehicles' engines.

Ms Ford stated that she had seen people outside the premises with bottles when she had been driving past; litter is a concern but not as much as noise and anti-social behaviour. She added that the residents' car park is right by the pub, round the corner and over the road, and the people congregate under the car port when it is raining. At certain times, groups of motorbikes come and park outside, even the pub would accept that fact, and that it does happen late in the evening, and she has seen their drivers coming from the premises.

There were no questions from the Principal Licensing Officer.

Objectors - summing up

Ms Ford informed the Licensing Sub-Committee that it had heard and read the representations from residents. She had attended the hearing in person as she felt very strongly that the application to vary the licence should be refused.

Mr Ahmed informed the Licensing Sub-Committee he had nothing further to add.

Applicant - summing up

Mr Wallsgrove, on behalf of the applicant, informed the Sub-Committee that:

- Mr Becker disputes what residents say about urinating; the pub has plenty of toilets inside and there would be no need for its patrons to indulge in this type of anti-social behaviour.
- Any drug deals or dealing seen by residents of nearby premises does not relate to customers of the Deco; the Police know where they live, and the applicant has helped the Police by providing CCTV footage.
- The applicant also disputes that large numbers of people congregating across the road were drinking from bottles purchased from the premises; the Deco's customers know they cannot take bottles outside and the premises is well managed.

- Four residents have written in support of the application.
- The Police and Environmental Health responsible authorities are experts and neither have objected to the application.
- Residents can call for a review of the licence when they have credible evidence of issues arising from the premises.

The Licensing Sub-Committee adjourned for its deliberations and the hearing resumed at 5.08pm when the following decision with reasons was announced.

Decision

In the matter of: Licensing Act 2003 - Application for variation of a premises licence - Deco, 128 Elm Grove, Southsea, the Licensing Sub-Committee has considered very carefully the application for variation of a premises licence. 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, the provision of late night refreshment and an extension to opening hours at the premises. There had been representations from residents (a total of 13) with 9 objecting and 4 in support. A local councillor had also objected to the extension of hours and proposed an earlier terminal hour. Those objecting raise concerns broadly in relation to the licensing objectives of public nuisance and crime and disorder with issues of concern relating to noise - particularly from motorcycles, groups outside dispersing and / or smoking, anti-social behaviour, litter and urinating in public etc. 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 Sub-Committee heard that conditions had been agreed with the police relating to SIA door staff and use of an ID scanner.

After having heard all of the above evidence the Sub-Committee determined to grant the proposed application in the terms sought.

Reasons

The Licensing Sub-Committee listened very carefully to residents' concerns - 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 expert professional position is that the proposal is not considered likely to undermine the licensing objectives. Weight has to be attached to that position as each are considered the lead in their respective fields.

Clearly the premises is located in an area that has issues of late night anti-social behaviour. However, the Sub-Committee has had to consider how the premises is currently affecting that position and whether the proposed variation is likely to undermine the licensing objectives. The residents have a sincere fear that additional hours will inevitably aggravate the issues of concern.

For the premises, the Sub-Committee heard that the premises is a family-friendly and safe neighbourhood establishment that does not attract or seek to attract younger groups specifically but a mix of patrons. At the current terminal hour a significant number of patrons are forced to leave the premises and migrate to surrounding premises with hours similar to those sought. The intention is to retain those customers and allow gradual dispersal over the additional hours which will actually serve to reduce the anti-social behaviour of groups moving through the area. The manager has 17 years of experience and can be trusted to continue to run the premises in a way that promotes the business. The premises has actively worked with the police to identify others in the locality that have been causing precisely the behaviour complained of. In addition, the police and licensing authority were consulted, and conditions agreed with the police. Temporary events have been run over 8 evenings for the proposed hours and have not resulted in specific complaint. Live music is not intended to extend beyond the current 11.00pm cut-off if the hours are granted. Drinks are not permitted to be taken outside the premises and this is carefully monitored and enforced. Some residents (particularly those living very close to the premises) are wholly supportive of the premises and the application.

The Sub-Committee acknowledges the concerns of residents objecting to the proposed hours and is disappointed to hear that the premises did not engage with residents better before making the application. The Sub-Committee recommends that the premises and residents engage in dialogue to address concerns in future. In the event that the proposed operation of the premises does lead to issues of concern, residents are strongly advised to report matters to the police and environmental health where appropriate. Residents can very much be reassured that there are 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.

On balance and given the range of alternative sources of anti-social behaviour the Sub-Committee was not satisfied that it would be appropriate to restrict the premises' proposed application at this point in time.

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.

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

The hearing concluded at 5.13pm.

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Councillor Scott Payter-Harris
Chair of the Licensing Sub-Committee

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Councillor Scott Payter-Harris
Chair