

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-Committee held on Tuesday, 25 October 2022 at 3.00 pm in the executive meeting room, floor 3 of the Guildhall, Portsmouth

Present

(in the Chair)

Councillors Stuart Brown
 George Madgwick
 Benedict Swann

Apologies for Absence

57. Appointment of Chair

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

58. Apologies

There were no apologies for absence.

59. Declarations of Members' Interest

There were no declarations of Members' interests.

60. Licensing Act 2003 - Application for variation of a premises licence - Sherlock's Bar, 17 Clarendon Road, Southsea, PO5 2ED

NB the hearing is available to view via the Council's website at: [Licensing Sub-Committee meeting 25 October 2022 on Livestream](#)

The Principal Licensing Officer introduced the report, informing the Licensing Sub-Committee that it is asked to consider an application for the variation of a premises licence pursuant to section 35 of the Licensing Act 2003.

The Principal Licensing Officer explained that the matter has been referred to the Licensing Sub-Committee for determination following receipt of relevant representations from Richard Maidment, Principal Regulatory Services Officer, and fifteen local residents.

The Principal Licensing Officer informed the Sub-Committee that the current authorisation authorises alcohol sales and opening hours as Sunday 09:00 until 23:00 and Monday to Saturday 08:00 until 23:00 hours. The Applicant wishes to increase the sale of alcohol until 01:00 hours on Friday and

Saturday and for the opening and closing hours to be increased to the same times. The Applicant also seeks to include additional licensable activities to the licence as follows:

- Live Music - Friday 19:00 to 21:00 hours and Sunday 14:00 to 16:00 hours.
- Recorded Music - Sunday 12:00 until 23:00 hours, Monday to Thursday 17:00 until 23:00 hours, Friday 17:00 until 01:00 hours and on Saturday 12:00 until 01:00 hours.
- Late Night Refreshment - Friday and Saturday 23:00 until 01:00 hours.

The Applicant has detailed in the Operating Schedule the steps intended to support and promote the Licensing Objectives which includes the restriction on persons drinking outside during these extended hours. These can be found in the redacted application form attached as Appendix A of the report. The current licence is attached as Appendix B of the report.

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

- Sherlocks Bar is located at the end of a small parade of shops, bars and eateries on either side of Clarendon Road running east from the Palmerston Road precinct.
- Responsible authorities are automatically notified of all new applications and each responsible authority is an expert in their respective field.
- When determining the variation application, the Licensing Sub-Committee must have regard to the promotion of the Licensing Objectives as well as policy and statutory considerations.
- The proceedings for reviewing premises licences represent a key protection for the community where problems associated with the Licensing Objectives occur after the grant or variation of a premises licence.
- The Applicant has confirmed, by way of amendment of the application, that he is not seeking to make any start times for licensing activities or hours the premises are open later than existing.
- The Applicant has operated to later hours (midnight or 01.00 hours) on five occasions, without complaint, using Temporary Events Notices (TENs)
- One local resident making valid representations had provided a selection of recordings of music and noise but as there was no direct evidence that they related to Sherlocks they had not been accepted.
- The representation from local resident Mr Gutu references a fight but the Police have no record of the incident.

The Principal Licensing Officer informed the Licensing Sub-Committee that he had a list of other licensed premises which he could share with members.

The Principal Licensing Officer explained that planning and licensing are separate regimes. Planning legislation requires consideration of amenity in its decision making whereas licensing legislation involves a process that requires the Licensing Sub-Committee to consider the promotion of the Licensing Objectives in reaching its decision. As they are different regimes, the Sub-Committee cannot take Planning matters into consideration in making its decision.

Members of the Sub-Committee requested a copy of the list of Licensed premises in Clarendon Road (attached as an Appendix to these minutes). He also provided examples of hours of operation for other licenced premises in the vicinity including Moon and Shine 1 (Granada Road) which closes at 03.30 hours Monday to Sunday; Drift Bar (Palmerston Road) which is open until 03.00 hours Sunday to Wednesday and 04.00 hours Thursday to Saturday and Paul's Bar which is closes at 03.00 hours.

Questions by the Licensing Sub-Committee

The Principal Licensing Officer provided the following points of clarification in response to questions by members:

- The Licensing Authority had not received any complaints following the use of TENS.
- He was aware that residents have made complaints to Environmental Health, but no complaints had been made to the Licensing Authority.

Questions by the Applicant

There were no questions.

Questions by Responsible Authorities

There were no questions from the Principal Regulatory Services Officer.

Questions by other persons

In response to questions by Andy Cook, the Principal Licensing Officer clarified that the Licensing Authority would be informed about complaints made to the Environmental Health (Noise) team when the issue was considered extreme. The Principal Regulatory Services Officer clarified further that, generally, this liaison would take place once a Noise Abatement Notice had been served.

The Legal Advisor advised that there was no requirement for complaints to be made directly to the Licensing Authority and that complaints are no less valid for not being submitted to the Licensing Authority.

Andy Cook commented that many of the representations made cited the same problems associated with noise from the premises and that making a complaint takes courage.

Sarah Barrett noted that the list of nine licensed premises circulated included off licenses, restaurants and a fish and chips shop and were not comparable to Sherlocks.

Ross Lucas Young agreed that none of the premises on the list provided are like Sherlocks, adding that the bar is in a heavily residential area unlike the others.

The Applicant's Case

Richard Peckham, representing Sherlocks Bar, made the following points in his representations to the Licensing Sub-Committee:

- The premises has been used for a variety of purposes in recent years and all those businesses have failed.

- Debbie Moorhead and himself had opened the Bar to attract the over-40s and it is one of the few in the city to do this.
- Lockdown had caused setbacks to the business, but it provides local people with jobs and the target market of over-40s is reflected in the staff profile.
- During most of 2021 and the early part of 2022, the Bar held coffee mornings on Tuesdays and Wednesdays to raise money for Spark Community Space.
- Under Covid restrictions the Bar teamed up with the Fisherman's Kitchen to provide a fresh food offering and to help keep both businesses going.
- The Bar supports local music talent by holding live music sessions on a Sunday, and sometimes on a Friday evening, including Molly Scott who recently appeared on The Voice.
- Sherlocks Bar is themed to the Sherlock Holmes series of books.
- Sherlocks was a Finalist in the Portsmouth Excellence awards in 2022, is in the top ten for rankings on Trip Advisor for the area and receives positive feedback in the press.

Questions by the Licensing Sub-Committee

Richard Peckham provided the following points of clarification in response to questions by members:

- The Bar will stop serving food on 13 November as it has not been successful.
- Live music ceases at 21.30 hours and then reverts to recorded music.
- He is also a DJ and so controls the level of music based on what is acceptable at the time, including considering the number of people in the bar.
- Noise attenuation measures include rubber around the door and the speakers above door and windows face into bar.
- The Bar does not have a Noise Management Policy, but he controls the sound level from his position near the door and the music noise level is set so that people in the bar can talk to each other.
- He has videos of music being measured using a decibel reader on his iPhone.
- He is keen to work with residents and the Licensing Authority including adopting a Noise Management Policy if necessary.
- Bottles are stored in the Bar and when storage buckets are full, they are taken to the back of the premises; bottles are emptied into the bottle bin once a week during the day before collection.
- There is a base bin, but it is turned down.
- The Bar does not employ SIA Door Staff but as owner of the premises he would be prepared to take the exam to qualify as a SIA Door Supervisor.
- The judgment of what is an 'acceptable' level of noise is down to Ms Moorhead and himself and is set so that customers can talk.
- Children are not frequent visitors to the Bar but when they do come in, they are asked not to run around and generally leave by 21.00 hours unless it is a special event.
- There is no formal policy in relation to children being permitted on the premises.

- There was no set capacity for the premises but 70 people can sit down in the venue and when there are 70 people present, he stops more coming in.

Questions by Responsible Authorities

- There were no questions from the Principal Regulatory Services Officer.

Questions by other persons

Andy Cook commented that he had emailed suggestions for a formal Noise Management Policy and other ideas to help mitigate noise from the premises in July 2022 and had received no response. He added that it was not fair to say that Mr Peckham was willing to work with residents and that footage on Sherlocks social media pages showed people singing along to music and shouting at top of their voices and that the management did not exercise control at the premises.

In response, Richard Peckham provided members of the Sub-Committee with a series of email exchanges about noise complaints by Mr Cook and his responses which he noted welcomed constructive dialogue with his neighbours. These emails were dated 25 July 2021 (from Mr Cook), 27 July 2021 (from Mr Peckham), 29 July 2021 (from Mr Cook) and 11 September 2021 (from Mr Peckham). Mr Peckham read the email exchange in full.

Richard Peckham also referred to and circulated a letter from Environmental Health dated 25 June 2021 which noted that some complaints may be "exaggerated or mistaken". Richard Peckham explained further that until 19 July 2021 they had not been able to close the door due to covid restrictions and that he always walked around the premises to monitor noise from the Bar.

In response to the email received from Andy Cook in July 2022, he had informed Jason Ellam in the Licensing Team that he would not reply to Mr Cook direct as he had already informed the Licensing Authority that he would be looking to extend the premises licence and felt it would be inappropriate to respond during the process.

As additional information had been circulated, the Chair invited members of the Licensing Sub-Committee to ask further questions before reverting to questions by local residents.

In response to members questions, Richard Peckham clarified that when taking his own meter readings from outside the premises, he would see levels of 70 decibels (dB) with the door closed and 80-90 dB with it open but that there was also the noise of cars going past.

Andy Cook, in response to a question from members, explained that the email exchange from July 2021 that Mr Peckham had read out was not the email he had mentioned earlier. That email had been sent on 4 July 2022 in response to intolerable noise on 3 July 2022 and he had not received a response from the Applicant. Andy Cook provided a copy of the email to the Licensing Sub-Committee and confirmed that the suggestion about a Noise Management Policy and other measures stemmed from July 2022, not 2021. Mr Cook read out an email to the Licensing Sub-Committee and explained that music noise

is not the only issue; noise from customers sitting outside, talking and shouting, and customers walking down the road hailing cars and causing a commotion when they leave the premises is unacceptable.

Richard Peckham confirmed that he had informed the Licensing Team and Environmental Health (Mr Maidment) that he did not intend to reply to Mr Cook in July 2022 as he was seeking to extend his licence. He added that the email of 4 July was dated 10 months after Mr Cook's previous complaint and had been received the day after his application to extend the licence.

The Principal Licensing Officer informed the Licensing Sub-Committee that Jason Ellam, Licensing Officer was dealing with Mr Peckham in relation to complaints about the use of the pavement outside the premises. There were concerns that people had not remained within the privately owned area and had encroached onto the public pavement area.

Ross Lucas-Young commented that it was odd that Sherlocks was seeking to extend the licence in the knowledge that there were already concerns about noise, especially in relation to customers drinking and smoking outside. Richard Peckham noted that the only complaints he was aware of at the time had come from Andy Cook and his partner Sarah Barrett.

Sarah Barrett noted that throughout the 10-month gap between emails sent to Sherlocks direct, she had been making complaints to Environmental Health. Richard Maidment as Principal Regulatory Services Officer confirmed that he had received a number of complaints from Ms Barrett.

In response to further questions from the Licensing Sub-Committee, Richard Peckham clarified that:

- He has some recordings of decibel readings on his phone.
- There would be no drinking outside during the extended hours sought, the tables and chairs could be put away and he was happy to work with the Licensing Authority.

It was clarified that two videos of decibel recordings made by the Applicant had been circulated to all parties before the hearing. However, there was some doubt that all parties had been able to see it. The Licensing Sub-Committee decided to see the videos of decibel readings.

The Legal Advisor noted that several documents, including emails and a copy of a document produced by the British Beer & Pub Association relating to Noise Control had been exchanged. He noted that no parties present had made any objection to the circulation of these documents and that although it is usual for all information to be circulated to all parties in advance so that they could formulate a reply, both the Applicant and Objectors had benefitted in this case from this late evidence. No party to the hearing objected to the documents already handed to the Sub-Committee being taken into consideration.

The Chair asked if there was any other evidence that anyone would like to share.

- Andy Cook stated that he had made notes for his submission to the Sub-Committee, that this included photographs of the area and he had a video of the outside of the premises.
- Richard Peckham informed the Sub-Committee that he had some additional letters of support to share.

The Chair noted that a map of the area and photographs of the premises had been included in the pack of papers circulated for the meeting. The Legal Advisor explained that the submission of all new documentary evidence needed the agreement of all parties. Mr Peckham said he would reference the information in his summing up.

The Principal Licensing Officer played the videos of decibel monitoring provided by the Applicant.

Video 1 - 5.36 minutes in length showed the Applicant walk from inside premises up and down the road, with door open and closed while music played inside.

Councillor George Madgwick asked to confer with the Legal Advisor on a legal matter. On return to the hearing the Legal Advisor informed those present that Councillor Madgwick had enquired to what extent members of the Sub-Committee can utilise personal knowledge during the proceedings. He had advised that members must not introduce their own evidence into the proceedings but that they may use their own knowledge, whatever that may be, to ask pertinent questions.

Video 2 - 2.21 minutes in length started inside the premises and showed meter readings outside neighbours' properties before moving to the back entrance in Stanley Street and re-entering the premises with music being played throughout.

The Chair asked if there were any final questions. There were no questions from members of the Licensing Sub-Committee or the Responsible Authorities.

Ross Lucas-Young commented that decibel meter readers of iPhone are omnidirectional with very limited capability, and he questioned the value of the information in the video. Councillor Madgwick noted this was a valid point but that technical questions should be directed to Mr Maidment rather than the Applicant.

Richard Peckham commented that during the tests shown in the video, the music in the Bar had been turned up to its maximum volume.

Representations by Responsible Authorities

Richard Maidment, Principal Regulatory Services Officer (Environmental Health - Noise) in making his statement to the Licensing Sub-Committee included the following points:

- Sherlocks Bar is the last commercial premises at the end of a row of shops, offices and restaurants located the very beginning of Clarendon

Road which from this point onwards is entirely residential until it meets Granada Road.

- There is a 4-storey residential block directly opposite the premises with windows directly overlooking the front facade and the entrance.
- These suggest that this is a sensitive location in terms of potential public nuisance.
- In comparison with other licensed premises in the locality, the only similar premises is the Agora Restaurant which stays open till 01.00 hours; the others are a fair distance away.
- Environment Health has had no complaints about the Agora restaurant but there are problems relating to Moon and Sine and Paul's Bar with ongoing investigations in relation to these premises.
- Clarendon Road is not like Palmerston Road which is a night-time economy area.
- It is important to prevent the night-time economy area spreading into the immediate residential localities.
- The original authorised use of the premises was for a retail shop or office.
- In early 2017 an application was put in for a change of use to A3 café/ restaurant which was refused on the grounds that due its proximity to residential properties the proposed use would likely give rise to undue disturbance to the detriment of the amenity of existing or future occupiers of nearby dwellings.
- In March 2017 a change of use was granted to A3 café/ restaurant which is the current use; one of the conditions being that the restaurant/ cafe shall be closed and vacated of customers between 23.00 and 08.00 Sunday to Friday and 23.00 to 09.00 Saturday to Sunday.
- This condition aims to protect residential amenity from excessive noise and disturbance in accordance with Policy PCS 23 of the Portsmouth Plan.
- This application would be a direct contradiction of the decision of the Planning Committee.
- The proposed variation would also seem to be a change of use of the premises from a restaurant to a drinking establishment or possibly a nightclub and this may require further planning permission.
- Since 2021, Environmental Health has received noise complaints regarding these premises.
- These complaints relate to loud music including live acts, karaoke, DJs and the boisterous behaviour of customers drinking outside the premises including when they leave the premises at closing time.
- The number of objections received to the application substantially exceeds the number of complaints Environmental Health usually receives about this premises.
- This may be because residents know that currently the noise will end at 23.00 hours but that this application will have the effect of extending the disturbance to 01.00 hours at weekends.
- The number of objections therefore reflects the strength of feeling in the locality.
- Having reviewed the Applicant's video, the use of a phone app does not provide accurate readings as it not a calibrated scientific instrument.
- Some of the readings shown in the video were at levels of 90-100 dB which would be excruciating and require ear defenders.

- The only value of the video is to show that it is possible to play music in the venue without disturbing the neighbourhood.
- There are several videos of performances / entertainment on the Bar's Facebook page which seem to be louder than the level of the music being played in the test video although it is difficult to make an accurate assessment as use of a reference tone is needed.
- The Applicant has offered to close the doors and not allow any outside drinking from 23.00 to 01.00 hours, but as people enter and leave the premises or go outside to smoke, music noise bursts out.
- The front side of the venue is entirely single glazed offering little in the way of noise attenuation especially low frequency bass and there is no lobby.
- Noise control is totally reliant upon manual volume control and there is no information about what an 'acceptable' level is.
- The premises is at the periphery of a commercial area and adjacent to a high concentration of residential dwellings and the sensitive nature of the area is supported by the condition imposed by the planning permission to protect residents from excessive noise and disturbance in accordance with Council policy.
- Environmental Health has already received complaints about loud music and rowdy behaviour of customers leaving the premises at closing time which will now potentially be extended from 23.00 hours to 01.00 hours at weekends.
- Environmental Health anticipates there will be an increased number of complaints if the variation is allowed.
- No improvements to sound insulation have been proposed to contain music breaking out of the premises and the only proposed mitigation measures may prevent customers drinking outside the premises after 23.00 hours.
- The premises are unsuitable for further variation and the premises licence should reflect the timings originally granted by the planning permission.

The Legal Advisor advised that the Licensing Sub-Committee may not attach any weight to the current planning position and that reference to the current planning restrictions are indicative of the nature of the area. The application must be determined on the Licencing Objectives only. The planning authority is a responsible authority, is consulted and can make representations. However, the Sub-Committee cannot take into account planning considerations. The two regulatory systems run in parallel to each other and having the benefit of one permission does not guarantee the other will be granted likewise. As the Licencing Officer outlined when he introduced the report, if the licence was granted today the applicant would still be required to separately obtain the relevant planning permission to operate lawfully.

Questions by the Licensing Sub-Committee

In response to questions, the Principal Regulatory Services Officer clarified that:

- To obtain accurate readings, there would need to be a reference tone recorded simultaneously with the music on the sound level meter.
- For decibels, if a logarithmic scale is used, when a sound is perceived to double in loudness, this corresponds to roughly an increase of 10 dB.

- A reading of 90 dB could be expected in major night clubs and would require ear defenders; a more usual level would be 80 dB.
- The premises has attracted multiple complaints from three individuals, the first in 2020, the latest on 9 September 2022.
- A Noise Abatement Notice has not been served as officers have not been able to access the complainant's premises at the time of the noise to assess nuisance.
- The main concern with the application is the proposed extension of hours by two hours in an inappropriate location.
- A Statutory Noise Nuisance is dealt with under the Environmental Protection Act 1990 and may result in a Noise Abatement Notice and this may arise from noise nuisance at any time of the day or night; the Night Noise Act 1996 relates to complaints of noise, including from licensed premises, between 23.00 hours and 07.00 hours.
- The premises has A3 planning permission; this class along with others was swept away in 2020 with changes to Town and Country Planning regulations when pubs and bars became part of the Sui Generis Use Class; the premises is therefore likely to need new planning permission.

The Legal Advisor reminded the Licensing Sub-Committee that planning matters were not for consideration by the Sub-Committee.

In response to further questions, the Principal Regulatory Services Officer explained:

- An 'acceptable' music level for a bar is dependent on the venue, the level of insulation and other factors; it would need to be measured but is likely to be above 75 dB otherwise it would not be heard above people talking.
- Environmental Health officers had not been able to enter complainants' properties as these are reactive visits and there is only one officer on duty. Complaints had been made after the event.
- Anyone making a complaint is provided with the out of hours number to call in the event of further nuisance.

The Legal Advisor sought clarification on the number of complaints made. The Principal Regulatory Services Officer clarified that although three individuals had made complaints, the complaints came from two households.

Questions by the Applicant

Richard Peckham did not ask questions. However, he explained that Sherlocks Bar would stop serving food from 13 November 2022, is currently a bar and restaurant and that they would put in a planning application for change of use if necessary.

Questions by other persons

Andy Cook commented that he did not think the videos were a fair test of the noise generated by the premises and that the Facebook videos showing singing and shouting in the Bar were more representative.

In response to questions from Andy Cook, the Principal Regulatory Services Officer:

- Confirmed that the videos were not very helpful without a reference tone level.
- The number of people in the bar has an effect, as with an increased number of people there is more absorption so the level can creep up unless controlled.

Andy Cook enquired whether the current licence is appropriate in relation to the outside area which is one paving slab wide and given that large numbers of people congregate there and can be noisy and rowdy.

The Principal Licensing Officer explained that the area immediately outside the premises is owned by the property and the Licensing Authority has no jurisdiction over it. If tables and chairs are on the public highway, then the Policy across Portsmouth is that outside spaces must close at 21.00 hours with furniture being removed.

The Legal Advisor sought confirmation that the Applicant had offered to close the outside area at 21.00 hours. Richard Peckham said that he would make his position clear in his summing up.

The Principal Licensing Officer added that he believed the Applicant would offer some compromises on the application at some stage during the hearing.

The Principal Licensing Officer confirmed that the Applicant would be able to use the area until 23.00 hours if the application to vary the premises licence was granted as applied for.

In response to a question from the Licensing Sub-Committee, the Principal Licensing Officer confirmed that the Sub-Committee may, having heard all the evidence and representations, take any steps it considers appropriate for the promotion of the Licensing Objectives and that this includes granting or rejecting the whole or part of the application, adding, altering or modifying the conditions of the licence.

The Chair commented that once the Sub-Committee heard the entire case, it would retire and make an appropriate judgement based on all the evidence.

The Chair then asked the other persons present to address further questions, if any, to the Principal Regulatory Services Officer.

Andy Cook enquired about the enforcement of the outside space, noting that Sherlocks Bar is the only establishment in Southsea that allows people to sit outside until 23.00 hours.

The Legal Advisor advised that the Sub-Committee had heard that the outside space is not part of the highway and that the location of the tables and chairs is private property so there is no obstruction of the highway by those tables and chairs. If patrons spill out beyond that area, then they are personally and privately potentially creating an obstruction of the highway.

Andy Cook informed the Licensing Sub-Committee that he had submitted a video showing people sitting at the tables and chairs and the obstruction to the doorway of number 17 and asked if this was reasonable.

The Principal Regulatory Services Officer stated that he was not able to answer the question and the Legal Advisor advised that the point had been noted and that the Applicant had said he would cover it in his summing up.

The Licensing Sub-Committee agreed to see the video supplied by Andy Cook.

Video 3 - 10 seconds in length showing people sitting at tables and chairs beyond the grey area marking the private property area.

Richard Peckham noted that when patrons move chairs off the grey tiles, he or his staff ask patrons to move their chairs back inside the area.

The Chair suggested a 10-minute adjournment at 5.00pm. The hearing reconvened at 5.09pm when all parties had returned except James Froggatt (local resident) who left the meeting during the adjournment.

The Objector's Case

The Chair invited Sarah Barrett to make her statement to the Sub-Committee. In so doing, Sarah Barrett, local resident, included the following points in her representations:

- It has been interesting to see the other objections from other neighbours, all 16 of whom complain about the same things that are occurring right now within the existing opening hours at the Bar.
- This includes noise emanating from within and outside Sherlocks, unruly unmanaged behaviour related to customers and the negative effects this has on well-being and health of residents.
- There will be more than 16 residents affected, these are just the neighbours who saw the notice and had the courage to make their objections known.
- There were five letters expressing support for this application but four are not from local residents and one is new and not a tenured resident.
- Her first noise complaint was logged in 2021, around the time the Bar truly opened up after lockdown so the issues have been going on for about 18 months.
- She has had to resort to taking sleeping tablets and wearing uncomfortable ear plugs to sleep.
- Even though her home is glazed with acoustic glass, the noise of the music and deep bass permeates the inadequate glass frontage of the Bar and the customers sitting outside on the so-called sun terrace are often drunk, loud and argumentative.
- There are bursts of noise as music escapes every time the door is opened and there is no lobby area to help contain the noise.
- In warmer weather it is not possible to sleep with the windows open.
- The noise over the weekend and late into Sunday night is unbearable and the Bar uses marketing and cheap drink promotions to create a nightclub

atmosphere which can be evidenced by the many customers dancing in the bar as seen its own social media.

- Extending the licence to 01.00 hours will only serve to reinforce the nightclub vibe and put extra pressure on an already stretched Police force which concentrates its policing of late-night establishments in Palmerston Road South.
- The establishments in Palmerston Road South have a condition to clear customers from outside by 21.00 hours.
- Mr Peckham's suggestion that having a senior manager marshalling the front door will not sufficiently manage the noise pollution from intoxicated customers entering and exiting the premises or from smokers congregating outside especially when even more alcohol is likely to have been consumed by drinkers, nor will it help manage the noise of people arriving and departing which is likely to continue well past 01.00 hours.
- Walking past Sherlocks is an anxious and intimidating experience especially when its customers spill over onto the pavement causing an obstruction.
- It may not be possible for her to carry on living in Clarendon Road and other residents feel the same.
- The prospect that the current issues may continue into the early hours of the morning on Friday and Saturday nights is not reasonable.

Questions by the Licensing Sub-Committee

There were no questions from the Licensing Sub-Committee.

Questions by Responsible Authorities.

There were none.

Questions by the Applicant

The Applicant stated that he would address questions to Ms Barrett and Mr Cook together as they shared a household.

Questions by other persons

In response to a question by Ross Lucas-Young, local resident, Sarah Barrett confirmed that as the space available on the pavement outside Sherlocks is often narrowed by patrons sitting at the tables outside, it can be intimidating to walk past to get to her home. She added that Mr Peckham is also often outside the premises and his presence can also be intimidating as he knows she has made complaints about noise from the premises.

Andy Cook, local resident, then made his statement to the Licensing Sub-Committee, stating that there are three main reasons for objecting to the application to vary the licence, including:

- Inappropriate location and nature of the premises in a residential area.
- Lack of noise management.
- Detrimental impact on the lives of local residents.

Mr Cook then amplified these comments, including the following in his statement to the Sub-Committee:

- This is an inappropriate location for a premises of this nature due to the high number and density of residential properties.

- The distance between the premises and the homes of residents, including his own, is about 10 paces and the block of flats opposite Sherlocks Bar acts as a massive sound reflecting surface.
- The sound reverberates around the locality and is even more of an issue at night as ambient noise levels reduce.
- The premises used to be a chocolate shop which was appropriate for this area.
- There is no lobby and every time the door is opened, noise bursts out into the local environment.
- Mr Peckham has committed to closing the door, but it cannot be closed permanently as it is the only entrance to the Bar.
- The front of the premises is single glazed and offers very little in the way of sound protection.
- The Sub-Committee has seen a video about the use of the outside space as a beer garden which is inappropriate for its size and patrons do not remain on the grey tiles when sitting at the tables and chairs.
- He supported the Environmental Health Officer's view not to support this application.
- There is a lack of policing in the area and when it is policed it is limited to Palmerston Road South.
- He had not made any complaints about other premises in the area including Agora and Sant-Yago.
- Sherlocks is the only establishment that has people sitting outside and drinking until late at night and this combined with blocked doorways and pavements shows that the whole outside space is unmanaged.
- This represents persistent breaches of the existing terms of the licence and the Bar has generated a string of complaints going back to 2020.
- These complaints relate to loud and prolonged shouting and singing from inside the bar until late at night, no supervision of the outside space and large groups drinking, shouting and swearing beyond 23.00 hours.
- There is also the noise of customers leaving the premises, fights have taken place and taxis turn up and sound their horn.
- The nature of this business is about getting people in at lunchtime, bringing in some live music then selling customers cheap drinks to keep them there until late into the evening.
- On two separate occasions he had seen people urinating in the garden next door and this was also mentioned in the submission from Stephen Gutu, local resident.
- There have been 16 objections to this complaint from residents, many of whom are elderly or have international backgrounds and do not want to complain but this process drawn out the strength of feeling about the Bar within the local community.
- Some residents say they cannot use some rooms in their own homes, they cannot use their gardens or sleep and may be driven to moving away.
- It is completely unreasonable to be disturbed until 23.00 hours on a Sunday and a late licence would only compound the misery and be a disaster for the local community.

Questions by the Licensing Sub-Committee

There were none.

Questions by the Applicant

Richard Peckham asked Andy Cook and Sarah Barrett for proof of anti-social behaviour, arguments and physical violence relating to Sherlocks and proof that they could hear the music from the Bar in every room in their house.

Andy Cook informed the Sub-Committee that Sarah Barrett had submitted sound recordings from inside their house and that both he and his neighbour had personally seen people urinating in the garden. It was hard to get evidence and when he had gone outside to take a video the other night, he had been accosted by the Applicant.

The Licensing Sub-Committee sought clarification about the weight they should attach to the lack of representations from the Police.

The Legal Advisor advised that it was relevant that the Police had not made representations as it was, in effect, support for the application. This was therefore a material factor for the Sub-Committee to consider as the Police takes the lead on crime and disorder issues.

The Legal Advisor sought confirmation from Mr Cook that he had witnessed individuals on two occasions urinating in his next-door neighbour's garden and whether he actually saw where they had come from.

Andy Cook confirmed that he had witnessed the two incidents and that they came from Sherlocks. In one case, the individual came out of the front of the Bar, went into the garden and was seen coming out pulling his trousers up before getting into a taxi. On both occasions they were customers of Sherlocks.

Richard Peckham challenged this account as Mr Cook's house is set back and he would not be able to see where people had come from. Andy Cook responded that there were in fact three occasions as he had seen two, both from outside his house, and his neighbour had reported a third separate event. He had not recorded the events.

Sarah Barrett informed the Sub-Committee that she had called the night noise team on two occasions. The first call did not register and the second time there was no answer, so she had left a message. Sarah Barrett had made sound recordings of noise from inside her house, but these had not been accepted, adding that no-one making representations would have done so if the problems had not been real.

Richard Peckham commented that he had read everything submitted to the Sub-Committee, but he could not see the proof of problems arising from Sherlocks.

Sarah Barrett reiterated that she had submitted sound recordings at the start of the process, but they had not been accepted.

In response to a question from the Chair, the Principal Regulatory Services Officer could not immediately confirm whether he had received the recordings but noted there had been considerable correspondence.

Questions by other persons

Ross Lucas-Young asked about the relevance of the question from the Legal Advisor that two complainants lodging complaints to Environmental Health came from the same household.

The Legal Advisor responded that the question had been asked so that the Sub-Committee could be fully appraised of the facts. He added that if two people are living in the same property they are likely to be of the same opinion and experiencing the same issues. There is nothing to say that any less weight ought to be attached to complaints because the two individuals making representations live at the same property. Mr Lucas-Young commented that two people living at the same address need not have the same views and should be treated as individuals.

The Licensing Sub-Committee then heard from Ross Lucas-Young, local resident. Ross Lucas-Young included the following in his statement:

- The shops in Clarendon Road were originally attached to residential properties and when built in 1910 had covenants on them which precluded their use as a drinking establishment.
- The Victorians understood that it was not desirable to have bars running alongside residential properties.
- Change of use under planning is a totally separate issue but this area is being poorly managed by planning, it has been let down by licencing and the only sensible comments heard today have come from the Environmental Health officer.
- Those comments recognise this is a particular area affected late into the evening by noise issues.
- Although the noise from the Bar had been nuisance in the past, he had not complained as he had concluded that a certain amount of noise is consistent with living in an inner-city area.
- However, the number of complaints received over a two-year period show that this is not being controlled properly and that extending the licence to 01.00 hours when surrounded by hundreds of residential properties is the final straw.
- There have been 16 complaints and, from talking to other residents, he believed that had more people been aware of the application there would have been more representations.

Questions by the Licensing Sub-Committee

Ross Lucas-Young provided the following points of clarification to questions:

- The Bar is not being run well, there are people sitting at tables and chairs all over the pavement and this is not being enforced by the management or the Police.
- Although he could live with music to 23.00 hours, an extension of the licence was not acceptable.

Questions by the Applicant

In response to questions by the Applicant, Ross Lucas-Young clarified that:

- He did not live in Stanley Street, that was Mr Froggatt who had left the hearing earlier.
- He could offer no proof that excessive noise and nuisance came from the premises.

Questions by other persons

In response to a question by Andy Cook, the Legal Advisor advised that it was not helpful to reflect on who had or had not made representations and it was conjecture as to why they had not made representations.

Questions by the Licensing Sub-Committee

Members of the Licensing Sub-Committee then sought points of clarification from the Principal Licensing Officer, including:

- The current licence is attached to the report at Appendix B.
- The provision of recorded music in licensed premises was not to be regarded as a licensable activity if it took place between 08.00 hours and 23.00 hours.
- Sherlocks Bar had applied for and been granted TENs for events on 31 December 2020/21 (to 01.00 hours), 22 July 22 (to midnight), 31 December 2021/22 (to 01.00 hours), 23 September 2022 (to midnight) and one TEN is pending and has been approved.
- One TEN had been refused (for 12 December 2020), not because the Police or Environmental Health objected, but because of the coronavirus regulations in place at the time.
- The Police and Environmental Health are the only Responsible Authorities which can object to TENs.

The Licensing Sub-Committee sought further information about TENs from the Principal Regulatory Services Officer. In response to questions, the officer confirmed that DCMS guidance requires a light touch approach, that Environmental Health accepts that premises will have late night events and will not intervene unless there is a Noise Abatement Notice in place, or it has evidence of potential problems from a premises. TENs events are occasional and do not take place every week.

The Principal Licensing Officer confirmed that a premises may apply for up to 15 TENs each year.

Sarah Barrett asked questions about the TENs process. The Legal Advisor confirmed that it is only the Police or Environmental Health that can object to a TEN and that they can object on any of the Licencing Objective grounds. The four Licensing Objectives are set out in the report, and these are the factors that the Sub-Committee will have in mind when they make their determination.

Summing up by the Licensing Authority

The Principal Licensing Officer reminded the Licensing Sub-Committee that if problems occur linked to the granting of the variation, then the premises can be called in for review.

Summing up Responsible Authorities

The Principal Regulatory Services Officer had nothing to add.

Summing up by other persons

Andy Cook commented that the Applicant had suggested that he and Ms Barrett were the only complainants. The 15 other representations objecting to the application should have equivalent weight. He had not made complaints about other establishments in Clarendon Road.

Summing up by the Applicant

Richard Peckham included the following in his summing up:

- The Police had not received complaints about the premises and had not made representations.
- The premises had not received any Noise Abatement Notices.
- Other premises along Clarendon Road have later hours than Sherlocks, including Sant-Yago, Agora, Deco and a new bar which has just opened two doors away from the Bar and Sherlocks' licence was an anomaly.
- Before opening as Sherlocks, the premises had previously been a cafe bar and a chocolate lounge with a licence to 23.00 hours and before that it was a haberdashery.
- Sherlocks opened in May 2020 and Mr Cook and Ms Barrett moved in around July as they came into the Bar and had a friendly conversation with him.
- He had always engaged in a very positive manner with the neighbours, had always been respectful of any concerns and had never raised his voice to his neighbours.
- The Bar is very well regarded on Trip Advisor and Google rankings.
- He understands that neighbours have concerns, including about the door opening.
- Having listened to the comments and having read all the representations and following the experience of holding events using TENs without complaint, Sherlocks would settle for a closing time of midnight.
- In addition, the benches have been removed from the outside area and brand-new tables and chairs are now in use now and these can be locked away.
- The management asks patrons to move back into the private outside space.
- Closing the outside space at 22.00-22.30 in the summer or earlier in the winter would be reasonable.
- Sherlocks had not been aware of the level of concern about noise or complaints until this process and he would therefore like to provide his mobile telephone number to residents so that they can contact him, and issues can be dealt with immediately.
- There is always a senior member of staff at the door to greet customers and say goodbye and there is a sign asking customers to leave quietly.
- There is not a set level for music, but it is kept at a reasonable level and is reduced when needed.
- He would be happy not to serve drinks outside after 23.00 hours and will make a notice asking people to be respectful of our neighbours.

- He has the details of SIA exams and would be willing to take the exam although he is aware that there is a considerable backlog and it could take some time to arrange.
- They have taken the hearing very seriously as their livelihood is a stake.
- Someone from Sherlocks attends Pubwatch meetings and offers proposals to help improve the area.
- They understand that the decision today could be reviewed.
- They are trying to run a successful premises, have a 10-year lease and employ local people in a family run business.
- They had applied for the variation to the premises licence as their patrons want to stay longer.
- Before 16 September, they had no idea some residents were concerned about the Bar, so they had approached some neighbours for letters of support. The letters had indicated attempts to generate objection.

Members of the Licensing Sub-Committee expressed concern when Richard Peckham started reading from letters he had received, and which had not been submitted to the Sub-Committee in advance. The Legal Advisor confirmed that the time for the admission of new evidence had passed but that general comments were appropriate as part of summing up.

Richard Peckham commented that he had received letters of support from three local neighbours in addition to the others included in the in the pack of information for the hearing.

Sarah Barrett noted that it was not possible to know whether the new letters were legitimate and that they amounted to new evidence.

The Principal Licensing Officer informed the Licensing Sub-Committee that in coming to its decision the Licensing Sub-Committee may only impose conditions that are proportionate. He added that in relation to SIA door supervisors, the Applicant could not hold a dual role of SIA door supervisor and owner.

The Licensing Sub-Committee adjourned for deliberations at 6.16pm and resumed to announce its decision at 7.40pm. The Principal Regulatory Services Officer (Environmental Health - Noise), Sarah Barrett, Andy Cook and Ross Lucas-Young (local residents) left the meeting and were not present for the decision.

In the matter of: Licensing Act 2003 - Application for variation of a premises licence - Sherlocks Bar, 17 Clarendon Road, Southsea, PO5 2ED

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

Decision

The Licensing Sub-Committee has considered very carefully the application for variation of a premises licence at Sherlocks Bar. 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, to add live music, recorded music, late night refreshment and an extension to opening hours at the premises. There had been representations from residents or other persons - a total of 20, with 15 objecting and 5 in support.

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 live and recorded music later in the evening as well as use of the smoking area, anti-social behaviour, obstruction of the pavement, patrons urinating, litter, fighting and arguing in a residential area.

A representation was received from Environmental Health citing the prevention of public nuisance objective. It confirms that complaints have been received to the service and outlines concerns about the location and lack of attenuation measures as well as the residential nature of the area.

A representation from planning has identified certain planning issues, not least existing conditions restricting timings.

The Applicant indicated an acceptance of midnight as a terminal hour rather than 01.00 hours as applied for and acceptable timings for use of the outside area, at the Sub-Committee's discretion.

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

The sale/ supply of alcohol shall cease at midnight on Fridays and Saturdays (other timings to remain as licensed).

The provision of live and recorded music at the premises shall cease at 23.00 hours on Fridays and Saturdays and be granted as otherwise applied for (to this extent the application to extend is in effect refused, noting the impact of the Live Music Act 2012 which exempts such provision until 23.00 hours during hours that the sale/ supply of alcohol is permitted).

Late night refreshment shall cease at midnight on Fridays and Saturdays.

Use of the tables and chairs outside the front of the premises, abutting the pavement shall cease at 22.00 hours every day and be secured to prevent use after that time.

The Applicant shall adopt a noise management plan to be agreed, in writing, by Environmental Health and the Licensing Authority prior to the commencement of licensable activities in accordance with the variation approval.

Reasons

Sherlocks Bar is located at the end of a small parade of shops, bars and food led premises on either side of Clarendon Road running east from Palmerston Road precinct.

Sixteen representations have been received against the application. One representation is from Regulatory Services, a responsible authority, and fifteen from local residents, objecting to the extended hours due to noise and anti-social behaviour at the premises. Five support representations have been received.

The Sub-Committee listened very carefully to residents' concerns - and has balanced 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 in particular.

The Sub-Committee has had to take account of the fact that no representation has been received from the Police and therefore the inference being that their expert professional position is that the proposal is not considered likely to undermine the crime and disorder licensing objective.

The Sub-Committee was of the view that the premises is located in proximity to residential properties and is not suited to the provision of late night live or recorded music. The frontage is single glazed, there is no entrance lobby or double door to ameliorate noise escape and the structure of the building does not lend itself to such use.

Whilst the Licensing Sub-Committee heard that steps had been taken (eg. speakers facing inwards and away from the door and windows at the premises) there was no formal noise management plan or significant or appropriate means of preventing noise escape. This is particularly the case when the door to the premises is opened.

Many of the concerns raised by residents related to use of the outside space and restricting this to 22.00 was considered appropriate and proportionate in all the circumstances.

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.

Planning issues have not been taken into consideration and the Applicant is reminded that separate planning approval must be in place in addition to any licence.

Other premises' timings have been raised but the Sub-Committee ultimately decided the application on its own merits.

The requirement for SIA doorstaff was considered but felt inappropriate and disproportionate for a venue of this size and given the financial impact.

It is recommended that the Applicant clarifies the capacity of the premises for fire safety purposes. Further it is recommended that a formal policy in relation to children being permitted on the premises be adopted and implemented. For the avoidance of doubt, these are not conditions of the licence.

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 7.49 pm.

Chair