

## LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-Committee held on Monday, 9 October 2023 at 10.00 am in the Executive Meeting Room, floor 3 of the Guildhall, Portsmouth

### Present

Councillor Stuart Brown (in the Chair)

Councillors Yinka Adeniran  
Emily Strudwick

#### **53. Appointment of Chair**

Councillor Stuart Brown was duly appointed as Chair for the meeting.

#### **54. Declarations of Interest**

There were no declarations of interest.

#### **55. Licensing Act 2003 - Application for variation of a premises licence - Southsea Brunch Klub, 119 Elm Grove, Southsea, PO5 1LH**

##### Also Present:

Ben Attrill - PCC Legal Advisor

Derek Stone - PCC Licensing Officer

Steve Hudson - Applicant

John Wallsgrove - Applicant's legal representative

Michael Cross - Local Resident

Laura Cook - Local Resident

Adrian Bird - Local Resident

#### **Summary of Application and Representations**

The Licensing Manager presented the report the purpose of which was for the committee to consider an application for the variation of a premises licences pursuant to section 35 of the Licensing Act 2003. The matter had been referred to the committee for determination following receipt of relevant representations from a number of local residents.

The Licensing Officer outlined the variations applied for, the background to the application and the history of the premises. He noted the Police had requested an amendment on the CCTV conditions which had been done, the Police then having no further objections.

The Licensing Officer advised that on Wednesday 4 October 2023 a further video clip had been received which would be shown to the Panel. The Applicant had seen the clip. The panel was also provided with a photograph taken on 19 August from outside the launderette on Elm Grove. An additional

email had been received that morning regarding a noise issue over the weekend and this had been shared with the Applicant and his legal representative.

The Legal Advisor noted there had also been a direct email sent by a resident to the panel members which had been shared with the Applicant's legal advisor with no objections being raised.

#### Members' questions to Licensing Manager

In response to questions the Licensing Manager clarified:

- An application to vary a licence retrospectively shouldn't happen - the situation was quite a rare occurrence as Licensing would want to inspect the premises and ensure the variation is suitable.
- The council policy on late-night venues around the city only relates to the control zone around the Guildhall Walk area where there is a restriction on the number of premises.
- In its current ownership, the venue had received some complaints around noise resulting in a visit from Public Protection. The Licensing Manager visited one Saturday lunchtime and observed the door to be open which was a minor breach of a condition that the door should be shut.
- None of the responsible authorities had made a representation in relation to the application.
- Licensing is not able / the relevant authority to enforce in relation to the LED sign in the photograph submitted in one of the representations.
- There are a number of other licensed premises in the area some of which are licensed to 3am or 4am.

#### Applicant questions to Licensing Manager

There were no questions.

#### Other Persons' questions to Licensing Manager

In response to questions the Licensing Manager clarified:

- The licensing authority's interpretation of 70 seats was that it meant the same as 70 covers.
- The licence for the premises was last amended in November 2022.
- When the application was submitted all responsible authorities would have been notified. The fire authority has made no representation on the application and fire regulations are not enforced by the licensing authority.

The legal officer advised all parties that only matters that had been raised in the written submissions, either during the initial consultation period or submitted through the course of the proceedings (before the hearing) could be

relied on during the hearing. Parties to the proceedings could only expand upon points or issues already raised in written submissions.

### **The Applicant's Case**

The Applicant's solicitor set out the Applicant's case.

He noted the application can be granted as applied for or granted in part. The principle part was the layout plan which had changed through the addition of the lobby and the addition of a service bar to the basement.

Mr Wallsgrove noted the lobby had been added through working with environmental health to address the concerns of local residents about noise escaping from the premises. This part did not require a variation to the licence to approve a new plan.

The service bar was added without knowing there was a requirement to have the plan approved. Mr Wallsgrove explained the bar had been installed due to difficulties bar staff were having serving drinks in the basement from the upstairs bar. The licensing officer, when visiting the premises, became aware that the bar was not on the plan and advised that a variation needed to be applied for straight away. The applicant took this opportunity to consider the other conditions on the premises licence.

The wording of the CCTV condition needed amending to include the provision of CCTV at the request of the Local Authority. This was on the recommendation of the Licensing Officer. The Licensing Police Officer also requested a tweak to the condition which the applicant agreed to.

Mr Wallsgrove considered the plan changes and the CCTV condition were not contentious.

The condition for a hostess to supervise departure was too vague to be enforceable. In addition, the premises were small with only one entrance and all waiting staff and bar tenders can see the door. At the weekends there are also SIA security staff to manage people queuing outside to get into the premises.

Mr Wallsgrove noted the change of the conditions in relation to the sale of alcohol being ancillary to a table meal and the removal of the condition that only 25 people can be at the bar were the changes that had led to resident objections, along with the reduction in the number of seats/covers.

Mr Wallsgrove told the panel that the continued primary focus of the premises was on the sale of food and the concept of the brunch. The premises were continuing to operate as a restaurant but was trying to achieve a degree of flexibility within that. He considered that the term 'ancillary to a table meal' was a grey area in how it could be interpreted. The proposed wording was clearer that 'substantial food must be available up to 90 minutes before closing'. This would be clear that 90 minutes of consuming alcohol after a meal is still ancillary to that meal. It allows the flexibility for people who have

finished their meal to move to the bar area, should they wish, freeing up the table for more people to come in and eat.

Mr Wallsgrove acknowledged the concerns raised by residents and advised that Mr Hudson wanted to reassure everybody that he was very keen to ensure solutions were found to any genuine issues directly related to the premises. Mr Wallsgrove stressed that not everything that happens in the vicinity of the premises is directly as a result of SBK customers. The recent stabbing was nothing to do with the premises as they were closed. The photograph of the girls behind a campervan was nothing to do with SBK, they were not customers of SBK, and in fact Mr Hudson provided welfare support to the group as they were extremely drunk.

Mr Wallsgrove highlighted that Police and Environmental Health had not made any representations in relation to the variation application.

Mr Wallsgrove further noted that the application is not changing the hours of operation or the activities of the premises. The capacity of the premises was not changing. With the changes to the conditions, the queues outside should disappear. The condition of 25 people at the bar leads to a one in, one out policy leading to a queue. The queue is, however, well managed and is orderly.

Mr Wallsgrove re-iterated his assertion that most of the variation application was uncontroversial in terms of the changes with no representations from Police or Environmental Health. He noted the right of residents to ask for a review of the premises licence at any time when there is credible evidence of a breach of the licensing objectives.

Mr Hudson's intention was to become more engaged and hands-on in relation to the premises. A new manager had been appointed who would be starting shortly. Mr Wallsgrove therefore asked that the panel grant the application.

#### Members' questions for the applicant

In response to questions the applicant clarified:

- He would ask Veolia to empty the bins later in the day as they had done at another of his premises.
- The opening hours are - Thursday 7pm - 11pm, Friday 6pm - 1am, Saturday midday - 1:30am, Sunday midday to 7pm. The hours permitted on the licence are for much longer.
- The reduction in the number of covers is to allow flexibility for customers to remain, ancillary to the meal, and have a drink on the premises whilst also accommodating people who just want to come to the venue for the atmosphere, have a drink and meet friends who have had a meal there. People's social habits have changed, and people often prefer to remain on the premises rather than move on elsewhere. As evidenced by the long history of owners, operating solely as a restaurant makes it difficult for the business to succeed.

- The venue is not big enough to safely contain 110 covers. The premises have been operating with 85 covers. The 25 people at the bar condition restricts the ability to 'flip tables' so removing that restriction and reducing the number of covers would allow for more people to move onto the bar area after eating.
- The upstairs area would have approximately 60 covers and the basement 10 covers.
- The variation application wasn't submitted before the changes as the applicant did not realise that putting in a service bar in the basement would require a variation to the licence. As the premises were licenced, he presumed the basement was licensed too. The lobby change happened at the same time as the variation application was going in.
- Max Foley would be the new manager. He had worked in Portsmouth for the last 5 - 6 years as a DPS and licence holder with no issues. He had experience of both wet and dry trade.
- The applicant had no objection to the use of the word 'covers' instead of 'seats'. He was not minded to alter the opening hours of the premises.
- There is a noise level monitoring system in place for recorded and live music that had been set with the Environmental Health Officer.

#### Residents' (other persons) questions for the applicant

In response to questions the applicant clarified:

- The condition requiring table service is at Annex 2, condition 3 - "Alcohol shall not be sold or supplied on the premises otherwise than to persons taking table meals there ...".
- In terms of safety, he did not consider it would be safe to have 110 restaurant covers in the premises and could not say how previous operators managed to comply with the condition.
- He had no objection to the use of the word 'staff members' instead of 'hostesses' to supervise people leaving the premises, if the committee considered it appropriate. He further noted that due to the glass frontage every member of staff working on that floor could see people leaving and at the weekends, door security are employed.
- The new manager had been appointed and would be on site when the premises next opened. The application for the new manager to be the DPS would be submitted before the premises next opened.
- He agreed that it was for the sub-committee to consider, on the balance of probabilities, whether the complaints were in relation to SBK customers. He considered there may be, on the odd occasion, a customer of SBK who

causes an issue for local residents, and he was confident that the management of SBK would deal with those instances appropriately.

- The premises were shut at the time of the stabbing incident and the incident had nothing to do with SBK.
- He agreed to provide contact details to the local community.
- The primary function of SBK was as a restaurant with the food the focus. It was not a nightclub.
- The reason for allowing more people at the bar was to enable tables to be 'flipped' more often, to ensure increased revenue and to maximise the operating hours.
- The bottomless brunch finishes at 6:30pm followed by a full food service. From 11:30pm people who have eaten may stay on and have a drink ancillary to their meal.
- The premises have an incident book to record all incidents and complaints and the CCTV covers the whole side of the premises.
- The fire risk assessment is undertaken by an expert consultant and is a matter for the license holder and the fire authority who had seen the plans and had not objected.

Following a particular line of questioning, Mr Attrill advised that the panel were not able to consider reducing the current opening hours as it was not within the scope of the application being determined.

The meeting was adjourned for a comfort break at 11:45am and re-commenced at 11:54am.

The Licensing Manager shared some video footage with the panel members and residents. The first clip was taken from across the road and showed people outside of SBK on 27 May 2023 at 22:48. The second clip was taken on the same side as SBK on 1 July at 23:23. Following discussions a third audio clip was also shared.

### **Other Persons' Case**

A local resident read out a prepared statement which voiced local resident concerns about the licensing variations made by SBK and shared the experiences of local residents since SBK had been in operation with regards to public nuisance and crime and disorder. They noted a significant increase in screaming and shouting in the early hours of the morning by groups of people; children being woken up; residents having to move bedrooms, use ear plugs and not being able to have windows open at night. They noted loud music into the early hours which was made worse when SBK front and side doors were open. An increase in the numbers of taxis and cars pulling up in the road at all hours had been noted. There had also been noted an increase in litter such as cigarette butts, disposable vapes, broken glass, beer cans,

condoms, sanitary items and chewing gum on Elm Grove and St Peter's Grove. SBK staff had left bins overflowing with debris in the street.

The resident went on to note incidents of people urinating in driveways, on the street and against a house. A female customer of SBK had been observed to remove a tampon, leave it in the street and return to SBK. People have vomited on the pavement outside of SBK. Incidents of drug taking have been witnessed in St Peter's Grove and drug dealing at the back of the Co-op on Elm Grove. Local residents had also witnessed sexual activity at the rear of the funeral parlour on Elm Gove. There had been recent vandalism to vehicles in the area, glass bottles thrown into gardens and people entering gardens and breaking plants and vomiting.

The crowds of people congregating outside SBK meant people had to walk in the road to pass them. Any confronting of anti-social behaviour had led to threats of violence and abusive behaviour with the resident advising he had been verbally abused and intimidated on 7 October by a group of men. Fighting between SBK customers in the street had been witnessed. The effect was that local residents were frightened to confront drunk and aggressive people about their anti-social behaviour.

The resident considered there was a causal link between the SBK operation and the upsurge in anti-social behaviour and criminal activity in the neighbourhood. There was concern that the licence variations would exacerbate the intolerable situation.

Another local resident drew attention to the application to remove condition 2 of annex 2 in relation to CCTV and replace it with alternative wording and considered the effects would be far ranging. He considered that the panel could not rely on the applicant's statement and could see no good reason why the change should be allowed and referred to the requirements of the data protection act.

He drew attention to the application to reduce the number of restaurant covers and the use of the word 'seats' instead of 'covers'. He considered 70 seats could technically be 70 chairs stacked in a corner and that it did not have to be places where people can sit and eat.

The resident considered that the change in the limit on the number of people at the bar would effectively change the premises from being a restaurant into a bar. He considered this would also be the effect of the removal of the condition that alcohol should only be supplied to persons taking table meals and for the consumption ancillary to that meal. The requested wording 'substantial meals shall be available until at least 90 minutes before the premises close', he considered, would change the premises from a restaurant to a bar where anyone could go in and have a drink.

Both residents requested the panel refuse the application.

#### Members' questions to the other persons

There were no questions.

Applicant's question to the other persons

There were no questions, but the applicant noted it did not mean they agreed with the statements.

### **Summing Up**

#### Other persons' summation

Local residents had lived in harmony with their business neighbours for a 20 - 50 years. They asked the panel to consider their current lived experience and how uncomfortable and intolerable it was for them. They reiterated a couple of the experiences that had led them to feel a sense of victim status and asked the panel to take this into account when making their decision.

#### Applicant summation

The solicitor for the applicant reminded the panel that environmental health and the police had not made any representations against the application. He noted the panel had been presented with two conflicting accounts of what was happening in the locality and asked them to strike a balance between the needs of the business and its continued economic success and the needs of the residents. The applicant would be taking a more proactive, hands-on approach with the new management team in place to address and allay some of the concerns of residents.

In relation to the CCTV, the applicant noted that the condition the panel were being asked to put on the licence was agreed by the Police and was the condition that was now going on every licensed premises in Portsmouth. All of the obligations discussed in relation to this fall under the data protection act. He requested the panel grant the application that had been applied for.

Mr Attrill, confirmed that anything that is part of an existing national law applies, regardless of what is or isn't in a licence. Licensing guidance states that conditions ought not duplicate other regulatory regimes where there is legislation that provides for enforcement.

The Chair asked if everyone was satisfied, they had had the opportunity to state their case. All parties agreed they had.

The meeting adjourned at 12:44 for the panel to commence their deliberations.

The meeting re-convened at 15:45 and the Panel gave their decision:

**In the matter of: Licensing Act 2003 - Application for variation of a premises licence - Southsea Brunch Klub ("SBK"), 119 Elm Grove, 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 SBK. 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 / expanded upon 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 approval for an inner lobby at the front of the premises and an additional bar in the basement, with several proposed changes to conditions on the existing premises licence as detailed in the application. These included the removal of a police station address that is now closed, the updating of the CCTV condition, the re-wording of a condition currently preventing alcohol sales other than to persons taking table meals (save for those at the bar) to requiring substantial meals until 90 minutes before the premises close, a reduction from 110 covers to 70 covers and removal of the limit of the number allowed in the bar area.

There had been representations from 12 residents. Those objecting raise concerns broadly in relation to the licensing objectives of public nuisance and crime and disorder with issues of concern relating to irresponsible drinks promotions, patrons outside causing noise, noise from within the premises, nuisance in the form of blocking of pavements, litter, vomiting and urination in the street and near to the premises as well as crime such as drug taking in the locality, criminal damage etc. It is stressed the premises have an impact on a residential area.

After having heard all of the above evidence the Sub Committee determined to grant the proposed application in part and subject to amendment as set out below.

- Layout amendment to include additional bar and an internal lobby at the entrance. This part of the application is approved as applied for.
- Amend Condition 1 in Annex 2 to remove the address of the police.  
This part of the application is approved as applied for.
- Amend Condition 2 in Annex 2 on CCTV.  
This part of the application is approved as applied for.
- Amend Condition 3 in Annex 2 to "Substantial food will be available to order until at least 90 minutes before the premises close".

This part of the application is approved save for adding clarification to the condition as follows:

"Substantial food (substantial food being defined as: food items prepared or cooked on the licensed premises and that are typically served as a main course or entrée) will be available to order until at least 90 minutes before the premises close."

- Remove Conditions 1 and 3 in Annex 3.

The removal of Condition 1 in Annex 3 is approved.

The removal of Condition 3 in Annex 3 is refused, and the existing condition is to be amended to read as follows:

"The premises licence holder shall ensure that staff (and when so employed, SIA accredited door staff) supervise the orderly departure of patrons from the premises to minimise noise nuisance."

- To amend Condition 5 in Annex 3 to: "There will be a minimum of 70 seats available when the premises are open"

This part of the application is refused and the condition shall be amended to read as follows:

" There will be a minimum of 85 restaurant covers available at all times the premises are open"

- In addition the Sub Committee has determined to amend condition 2 of Annex 3 to read:

The premises licence holder shall ensure that all external doors and windows shall remain closed whilst the premises are open for business save for access and egress.

### Reasons

The Sub-Committee accepted advice that it was considering the application to vary only i.e. whether the premises ought to be granted the changes sought and not a general review of the premises licence.

The Sub Committee also accepted advice that it must focus its attention on the licensing objectives and cannot take issues that have not been formally raised in written representations into account.

The 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 hearing was unusual in that parts of the application had already been put in place (eg lobby, basement bar, and an apparent change in focus of trading). A previous hearing had imposed conditions clearly intended to limit the potential for nuisance that might be caused by a vertical drinking establishment rather than a premises primarily focussed on food and restaurant use.

The Sub Committee heard repeated reassurance from the premises that its intention was to operate as a restaurant but to allow flexibility for tables to be "flipped" and for patrons to remain after having eaten.

The Sub Committee heard evidence that the premises have been operating with typically 80-85 covers and that this was most definitely a restaurant - the intention was to run as such. Reducing covers to only 70, the Sub Committee felt, would likely lead to a disproportionate amount of drinkers compared to

diners. Particularly given the restriction on the number of patrons at the bar (and now bars) has been removed.

It was noted that the police and environmental health in particular had not made representations (notably following agreed amendment of the CCTV condition and introduction of the acoustic lobby).

It was accepted by the Sub Committee that the inference as a result is support of the application from the lead authority for the prevention of crime and disorder and prevention of public nuisance objectives. However, appropriate weight was attached to the clear strength of resident representations. First-hand evidence was heard from residents that the premises had significantly increased anti-social behaviour and the issues complained of generally since it had operated under its latest / current management. It is unusual that such a large number of residents should express these concerns. It is unfortunate and disappointing that the application is a result of complaints received regarding noise and non-compliance with conditions - meaning it is a retrospective attempt to regularise the change in the business already in force.

Whilst it is accepted that flexibility may mean the business has increased viability this has had to be balanced against the interests of the residents and the licensing objectives of the prevention of crime and disorder and public nuisance.

The Sub Committee is keen to support and endorse a successful restaurant but recognises and acknowledges the residents' concerns given the level of anti-social behaviour in the area in general (the Sub Committee heard and accepted that not every instance of anti-social behaviour could necessarily be attributed to the premises) but on the balance of the evidence that it heard determined that there was some impact on the licensing objectives in the vicinity of the premises. Accordingly, it was considered appropriate to implement some safeguards to ensure that sufficient restaurant provision remains in place at all times. The removal of the limit at the bars means that queuing outside the premises should be reduced.

The Sub Committee has noted the strength of assertions regarding the nature of the business to be conducted and would stress that there is a process of review if the premises changes or is not run genuinely as a restaurant with ancillary alcohol provision. A review can be brought by residents or responsible authorities in due course.

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 3.53 pm.

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Councillor Stuart Brown  
Chair