

## LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-Committee held on Monday, 22 July 2024 at 10.00 am in the executive meeting room, floor 3 of the Guildhall, Portsmouth

### Present

Councillors    Stuart Brown  
                      George Madgwick  
                      Benedict Swann

#### **33. Appointment of Chair**

Councillor George Madgwick was duly elected as Chair.

#### **34. Declarations of Interest**

Councillor George Madgwick declared a personal interest in that one of the objectors was a member of the Portsmouth Independent Party and had stood for the party in the local elections but had been advised the interest was personal and not prejudicial.

#### **35. Licensing Act 2003 - Application for grant of a premises licence - Restaurant 27, 27A South Parade, Southsea PO5 2JF**

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

Derek Stone, Principal Licensing Officer presented the report the purpose of which was to consider an application for the grant of a new premises licence pursuant to section 18 of the Licensing Act 2003 ("the Act"). The matter had been referred to the committee for determination following receipt of relevant representations from several local residents. Further detail about the representations received was shown at paragraph 4 of the report.

Mr Stone advised that the application does not include external seating and that he had personally visited the site and spoken with the applicant who had confirmed there would be no outside seating. He drew attention to the photos at Appendix E which showed the pavements were not wide enough to even consider such an application.

##### **Members' Questions to Licensing Authority**

In response to Members' questions, Mr Stone clarified:

- The Police conditions include CCTV on the premises to cover the bar area, entry and exit points; Challenge 25; Refusal Logs etc as included on all licences. All children need to be accompanied by a responsible adult. The applicant had stated they would not allow people into the venue purely to purchase alcohol and alcohol would only be purchased with a meal.

- The off sale of alcohol was to support the sale of alcohol with a meal for home delivery.
- The previous licence was not transferred as it had been surrendered by the previous licence holder when he closed the business.
- There had not been a review of the premises licence at that address in the last 50 years, as far as Mr Stone was aware.
- There was no associated planning application for the premises. There was no change of use as a restaurant had existed at the premises for the last 50 years.
- There had been no representations or objections from any responsible authority to the application.
- It was fairly standard practice for premises to allow customers to take away unfinished bottles of alcohol. However, given how expensive alcohol is people are not likely to waste them by smashing the bottles and disposing of them recklessly.

#### **Applicant Questions to Licensing Authority**

There were no questions.

#### **Other Party Questions to Licensing Authority**

There were no questions

#### **The Applicants Case**

Mr Mourougane presented the case on behalf of the applicant and apologised for Mr Madanlal's absence due to being overseas.

Mr Madanlal had been in the retail industry for the last 18 years and had been a licence holder for more than 15 years operating two premises in and around the area and one in Portsmouth. This would be a new venture for Mr Madanlal.

In relation to parking, Mr Mourougane stated there was public parking nearby on South Parade and customers would be advised to park there and walk the 2 - 3 minutes to the restaurant. This had been the same over the last 50 years there had been a restaurant in operation on the site. Taxis don't wait for more than 2 - 3 minutes so should not cause a disturbance.

Mr Mourougane noted there had been no responsible authorities objecting to the application and agreement had been reached with the Police for a number of conditions such as CCTV and monitoring, refusal log, challenge log and various posters would be displayed on the property. Mr Mourougane had bought the laminated notices with him and showed them to the committee. The applicant would make sure that customers left as quietly as possible and there would be a no smoking policy around the restaurant.

A written letter from Mr Madanlal was handed to the committee and the other parties having been cleared by Ben Attrill, PCC legal representative as there were no objections from the parties to its distribution at the hearing.

### **Members' questions to Applicant**

In response to Members' questions, Mr Mourougane clarified:

- Mr Madanlal did not intend to sell alcohol to customers unless it was part of a meal or a takeaway.
- Mr Madanlal's experience as a licence holder was through superstores and petrol stations. He had no hospitality industry experience and this was a new venture for him.
- The applicant did not have a Noise Management Policy in place, but he was going to put up a notice asking customers to leave as politely as possible and Mr Madanlal's number would be given to residents should they need to contact him about any issues.
- The applicant would have no objections to a condition requiring a Noise Management Policy.

### **Other Parties' questions to applicant**

In response to other parties' questions, Mr Mourougane clarified:

- The main entrance and exit to the restaurant would remain on Burgoyne Road with the doors on Clarence Road remaining as a fire exit and the entrance/exit to the staff premises. Mr Mourougane did not think the doors on Clarence Road would be used for collection of deliveries due to the double yellow lines in place there.

Mrs Husband considered that, despite reassurances, the side door would be an attractive option for delivery drivers due to the comparative quietness of the street which would be a concern for the residents.

The Chair advised that should the licence be granted the residents would be able to call for a review if there were any breaches of the four licensing objectives - for instance the prevention of public nuisance.

Ben Attrill then provided some advice on highways issues. Licensing does not have any control over parking issues or issues of that nature. The unloading of deliveries or collection of items would be marginally on the periphery of what may be considered in relation to licensable activity (the sale of alcohol). Any evidence must be directly related to the actual licensable activity rather than the operation of a food business which otherwise may generally not be licensable unless it operates within certain hours, or it starts to sell or serve alcohol.

The Chair clarified that if there were parking issues the residents would need to call the Parking Team at the Council but if there was a breach of any of the four licensing objectives then the relevant department would be licensing.

## **The Other Persons' Case**

### Mr Eldred

Mr Eldred told the committee he lived adjacent to the premises on South Parade. He noted the restaurant was in a wholly residential area, was a single retail outlet so was different from premises in other areas.

The previous restaurants had been run under different business models (upmarket restaurant) to that which was now being proposed, with limited opening hours and a limited number of covers. The previous owner had set very high standards in terms of customer behaviours and zero nuisance. There had never been any issues with the previous businesses.

The application at hand was for a fast-food operation, opening from 11am - 11pm with predominantly a walk-in clientele and a lot more covers.

Mr Eldred noted the applicant's lack of experience in operating a restaurant and with his other interests, Mr Eldred was concerned about how the applicant would be able to maintain high standards if he was not present on the premises.

Mr Eldred noted the issues of home delivery in conjunction with all the adjoining roads having double yellow lines and high competition for parking.

With a different type of clientele, Mr Eldred was concerned there would be greater demands for loud music, particularly in the summer and wondered if there would be any constraints on this. He disclosed a previous problem when living in Marmion Road and that they had moved to get away from the noise. He did not intend to tolerate the same issue again. Was the applicant intending to cater for noisy stag and hen dos?

Mr Eldred was also concerned about any advertising on Fascias, signage and billboards on the highway as the pavements were very narrow and that could impact on safety.

He stated residents were not against the restaurant operating but they had major concerns due to the different type of business operating model with an inexperienced operator and the potential impact this may have on local residents.

### Mrs Husband

Kate Husband told the committee they had lived in their house for about 6 years very happily alongside Restaurant 27. She was happy to support the new business as long as it sat alongside the local residents without causing any unnecessary anxieties.

She was happy that the opening hours had been reduced from 1am to 11pm.

Mrs Husband observed that the food delivery part of the business was a new element to the area and she would appreciate it if all the things suggested to be put in place in relation to this element were indeed implemented.

Mrs Husband stated they had been spoilt with the previous owner as he was always on site, very amenable and very proactive at keeping both customers and residents happy.

Mr Mourougane stated that every neighbour was a potential customer so they would not want to upset anyone.

### **Members' questions in Response to the other parties' case**

The Chair asked the Mr Mourougane, about the applicant's plans for operating the business.

Mr Mourougane would be operating the business himself but would be recruiting a manager and chef with plenty of hospitality experience. It would be difficult, but he would be there every day and his wife would be the DPS.

Councillor Swann asked Mr Stone if the applicant would have to apply for a street pavement licence should he wish to place any advertising signs outside the premises?

Mr Stone confirmed he would and that it would not be approved.

Councillor Brown asked Mr Mourougane what was the applicant planning in terms of music at the venue?

Mr Mourougane confirmed it would be very light background music and advised that the premises had been insulated so it would not go over 85 decibels. In addition, there was an air-locked front door to help mitigate any noise. Mr Stone confirmed this was the case.

Councillor Swann asked if the applicant was going to put anything in place to communicate to delivery drivers and taxi drivers not to park on the double yellow lines?

Mr Mourougane confirmed that the applicant would speak with Uber and Deliveroo to put a plan in place as was common in London.

### **Summing up**

The Chair confirmed that everybody was happy they had asked all the questions they wanted to and moved to summing up.

### Other persons

Mr Eldred said that the points made had been well said and considered the local residents genuine concerns had been taken on board. He reiterated they had lived in harmony with the previous owner/business and wanted that to continue. He noted the commitments made in relation to parking, noise, music etc and observed the local residents would hold the applicant to those standards.

### Applicant

Mr Mourougane reiterated his apologies that Mr Madanlal could not attend but they would make sure that they would abide by the commitments and conditions made as neighbours are potential customers and they would not want to upset them.

The Committee adjourned at 10:43am to make their decision on the application.

### **Decision**

The Committee reconvened at 11:22am to give the decision on the application as follows:

### **In the matter of: Licensing Act 2003 - Application for a premises licence - Restaurant 27, 27A South Parade, Southsea, PO5 2JF.**

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

### Decision

The Sub Committee had considered very carefully the application for a premises licence at Restaurant 27. 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 orally at the hearing, by all parties. Human rights legislation and the public sector equality duty has been borne in mind whilst making the decision.

The Sub Committee noted that there had initially been 19 representations from residents, objecting to the grant of the licence due to concerns (in the main) about the prevention of public nuisance licensing objective. The use of the premises until 01.00 hrs, outside drinking, the premises being located in a residential area being amongst the concerns raised. The applicant had amended the application with revised hours reducing the proposed hours of operation to 23.00 hrs every day and thereby removing late night refreshment from the application and this resulted in five residents withdrawing their objection.

No representations had been made by responsible authorities, notably the police and environmental health. Conditions had been agreed with the police.

After having heard all of the above evidence the Sub Committee determined to grant the proposed application, subject to imposing the agreed conditions and conditions implementing the operating schedule as well as the following condition:

No licensable activity shall be undertaken at the premises until a written noise management plan or policy has been submitted to and approved by the Licensing Manager of the licensing authority.

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## Reasons

It was noted that there had been no representations from responsible authorities (having agreed conditions with the police) and accordingly the Sub Committee had to accept the inference that there are no concerns on their part.

Objection from interested parties focussed upon potential noise disturbance from the premises - particularly from the use of outside areas. It was stressed that it is located in a residential area with the potential for nuisance arising from noise, due to the longer periods of trading (11am until 11pm), higher number of patrons, the change in clientele and deliveries to and from the premises.

The Sub Committee accepted legal advice that parking or issues regarding the amenity of the area are planning considerations and cannot be taken into consideration.

The applicant has reassured the Sub Committee regarding the nature of the proposed operation of the premises with only background music - certainly no karaoke etc., the double doors and insulation preventing noise escape and intention to manage deliveries, taxis etc. with the use of entrances and exits to remain the same.

It was confirmed that the applicant would manage the premises with his wife acting as DPS.

Conditions agreed with the police related to CCTV, challenge 25 policy, refusals log, children at the premises and the prevention of the sale of alcohol other than with a meal.

The Sub-Committee noted that there is a right, for all parties, to bring the licence back for review if there are any issues undermining the licensing objectives resulting from the licensable activity at the premises. If nuisance occurs as a result of the application, residents are encouraged to liaise with the premises in the first instance in accordance with any noise management plan and if unresolved Environmental Health and to report the matter promptly. In this respect residents can be reassured that if the premises changes hands or changes the nature of the operation, or indeed fails to implement the steps indicated and this leads to public nuisance, the matter can be brought back to the licensing authority for action to be taken.

The Sub-Committee balanced all of the above issues and determined that in light of the lack of representation from responsible authorities and the additional steps proposed by the applicant, it was considered appropriate to grant the licence with the timings now applied for and that this balanced the interests of residents with those of the business.

The condition relating to a noise management plan was considered appropriate to ensure that contact is enabled and continues from today's hearing and to clarify steps to minimise the impact of noise associated with the premises.

There is a right of appeal for all parties to the Magistrates' Court. Formal notification of the decision will set out that right in full.

The meeting concluded at 11.28 am.

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Chair