



NOTIFICATION OF DECISION

Licensing Act 2003 - Licensing Sub-Committee

PORTSMOUTH CITY COUNCIL as licensing authority in accordance with the Licensing Act 2003 ("the act") and regulations made thereunder, hereby give notice pursuant to section 23 of the act to:

Name: **Miss B Delaney & Mr P Melville**

Address: **Not Recorded**

Status: **Applicant**

That a hearing was held on: **13 January 2021**

To consider an application for the **GRANT of a premises licence** made in accordance with Section 17 of the Act. The details of the applicant and premises are:

Name of Applicant: **Miss Belinda Delaney**

Premises and address: **Delaneys
77B Castle Road
Southsea
PO5 3AY**

Decision of The Licensing Authority:

In determining and considering the application pursuant to section 18 of the act, the Committee had regard to:

- The Licensing Act 2003
- The promotion of the licensing objectives
- The council's adopted statement of licensing policy for the time being in force
- The statutory guidance issued by the Secretary of State for the time being in force
- Any relevant case law
- The representations (including supporting information) presented by all the parties

Decision:

The Sub Committee has considered very carefully the application for a premises licence at Delaneys. It gave due regard to the Licensing Act 2003, the Licensing Objectives, statutory guidance and the adopted statement of licensing policy.

The Sub Committee considered the relevant representations, both written and given at the hearing, by all parties. Human rights legislation and the public sector equality duty has been borne in mind whilst making the decision.

The Sub Committee noted that there had been a representation from a responsible authority (Environmental Health) and three residents objecting to the grant of the licence due to concerns about noise / prevention of public nuisance.

Representations were also received in support of the application from residents.

After having heard all of the above evidence the Sub Committee determined to grant the proposed application, subject to limiting the proposed hours as follows:

- The sale of alcohol shall cease at 21.00 hrs. on Thursdays, Fridays and Saturdays
- The sale of alcohol shall cease on Sundays, Mondays, Tuesdays and Wednesdays at 17.00 hrs.
- The opening hours for the premises shall have a terminal hour of 21.30 hrs. on any day (save for New Year's Eve) and opening hour as applied for
- The proposed hours for New Years Eve as set out in the application are granted as applied for.

Reasons For Decision:

Objection from residents (two of the three objecting attended the hearing) focussed upon the existing poor sound insulation and the level of sound already interfering with enjoyment of their property. Fears were expressed in relation to sound from both within and outside the premises (e.g. patrons outside and use of bins etc.). A recording submitted showed that voices could currently be heard from the kitchen area of the premises. Previous complaint about building works at the premises were not taken into consideration by the Sub-Committee as they do not relate to the proposed licensable activity and the impact that this might have. Past experience tended to show a lack of regard for neighbours and did not give confidence for future operation. A bedroom is located directly above the kitchen area of the premises and noise levels are already unacceptable.

Environmental Health expressed concern regarding the grant of a premises licence where residents' properties are structurally joined and expressed concern that with an 'on licence' in place, music (recorded or live) might be provided until 23.00. Concern was raised over reverberant sound within the premises, particularly clearing up at the end of the evening. The smoking ban could lead to noise nuisance outside from patrons smoking outside. It was stressed that the premises is within a densely populated area and was built in the (likely) Victorian era - with, as a result, the likelihood of very poor insulation between floors. Regards the mezzanine floor it was stated that this would be very difficult to address with

sound proofing due to need to reduce height of ceiling. Similar issues with same type of premises locally were outlined. It was confirmed that being able to hear conversations suggests very limited insulation and experience from other similar premises is that insulation can only ever partly address concerns. An extraction system would be required for increased cooking at the premises.

The applicant outlined their intention not to run terribly differently to the existing operation save for extending hours to provide an early evening supper menu. At other times it would allow a glass of prosecco or beer with food. Advice had been sought on reducing noise from the premises and steps that would be taken included insulation to the ceiling above the kitchen area and installation of a door to that area. Fixed seating had been installed to prevent sound from moving furniture. Rugs, throws, soft furnishings etc. had been used to absorb sound within the premises and acoustic panels could be implemented moving forward. Advice is being sought regarding insulation and would also include consultation on other measures that could be implemented. The premises had utilised three temporary event notices (TENs) in the run up to Christmas. There was no intention to provide live music or loud amplified music at the premises, simply background music from speakers mounted on brick walls adjoining commercial rather than residential premises. Bottles would only be emptied to outside bins at reasonable hours (mid-morning) and access to bins generally would be monitored to avoid disturbance. The premises has a maximum capacity of 30 and the intention is not to create a bar or pub but to allow alcohol to accompany their existing operation. In relation to cooking and use of the kitchen it is not anticipated that there will be any intensification and certainly not a move to industrial use. The early evening suppers would be from a limited menu. Notices would be displayed at the premises which was envisaged to run in a similar manner to a tea room rather than bar. The premises have had no warnings or enforcement action to date and will be run in a respectful and competent manner.

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

The Sub-Committee balanced all of the above issues and determined that in the first instance the applicant be granted the ability to operate in the manner described and implement the steps proposed to reduce the impact of sound and nuisance upon residents in close proximity. Accordingly it was considered appropriate to grant the licence with the timings as set out to balance the interests of residents with those of the business.

Appeal Provisions:

In accordance with the provisions of Schedule 5 of the Act, appeal provisions exist in respect of applications made to the Licensing Authority. Those provisions are outlined as follows:

The applicant:

Where the Licensing Authority rejects an application for a premises licence, the applicant may appeal against the decision - *Part 1, paragraph 1(a) of the Act*.

Where the Licensing Authority grants a premises licence, the holder of the licence may appeal against any decision:

- to impose conditions on the licence; or
- to take any step to exclude a licensable activity or refuse to specify a person as premises supervisor - *Part 1, paragraph 2(2) of the Act*.

A person who made relevant representations:

Where a person who made relevant representations in relation to the application desires to contend:

- that the licence ought not to have been granted, or
- that, on granting the licence, the Licensing Authority ought to have imposed different or additional conditions, or should have excluded any of the licensable activities to which the application relates or to refuse to specify a person in the licence as the premises supervisor

he may appeal against the decision – *Part 1, paragraph 2(3) of the Act*.

Note: The applicant for the licence is to be the respondent in addition to the Licensing Authority in relation to any appeal lodged by a person(s) who made relevant representations.

General Provisions About Appeals:

An appeal must be made to the Magistrates' court for the petty sessions area in which the premises concerned are situated.

An appeal must be commenced by notice of appeal given by the appellant to the designated officer for the Magistrates' court within the period of 21 days beginning with the day on which the appellant was notified by the Licensing Authority of the decision appealed against.¹

Action that may be taken by the Magistrates' Court:

On an appeal against a decision of the Licensing Authority, a Magistrates' court may:

- dismiss the appeal;
- substitute for the decision appealed against, any other decision which could have

¹ The period of 21 days will commence from the date on which written notice is given, or in the case of electronic transmission, when the text is received.

been made by the Licensing Authority; or

- remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court,

and may make such order as to costs as it thinks fit.

Date of Notice: **14 January 2021**



Signed on behalf of the Head of Service
(Authorised Officer)

