



Portsmouth
CITY COUNCIL

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: **Mr Andrew Aquilina**

Address: **Not Recorded**

Status: **Applicant**

That a hearing was held on: **5 September 2022**

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: **Mr Andrew Aquilina**

Premises and address: **Barcode
50 Osborne Road
Southsea
PO5 3LT**

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:

Grant with conditions

The Sub Committee has considered very carefully the application for a premises licence at Barcode. 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 the prevention of public nuisance licensing objective and the prevention of crime and disorder objective.

The applicant had amended the application in light of the representations, reducing the hours sought and agreeing conditions proposed by Environmental Health.

After having heard all of the above evidence the Sub Committee determined to grant the proposed application, subject to imposing the agreed conditions and noting the amended application and amended hours as follows:

- The sale of alcohol shall cease at 22.00 hrs. on Sunday to Thursday, with the premises closing at 22.30
- The sale of alcohol shall cease on Friday and Saturday at 23.00 hrs. with the premises closing at 23.30
- The opening hours for the premises shall have a terminal hour of 01.00 hrs. for New Year's Eve with the sale of alcohol ceasing at 00.30 hours
- The proposed hours for Christmas Eve ceasing at 00.00 (midnight) for sale of alcohol and the premises to close by 00.30.
- Late Night Refreshment is no longer required as this shall cease by 23.00 hrs.
- Live music is also removed from the application
- Recorded music shall be in line with the hours for the sale of alcohol
- Conditions as agreed with and submitted by Environmental Health during the meeting relating to: use of receptacles outside the premises, closing of external doors and windows after 23.00 hrs [noting the rear doors shall remain closed at all times licensable activities are taking place save for emergency escape], external lighting, deliveries and collections, requirement for provision and approval of a noise management plan and for those measures to duly be implemented.

Reasons For Decision:

Environmental Health expressed concern regarding the grant of a premises licence where residents' properties are structurally attached. The age and structure of the building were a concern in the absence of a noise management plan or indication of measures to be implemented. It was unclear whether sound insulation could even be installed given the premises are not purpose built. No mention had been made in the application as to how noise control, smoking, waste collection, litter or lighting were to be managed. The Sub Committee noted the consultation response from Environmental Health advised that planning permission might be better sought first but accepted that the application nonetheless had to be determined on its merits and as presented, irrespective the planning permission. Further, planning issues such as change of use (as raised by residents) cannot be considered by the Sub Committee.

Objection from residents focussed upon the existing nature of the area given the number of licensed premises. The Sub Committee accepted advice that commercial need could not be considered. Existing premises, it was stated, already cause issues of noise from those in drink, including shouting and swearing and associated antisocial behaviour such as vomiting and urinating. Rear doors at the premises present an apparent risk of noise nuisance from sound escape from live or recorded music.

Before the meeting had begun the applicant had confirmed an amendment to the application, namely a reduction in hours to those originally applied for and agreement had been reached with Environmental Health in relation to conditions.

In light of this the resident that had attended (and living to the rear) was satisfied that the application was now acceptable but feared potential change in the future operation of the premises.

The applicant outlined their intention to run a relaxed venue which will be food led. It is not the intention that this be a loud, late night bar.

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 light of the agreement reached between the parties present (noting and fully considering the written representations from those residents not in attendance). 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

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.

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 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: **6 September 2022**



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

Portsmouth City Council will process your personal information in accordance with data protection law. The personal details provided by you will be used for licensing service purposes. Your details will be held on a database and where the law allows, may be shared with other departments within the council to update details they hold about you. The council may also be required to disclose personal information to third parties (such as Police, Department for Work and Pensions or for the National Fraud Initiative) for the purposes of preventing or detecting crime or apprehending or prosecuting offenders.

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