

Licensing Sub-Committee
Portsmouth City Council
Civic Offices
Guildhall Square
Portsmouth
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PO1 2AL

**Culture, Leisure and
Regulatory Services**

Licensing Service
Civic Offices
Guildhall Square
Portsmouth
PO1 2AL

Phone: [REDACTED]

Our Ref: 24/00435/LAREVI

Date: 7 February 2024

Dear Members of the Licensing Sub-Committee

**APPLICATION FOR THE REVIEW OF A PREMISES LICENCE - 24/00435/LAREVI
SOUTHSEA BRUNCH KLUB 119 ELM GROVE SOUTHSEA PORTSMOUTH**

I refer to the recent application for the review of the premises submitted by the Chief Officer of Police on 12 January 2024 in respect of Southsea Brunch Klub, situated at 119 Elm Grove, Southsea, Portsmouth.

On behalf of the Licensing Authority, I wish to make a formal representation in respect of this application on the following grounds:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance

As members of the committee will be aware, any application for a review of a premises licence must relate to particular premises and must be relevant to the promotion of one or more of the licensing objectives. It is the view of the Licensing Authority that the incidents and reports that have led to the application for the review of this licence, together with other representations made, can be positively tied and linked by causal connection to Southsea Brunch Klub.

By way of background information, these premises have historically operated as a restaurant type venue. Licensing records, which commence from when alcohol licensing became a statutory function for local authorities in 2005 (In accordance with the Licensing Act 2003) identify the following uses of these premises:

- | | |
|-----------------------------|-------------------------------------|
| • Bangkok Spice Restaurant | September 2005 until September 2009 |
| • Big Ernies Restaurant | September 2009 until April 2013 |
| • Jags @ 119 Restaurant | April 2013 until October 2021 |
| • Three Cuts Burger and Tap | October 2021 until November 2022 |
| • Southsea Brunch Klub | November 2022 to date |

The current premises licence holder is Elm Grove Enterprises Ltd, the sole director of this company is Mr Steven Hudson.

Mr Hudson is also currently in place as the designated premises supervisor (DPS) following an application on 24 January 2024 to vary the DPS on the premises licence from the previous manager, Mr Fabio Mazzoni. This type of application permits the proposed DPS to have immediate effect pending any objections from the Chief Officer of Police which would result in the Licensing Sub-Committee determining the application.

The Police have submitted an objection to the variation of DPS application in respect of Mr Hudson and this will be subject to consideration and determination by the Licensing Sub-Committee under separate hearing procedures.

An application to vary the premises licence was made in August 2023 following a compliance visit to the premises where it was established that the layout of the premises did not accord with the deposited plan with the Licensing Authority. Works had been undertaken to the premises without licensing approval. The application prompted a number of objections from local residents which led to a licensing sub-committee meeting on 9 October 2003. After careful consideration of the facts before them, the Licensing Sub-committee determined to grant the application, in part, and made modifications to the licence in relation to the use of the premises for restaurant purposes.

A copy of this decision and the associated reasons is attached as **Appendix A**.

The Licensing Authority has had cause to undertake a number of compliance visits to these premises and a summary of those visits, in chronological order, is set out below:

Date:	8 September 2023	Time:	21:00 hours
<p>Comments:</p> <p>Visit made to the premises following receipt of a complaint/service request.</p> <p>The premises was open with 2 SIA staff on duty outside and a rope barrier on the highway which obstructed the footpath at the junction of Elm Grove and St Peters Grove.</p> <p>The designated premises supervisor at the time was identified as Sam Wellington who was present at the premises. An officer undertook a review of the licence requirements with the DPS.</p> <p>The ground and basement areas of the premises were checked and it was observed that a resident DJ was on site.</p> <p>Fire exits were clear.</p> <p>The kitchen area had some food provision (skewered kebabs) but "not much more".</p> <p>The officer reported that the emphasis was more of a "bar environment" than a food led outlet.</p> <p>Security provided at the premises was now being undertaken by Taurus and not Vespasian and the area manager of the security company arrived at the time of the visit.</p> <p>A floor walker was observed inside the premises with radio contact with the DPS and SIA staff.</p>			

The owner of the premises, Mr Steven Hudson arrived at the premises and advised that he had seen officers in attendance via the CCTV he was able to view on his mobile phone.

Mr Hudson advised that he was the leaseholder of the premises which also had an Air B&B business at first floor level.

Photographs were taken at the time of the visit and are attached as **Appendix B**.

Date:	29 September 2023	Time:	23:08 hours
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Comments:

Further visit to the premises for compliance purposes having regard to ongoing complaints from local residents.

3 SIA staff were on duty outside of the premises and the security company has reverted back to Vespasian. Door supervisor SIA licence checks undertaken and all satisfactory.

The DPS, Sam, was on duty and accompanied the officer on a walk round of the premises. The officer reported very loud DJ led music being played with about 25 persons in the premises with 8 persons located at the bar area. Lower basement bar was in use. The officer noted that the patrons were of a very young age.

Whilst at the premises, one male was ejected from the premises for "mooning" and was arguing with staff outside.

A small group of people were seen to be standing outside the premises.

The officer was of the view that the premises were operating as a late night bar.

Compliant licence check visit.

Date:	27 October 2023	Time:	22:42 hours
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Comments:

Officers carried observations of the premises from a parked position at the top of St Peter's Grove. Premises were observed to be open and 3 SIA staff seen outside.

The officer reports a constant huddle of males/females (one worse for wear and stumbling) around the pavement area of St Peter's Grove. It appeared that persons were either smoking and/or waiting for transport. No barriers were evident outside the premises.

The officer again reported a very young demographic of clientele.

Date:	3 November 2023	Time:	22:12
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Comments:

Premises was open and appeared to be busy with a private Halloween party taking place. Entry to the premises was by invitation only. 3 Vespasian door staff working and using "clickers" to limit capacity to 150 persons only.

Group of young females sitting on the pavement in St Peters Grove. The main entrance to the premises were closed but loud music was evident coming from the premises when the door was used for access and egress.

Date:	22 December 2023	Time:	22:24
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Visit to premises to deliver licence and summary to the premises following the amendment of the premises licence by way of a new DPS, Mr Fabio Mazzoni.

2 SIA door staff from Vespasian were on duty outside the premises and persons were observed to be standing outside the premises smoking.

Officers report that the premises was very very busy and when enquiries were made as to the nature of event being hosted that evening, they were advised that it was a "private party" company booking. Officers spoke with males outside of the premises, who were wearing red wristbands, and they confirmed they worked for the named company.

153 persons were present within the premises. Whilst officers were in attendance, a notice was then placed on the front door of the premises to say that a private party was taking place.

This notice was not on display when officers first arrived.

Officers report that the premises was very very busy with vertical drinking, bar area crowded and a table of "left-over" or currently available buffet style food was observed by the front window.

Officers report that there was no evidence of 85 table covers being available whatsoever along with no substantial food. No table mat placings, condiments, cutlery, chef or waiting staff for food sales apparent.

A DJ and guitarist were present and very loud music was being played.

An officer visited the kitchen and reported that there was limited provision of foodstuff available.

A further small table of food (much of it having been consumed) was observed at lower ground floor level.

The officers provided the licence and summary to the DPS (Fabio) and they expressed concern about food availability.

They were of the view that the premises were being operated as a vertical drinking establishment/club and not a restaurant.

Officers observed a male vomiting outside the main entrance who then walked around the side of the premises into St Peters Grove. Another male was seen falling down a small flight of stairs whilst inside the premises who appeared unsteady and in drink and another male who was seated and who appeared to either have "wet himself" or spilt drink over his groin area.

Pending investigations:

Following the visit to the premises on 22 December 2023, officers are actively investigating breaches of the premises licence conditions (which is an offence under section 136 of the Licensing Act) relating to:

- Non-compliance with the requirement of 85 covers at the premises;
- Provision of substantial food; and
- Failure to both keep and provide CCTV as requested by licensing authority officers.

Having regard to the concerns raised by way of the review application made by the Chief Officer of Police, the visits made to the premises by licensing authority officers, the concerns raised by local residents and the Chief Fire Officer, it is clear that the premises are not being utilised as a restaurant type premises as they purported to be at the Licensing Sub-Committee meeting on 9 October 2003.

Whilst it is accepted that licensed premises are not generally prevented from diversifying in their operation and businesses will wish to adapt to meet both their own and their customer needs, Members may wish to consider whether the Licensing Sub-Committee were deliberately misled by the licence holder as to the true nature of the operation of the premises.

The observations submitted for consideration by members, clearly indicate that the primary use of these premises, particularly in the evening, is a vertical drinking/club establishment and there is a heavy emphasis on the consumption of alcohol rather than the availability of food which, in turn, is having a detrimental effect upon the promotion of the licensing objectives.

The Licensing Authority is equally concerned that the "responsible person" (as defined in the Licensing Act 2003) is failing to meet the statutory requirements in relation to preventing irresponsible promotions and is failing to adhere to the mandatory condition attached to all premises licences who supply alcohol for consumption on the premises.

The aim of this condition is to prohibit or restrict promotions which encourage people to drink more than they might ordinarily do and in a manner which undermines the licensing objectives.

The Licensing Authority has sought further information from the South Coast Ambulance Service in relation to calls for their services in relation to these premises, but, unfortunately, at the time of preparing this representation, that report has not yet been received. Should this information be released to the licensing authority in advance of the hearing for the review application, this information will be shared in advance with the licence holder and will be expanded upon at the hearing.

Given the serious negative impact arising from the licensable activities being provided at these premises, the Licensing Authority considers that the most appropriate course of action available to the Licensing Sub-Committee is to revoke the premises licence.

Yours sincerely


Nickii Humphreys
Licensing Manager

Email: 



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 36 of the act to:

All Parties who made representations

Status: **Other Person**

That a hearing was held on: **9 October 2023**

To consider an application for the **VARIATION of a premises licence** made in accordance with Section 34 of the Act. The details of the applicant and premises are:

Name of Applicant: **Elm Grove Enterprises Ltd**
Premises and address: **Southsea Brunch Klub**
119 Elm Grove
Southsea
PO5 1LH

Decision of The Licensing Authority:

In determining and considering the application pursuant to section 35 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 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 doorstaff) 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 For Decision:

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

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 (in whole or in part) an application to vary a premises licence, the applicant may appeal against the decision - *Part 1, paragraph 1(b) of the Act*.

Where the Licensing Authority grants (in whole or part) an application to vary a premises licence, the applicant may appeal against any decision:

to modify the conditions of the licence - *Part 1, paragraph 4(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 any variation ought not to have been made, or
- that, when varying the licence, the Licensing Authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way,

he may appeal against the decision – *Part 1, paragraph 4(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

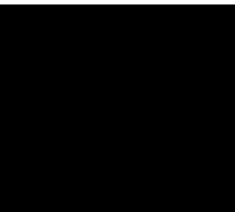
Action that may be taken by the Magistrates' Court:

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 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: **9 October 2023**



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

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.









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