

LICENSING SUB-COMMITTEE

Minutes of the meeting of the Licensing Sub-Committee held on Monday, 20 September 2021 remotely via Zoom at 10.00 am

Committee Dr P Bütikofer (Chairman) Mr T Adams
Mrs P Grove-Jones

Officers in Attendance: Licensing Enforcement Officer, Legal Assistant, Democratic Services & Governance Officer (Regulatory) and Democratic Services Manager

Also in attendance: Alex Green, Gosshalks LLP, representing the Applicant
Alison Cornelius on behalf of the Applicant
Tim Armitage, Objector

1 TO RECEIVE APOLOGIES FOR ABSENCE

None.

2 ITEMS OF URGENT BUSINESS

None.

3 DECLARATIONS OF INTEREST

None.

4 APPLICATION FOR A NEW PREMISES LICENCE - THE BULL, 41 BRIDGE STREET, FAKENHAM, NORFOLK, NR21 9AG

The Chairman, Members of the Panel and Officers introduced themselves.

The Legal Advisor outlined the purpose of the hearing and explained the procedure for the meeting. She confirmed with the Panel and Applicant's Representative that they had received a copy of the agenda papers. She reminded the Sub-Committee that the hearing was being conducted remotely via Zoom and must be conducted fairly and reasonably in line with the Applicant's right to a fair hearing under Article 6 of the Human Rights Act 1998. In the event of any participant leaving the hearing due to a technical issue, the hearing would not proceed until all parties were present. She drew attention to the fact that no Responsible Authorities had objected to the application.

The Licensing Enforcement Officer presented the report, which related to an application for a new Premises Licence to which objections had been received from local residents. The premises had been licensed previously on the basis of 24 hours, 7 days a week for all licensable activities. The licence had been closed on 5 November 2020 due to the insolvency of the licence holder and was not transferred within the statutory period of 28 days, therefore it was necessary to apply for a new Premises Licence. The Licensing Enforcement Officer referred to the operating schedule, mandatory and voluntary conditions. The Police had confirmed that they were happy with the application and the additional conditions proposed by the

Applicant.

The Chairman requested clarification of 'off licence' and 'late night refreshment'.

The Licensing Enforcement Officer explained that 'off licence' meant the sale of alcohol in closed containers for customers to consume away from the premises.

Mr Green explained that there were letting rooms at the premises and a late night refreshment licence was necessary to allow the sale of hot drinks or food if required after 11 pm. It was not intended to operate as a takeaway food business.

The Licensing Enforcement Officer confirmed that a licence for late night refreshment was necessary for any premises that wanted to serve hot food or a cup of tea or coffee after 11pm and before 5am.

Mr Green presented the case on behalf of the Applicant. Mr Green stated that the property had traded as a public house since around 1837. The premises licence had not been revoked, but had lapsed due to the bankruptcy of the tenants and the failure due to an administrative error to transfer the licence within 28 days. As soon as the applicants realised the error they commenced the process of applying to re-licence the premises. The re-application intended to replicate as closely as possible the lapsed licence, but it was important to note that the previous licence had been totally unrestricted and, having liaised with the Police, the Applicant had agreed to submit the application with the alcohol and opening hours more in keeping with other premises in the town. Unlike the previous licence, the current application included voluntary conditions that had been discussed and agreed with the Police and Environmental Health. None of the Responsible Authorities, who were experts in their respective fields, had objected to this application. The Applicant owned the largest freehold pub estate in the UK, as well as other retail and restaurant premises. The Applicant was in discussion with potential tenants but could not proceed further until the pub was licenced. The Applicant wanted the property to be of benefit to the community, whereas it was currently a burden. Mr Green outlined the steps to promote the four licensing objectives, which were included in the conditions agreed with the Police. He stated that the representations had to be considered against the backdrop of the lack of objection from the Responsible Authorities. He stated that the Applicant accepted and understood the concerns of the local objectors, but the licensing hours were significantly more restrictive than those in place under the previous licence.

Mr Green addressed the concerns raised by each of the objectors. In response to concerns raised by Mr Armitage, he stated that there were no plans to change the offering from the traditional pub and the hours sought were considerably less than the lapsed licence. His fear that the premises would become somewhere to go after other premises had closed were supposition and speculation and appeared to be based on noise coming from another premises. The pub was relatively small with letting rooms and a small kitchen, in a mainly commercial part of the town. It was not in the Applicant's interest to have noise late at night due to the letting rooms.

In response to Mr Lynam's concerns, Mr Green considered that they appeared to be based on issues Mr Lynam had with The Crown public house and were not on evidence that The Bull had caused any problems in the past. There were other options available to Mr Lynam if he had issues with a licensed premises. It was expected that the opening hours for The Bull would be similar to The Crown. The disturbances outside The Crown were not overly relevant to the application. Mr Lynam had mentioned the Police statistics for the town, but the Police had no issue

whatsoever with the application as submitted.

Mr Green considered that the issues raised by Mr and Mrs Watts were based on a misunderstanding around late night sessions and live music provision. The hours were considerably less than the previous licence, the offering was not being changed and the late night refreshment provisions were simply to give the flexibility to offer a hot drink to somebody who was still on the premises after 11pm.

The Committee questioned Mr Green.

Cllr T Adams requested confirmation that the kitchen would not be operating outside normal hours and asked if the planned opening times would in practice be as detailed in the application.

Mr Green stated that he understood there were no plans to provide a late night food offering, and food would be available for the period that was commercially viable for a traditional pub. The opening hours applied for would allow flexibility but would depend on the new tenant. He reiterated that the hours were much shorter than the previous licence.

Cllr Mrs P Grove-Jones asked if there was a capacity limit on the number of patrons in the bar and seating area, to what type of patron the premises would be targeted and if there was an outside area for patrons to sit and consume alcohol or food.

Mr Green was not aware of a limit on capacity but the premises were not large. Historically there had been a real ale element to The Bull, with slightly older beer drinkers. There was a possibility of a bistro-style offering but the kitchen was not large. The clientele were likely to be mixed. It would not be a 'wet-led' pub attracting young drinkers. There was a small terrace at the front of the property that would be available for patrons to use.

The Licensing Enforcement Officer provided further clarification in respect of late night refreshment. The sale of a cup of tea or coffee beyond 11pm would be in breach of the Licensing Act unless late night refreshment was included in the licence, and it was not generally used for the sale of hot food late at night.

The Chairman invited Mr Armitage to speak.

Mr Armitage stated that he represented 27 elderly people with dementia. The problem was the proximity of the pub to his premises. He understood what Mr Green was saying about licensing hours being less than previously, but he had not been aware that he could complain at the time the Government had allowed 24 hour a day opening. He had been glad that The Bull had remained a traditional ale drinker's pub following the Government's extension of opening hours, shutting at 11pm with customers having left by 11.30 pm, so there was a reasonable time when people could get to sleep and enjoy a reasonable quality of life. He stated that dementia patients lived in the moment and did not understand that the disturbance would stop. He accepted that what might happen was hypothetical at this stage, but he considered that disturbance would occur. He considered that it was a human right to get a decent night's sleep at a reasonable time and this was no different in the town centre than elsewhere. He asked the Sub-Committee to consider what it would be like to have the noise going on outside their bedroom windows.

The Chairman stated that dementia patients were not deaf and it should not be assumed that they were. He asked Mr Armitage how long his property had been a

residential home prior to the lapse of the previous licence, and if he had experienced noise nuisance within the last 5 to 10 years.

Mr Armitage stated that the residential home had been established since the 1980s and The Bull had been a normal pub, closing at 11 pm with people going home at 11.30 pm, as had The Limes across the road. There were a lot of pubs in the vicinity. He reiterated that he had been concerned when the licensing hours were extended but he thought that 24 hour opening was the law and only realised that hours could be restricted when he saw the current application. He considered that there would be an issue for the residential home. Regarding noise problems, the situation had improved since Wetherspoons took over The Limes as it used to be a rowdy music pub. He was concerned that The Bull would look for a niche to compete with Wetherspoons as it could not compete on the price of beer. It was music late at night that was his concern.

Mr Green stated that he respected Mr Armitage's opinion, but the Applicant was not looking for a niche and there was no intention to open up a late night music venue. Live and amplified music was allowed until 11pm in any case. He thanked Mr Armitage for confirming that The Bull had not been a problem in the past.

The Chairman asked how often the Police had been involved with incidents in the last five years and whether there had been any incidents of antisocial behaviour that had not involved the Police.

Ms Cornelius stated that she had been involved with The Bull for five years and had not dealt with the Police in that time. She was not aware of any incidents of antisocial behaviour.

The Licensing Enforcement Officer stated that the licence being applied for included fewer licensable activities than the previous licence.

The Legal Advisor asked Mr Green if there were plans for the opening hours at this stage, where in the premises music would be played, and if music would be played outside.

Mr Green explained that there were no plans in place for opening hours at this stage as it was important to get the pub up and running, and to do so the Applicant needed to attract a suitable tenant. Mr Green referred to the premises plan and stated that any live or recorded music would be played in the main section of the pub. There was no separate area for music and there were no plans to introduce live or recorded music outside. It was simply a case of replicating the previous licence.

The Legal Advisor asked how the applicant would promote the main licensing objective raised by the objectors, relating to noise.

Mr Green stated that noise had never been a problem and none of the Responsible Authorities had an issue. Whilst he was loathe to offer up a condition in those circumstances, he suggested that a potential condition could be added to require all windows and doors to be closed after 11pm when any regulated entertainment is taking place.

Cllr Mrs Grove-Jones asked if Mr Green would accept a condition to restrict the playing of music after a specified time.

Mr Green stated that it was important that the licensing objectives were met if

regulated entertainment took place after 11pm, and a condition to require windows and doors to remain closed should mean there was no nuisance to the neighbours. He referred to the neighbours' rights in the event of a nuisance being caused.

The Licensing Enforcement Officer confirmed that the application related to live and recorded music inside the premises and not outside. The application requested the provision of films outside.

Mr Green confirmed that the request for films outside was a tick box exercise and there were no plans for a 'drive-through' offering.

The Chairman sought the Applicant's views on a condition requiring windows to be closed after 11pm, bearing in mind hot summers.

Ms Cornelius confirmed that she did not have a problem with such a condition, but referred to the requirement for good ventilation under the Covid restrictions. The trade was currently nervous of another lockdown or restrictions during the winter and it was a matter of weighing up the balance between a rare escape of music late at night as opposed to customers' health.

Cllr Mrs Grove-Jones stated that ventilation was very important and many pubs now had air conditioning.

Ms Cornelius explained that the majority of the Company's pubs did not have forced air ventilation or air conditioning.

In answer to a question by Cllr Mrs Grove-Jones, the Licensing Enforcement Officer explained that occupancy would be determined by the fire risk assessment for the premises.

Mr Armitage stated that older people tended to go to bed earlier so the music would be for younger and perhaps more rowdy people. He did not object to a traditional pub, but his concerns related to how the pub would be marketed to compete with other offerings in the town, which would be music late at night.

The Chairman stated that the Sub-Committee would listen to Mr Armitage's objections, and reminded him that he could contact the Environmental Health Department in the event of any issues.

Mr Green presented his closing statement. He referred to the Home Office guidance and the High Court case of Thwaites, requiring that determination should be based on evidence and not supposition or guesswork. He stated that no objections had been received from the Police or Environmental Health, who were the experts in crime and disorder and nuisance and noise. The Police would have objected if there were any concerns regarding the premises or immediate area, which should carry considerable weight in determining the application. Robust and comprehensive conditions had been agreed in advance with the Police. The Bull was a long established, traditional pub with a food offering and letting rooms, and the Applicant wanted to breathe life into the area and not have another closed pub. He respected the objectors' views, but they were predicting what might happen and had raised concerns regarding noise and music that seemed to be based on another pub in the Market Place. Mr Armitage had confirmed that there had been no problems historically with The Bull. He reminded the Sub-Committee that this was not a review hearing, and that the hearing would not have been necessary if the transfer had taken place. He reminded the objectors that in the event of the Licensing Act

objectives not being met, they were able to bring the matter to the attention of the licensing authorities. He invited the Sub-Committee to grant the licence in full.

The Licensing Enforcement Officer drew attention to the determining actions that were appropriate for the promotion of the licensing objectives on page 17 of the report.

The Legal Advisor explained how the determination of this application would be conducted and her role in assisting with the formulation of facts and reasoning. She set out the advice she would give to the Sub-Committee to deal with the application impartially and on its individual merits, to consider only the representations that related to the promotion of the four licensing objectives. She would refer to case law that recognised that significant weight should be given to the views of the Responsible Authorities, none of which had objected to this application.

The Sub-Committee retired at 10.59 am.

RESOLVED

That the licence be granted, subject to

- 1. The mandatory conditions applicable under the Licensing Act 2003.**
- 2. The conditions consistent with the operating schedule as detailed in the report.**

The Sub-Committee did not impose any further conditions.

The meeting ended at 10.59 am.

Chairman