

## Licensing Sub Committee-Alcohol and Gambling

Thursday, 24th September, 2020

3.30 - 4.35 pm

Attendees	
<b>Councillors:</b>	Paul McCloskey (Chair), Roger Whyborn and Diggory Seacome
<b>Also in attendance:</b>	Vikki Fennell and Louis Krog

### Minutes

**1. ELECTION OF CHAIR**

Councillor McCloskey was elected as chair of the meeting.

**2. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**3. 131 THE PROMENADE**

The Licensing Team Leader, Louis Krog, introduced the report.

131 Promenade Ltd had applied to vary their licence in relation to the hours permitted for the provision of recorded music, late night refreshment and alcohol in the outdoor front, outdoor rear and indoor areas of their premises situated at 129-131 Promenade.

Ten objections had been received which were attached as Appendix C to the report, however no representations were received from any responsible authority.

The Licensing Team Leader clarified to members the variations in the licensing hours requested, reminded them of the licensing objectives and outlined the options available to members in determining the application.

Two objectors were present and invited to speak.

Jon McGugan, speaking in objection as a local resident, stated that he was often unable to sleep because of the noise of the bar late at night. This was especially bad in the summer when his windows were open, as they directly faced the building.

Leo Charalambides, Barrister speaking in objection on behalf of the Queens Hotel, stressed that the idea that the application needed to be determined on its own merits was not true. Competing considerations had to be taken into account, along with the context of the wider location. He suggested that the applicant had failed to carry out a full risk assessment of the local area, despite the report making it clear that it was their responsibility, while the council's main statement of licensing policy referred to the need to take wider considerations

into account. The Legal Officer agreed that although each case should be taken on its own merit, it needed to take into account the surrounding locality of the premises.

Mr Charalambides emphasised several areas of non-compliance. Firstly the notice was white rather than the required blue. The main issue of non-compliance pertained to the content of the public notice. He stressed it was a requirement to describe and clearly display the varying hours and he contended that this had not been the case and it was not clear for the general public. The poorly filled out application form was further heightened as the Licensing Officer had had to verify what exactly the new hours would be. In effect, the application intended to create two outdoor late-night bars with varying conditions sat adjacent to the Queens Hotel and other residences, so the hours in question were crucial to the local area.

He stressed that the applicant's failure to follow the Section 182 guidance on this and the council's failure to impose conditions on the application meant it was unlawful, and he asked Members to refuse the application on the basis of substantial non-compliance with procedural requirements.

The Chair remarked that any decision today was not necessarily urgent, as from this evening all hospitality venues had to shut at 10pm due to Covid-19 restrictions possibly for 6 months.

Mr David Mason, Solicitor representing the applicant, was invited to address the committee. He stressed that there were already conditions in place relating to restrictions on the outside area and contended that the notice was blue and therefore compliant in terms of colour. He emphasised that the wording used in the report was given to the applicant following consultation with the council's licensing officers. He totally rejected substantial non-compliance, as well as some of Mr Charalambides' contentions, suggesting that nobody could accurately say that the Queens Hotel had been misled on the variation in times, although some local residents may have misunderstood. He suggested that it would be unfair and unlawful for the committee not to proceed with the application because of the forthcoming new restrictions, as legal costs had already been incurred.

The Legal Officer clarified that the applicant's procedural defects were acknowledged in the report, and it was for Members to determine whether they were so significant as to make the application unacceptable. The colour of the application could not be clarified as members only had black and white photocopies to hand.

Members discussed the varying hours notice, which the Chair conceded was not clearly set out. Mr Mason agreed the application did not set out the variation in times, but stressed this was following licensing officers' advice and that nobody was misled, since the hours were clarified well in advance of the meeting.

The Chair adjourned the meeting for several minutes, so that the Legal Officer and Licensing Team Leader could discuss the matters at hand.

The Legal Officer suggested that while one error might have been acceptable, the series of errors in the content and nature of both the notice and application meant that it would not be in the public interest to overlook them. She advised that the application be dismissed, and advised the applicant to submit a full new application with the correct wording, clear information on timings and ensure the correct colour notice was displayed, saying that it would not prejudice them and that Mr Mason would be able to assist with a compliant application.

Mr Mason responded that the applicant was disappointed, as they had sought the advice of council officers throughout. He understood that the committee would not make a decision that contravened the legal advice they were receiving, and that he had to accept the decision with good grace. A new application would be necessary, and would be made. It was a matter of regret for the client, who made errors but had corrected them in a way that was endorsed by the council's officers.

The Chair agreed that it was a matter of regret, and an unfortunate situation for all involved.

Members agreed that it was the right decision, considering the uncertainty of the situation. They also suggested that whether, in view of the information received, it would be appropriate to employ the same three councillors for any future Licensing meeting on the same topic. The Chair and Legal Officer agreed that it would be prudent to retain the same membership for any future Licensing Sub-Committee meeting on the topic.

A member asked for clarity on whether the application was being formally dismissed or deferred to a later date. The Legal Officer responded that the application was being refused, but with the clear suggestion that it would be resubmitted with the procedural errors corrected. The Chair stressed that the refusal was no reflection on the applicant themselves.

Mr Charalambides responded that he was happy with the outcome and stressed the importance of following procedural protocols. He noted that ahead of any future application, his client (Queens Hotel) would welcome the applicant approaching them to sort out any issues. His presence would not be required at any future meeting if that were the case.

The Chair thanked attendees and brought the meeting to a close at 4.35pm.

**4. ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION**

There were no urgent items to be discussed.

Paul McCloskey  
**Chairman**