

Licensing Sub Committee-Alcohol and Gambling

Monday, 25th January, 2021
2.05 - 5.45 pm

Attendees	
Councillors:	David Willingham (Chair), Tim Harman and Wendy Flynn
Also in attendance:	Sarah Farooqi, Louis Krog and Jason Kirkwood

Minutes

1. ELECTION OF CHAIR

Councillor Willingham was elected Chair of the meeting.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. DETERMINATION OF APPLICATION FOR A PREMISES LICENCE

The Chair informed the meeting that on 22 January Cllr Harman, the Licensing Team Leader and himself had undertaken a socially distanced site visit to the Lucky Onion.

Cllr Mason, attending on behalf of residents in the area, was allowed to address the meeting on an initial procedural issue. He raised the issue of the late publication of the acoustic report and asked whether, due to the timing of this, it could legitimately be given consideration at the meeting. He urged the sub-committee to adjourn the hearing in order to allow time for this report to be fully reflected upon by all parties concerned.

The Head of Law was requested to provide advice to the sub-committee in this respect. She clarified that there was nothing within the regulations which would prohibit the submission of a report prior to the hearing. However, if either the objectors, Cllr Mason, or any other party wished to make representations on the submission, the sub-committee should reflect as to whether additional time should be granted to allow consideration of the report.

Cllr Mason explained that he, and some of the objectors, had not had sufficient time to reflect fully on the report following its late submission and therefore had not had the opportunity to make representations on this additional information.

Speaking on behalf of one of the Interested Parties, the Queens Hotel, Mr Charalambides raised a further procedural point. He questioned whether there was a protocol for site visits and asked whether the acoustic report had been discussed at the site visit declared by the Chair. He also asked whether his client or any of the other objectors were also given the opportunity for the sub-committee to visit their premises which were in the vicinity of the site.

On behalf of the sub-committee, the Chair clarified that site visits were common as Members were not always familiar with the premises. He confirmed that the

acoustic report had not been discussed, as it was not available to the sub-committee at that stage.

The Licensing Team Leader added that site visits were carried out in accordance with the authority's Probity in Licensing guide. He confirmed that Mr Connor had accompanied the party on site and the focus was on the premises in question, rather than adjacent premises. The acoustic report had only been received at 5pm on Friday afternoon via email. The council's current policy was not to undertake planning or licensing site visits due to current circumstances but, on this occasion, Members felt it was important to gain an understanding of the lie of the land.

Mr Charalambides requested a short adjournment for him to take instruction from his client on the site visit, which he deemed to be 'special treatment' due to not having had sight of the Probity in Licensing guide. The Chair stated that site visits were a regular occurrence and were not special treatment. The adjournment was granted by the Chair.

Upon resumption, speaking for the Queens Hotel, Mr Charalambides supported the request from Cllr Mason for the sub-committee to consider an adjournment of the hearing. He felt it was important for civil society to express their view through their councillor and also to give the sub-committee the opportunity to consider a site visit to the Queens Hotel location vis a vis the premises under consideration. Additionally, the opportunity to consult the aforementioned Probity in Licensing guide would be welcomed.

On behalf of the applicant, Mr Coppell QC, resisted a further adjournment to the hearing and stated that the acoustic report was not a late submission as the Licensing Act did not preclude its introduction in advance of the hearing. He requested the sub-committee to judge for itself as to whether they had been capable of absorbing it within the timeframe. The application for a variation of a premises licence did not require the sub-committee to look at every other premises in the area itself.

In response to a query from Councillor Mason, the Licensing Team Leader clarified that this had been circulated to all objectors with email addresses on the Saturday morning.

The Head of Law reiterated to the sub-committee that, having heard the representations from the applicant and the objectors with regard to this, the regulations did not preclude the submission of representations from the objectors or the applicant in advance of the sub-committee. The consent point would only be at issue if a report had been presented at the meeting itself.

It was for the sub-committee to consider whether they had time to absorb the information within the time permitted and to take on board, in the interests of fairness, whether the objectors had time to properly consider the points raised, given the length of the document and its content. In terms of the site visit, she confirmed that this had been carried out in accordance with the probity guide, available on the website. In the interest of fairness, it was for the sub-committee to consider if it was necessary to visit any other premises, prior to the hearing, to get an idea of the geography of the premises. If the hearing were to be adjourned, she advised this should only be for a short time period.

Vote on whether to adjourn the hearing

1 in support

2 against

The Licensing Team Leader introduced the report, he explained that an application had been received for a variation of a premises licence from The Lucky Onion LLP in respect of 129 - 131 Promenade, Cheltenham. A copy of the application was included at Appendix A and a plan at Appendix B.

The applicant had applied for a variation to extend the commencement hour for the sale of alcohol from 10am to 7am every day and to extend the terminal hour for the sale of alcohol, recorded entertainment and provision of late night refreshment to the hours outlined at 1.3.4. To remove the condition that currently restricts the use of the outdoor area both front and rear to 23.00 hrs. The proposed revised wording to annex 2G seeks to include the use of the external front of the premises to 23.00 for performance of recorded music and late night refreshment and midnight for the sale of alcohol and to include the use of the external rear of the premise to 1am for the performance of recorded music and late night refreshment and 2am for the sale of alcohol.

He confirmed that no representations had been received from responsible authorities. However, 36 representations had been received from Interested Parties including local residents and businesses. These were included at Appendix C of the report.

The Licensing Team Leader reminded Members that they must have regard to all of the representations made and the evidence heard in order to promote the licensing objectives. He drew Members' attention to the definition of public nuisance as laid down in paragraph 6.10 of the report. He stated that this application did not comply with the special policy or core hours as outlined at 5.26 of the officer report and as such the sub-committee should consider points outlined in para 5.27.

He wished to highlight that the premises had been subject to 3 noise complaints, not 2 as outlined in the report and referred to para 9.1 which gave a breakdown of police recorded incidents at the premises. He confirmed that the police had not made a representation on this application.

In response to questions, the Licensing Team Leader confirmed that he had reported all of the noise complaints recorded by the Environmental Health Service. He also confirmed that the planning restriction against double-glazing on the listed buildings in the vicinity could be treated as a material consideration when thinking about the potential impact of late night noise.

In response to questions from the applicant, the Licensing Team Leader confirmed that there were no substantial changes in terms of core hours in the recently approved 2020 Licensing policy compared to the previous 2015 policy.

In response to a question from the objector (Mr Charalambides) the Licensing Team Leader confirmed that the plans in Appendix B relating to the external front and rear areas of the premises were correct. This was also confirmed by the applicant.

The Licensing Team Leader confirmed, in response to a further question from the said objector, that the existing licence, notwithstanding the conditions restricting use to 11pm, permitted the performance of recorded music Thursday-Saturday until 3am indoors and Sunday-Wednesday until midnight indoors. Late night refreshment was all indoors. In terms of the supply of alcohol the licence was for Monday to Wednesday 2am, Thursday to Saturday 3am and limited by conditions to restrict the supply of alcohol to 11pm.

The Licensing Team Leader confirmed that Cheltenham did not have a cumulative impact area. The policy recognised an area of concern but on an informal basis. He referred to paragraph 5.26 of the officer report that stated what was expected to be reasonable in terms of core hours, but any application beyond that would need to be justified in terms of criteria.

Mr Coppell requested to address the sub-committee and wished to clarify that the area was not proposed to be extended in any way, paragraph 1.3.4 set out the current hours and the proposed extension of hours.

On behalf of residents, Cllr Mason reminded Members of the basis of the local policy - for Cheltenham to be a safe and clean town offering a great diversity in its night-time economy and less focus on alcohol and which protected the quality of life for residents. He suggested that this application focussed on increasing alcohol sales and using recorded music to achieve that. Noise pollution in the early hours, associated with the premises, already affected residents negatively. This would become intolerable and detrimental to them, should this variation be approved, particularly as double-glazing was not permitted on their properties due to planning restrictions. Additionally, anti-social behaviour concerns had been raised by the objectors and should be taken note of by the sub-committee.

On behalf of the Queens Hotel, Mr Charalambides reported that the premises under consideration was already having an adverse impact on the local area and the current request was for the ability to operate as an outdoor bar. He referred the sub-committee to paragraph 8.41 of the Section 182 guidance which refers to drafting a risk assessment considering the impact on the local area. He had seen no evidence of a risk assessment nor any partnership formed to assess the impact. He had attempted to make contact with the applicant's solicitors but no dialogue was forthcoming. Mr Charalambides made reference to the measures his client had taken when installing the external marquee it had erected in accordance with the COVID regulations but managed within the existing conditions of its licence. This included dialogue with neighbouring residents.

He highlighted that there were no measures proposed by the applicant to mitigate the impact of the proposed changes to the licence. The acoustic report, submitted late, recognised the adverse impact of the noise from the premises and stated that measures were to be agreed in cooperation with environmental health in terms of a noise management plan. These had not been prepared in time for the hearing, nor for scrutiny by members of civil society.

He urged the sub-committee to reject the application in its entirety.

In response to a Member question to the objector, it was confirmed that the Queens Hotel was a Grade 2 listed building. It was also confirmed that noise

complaints in the past had been passed to the council or the police but no issues had been raised since March 2020.

On behalf of the applicant, Mr Coppell reminded Members of the specific variation requested as outlined in the report. He highlighted that the majority of the representations revolved around noise nuisance and crime and disorder. He referred to the acoustic report and the noise monitoring which had been undertaken from a representative sample of four locations in the vicinity. The report recognised that noise was created and to address this 2 conditions were proposed which would mean levels of noise could be controlled within the respective guidelines. This would be carried out in cooperation with the council to give the authority maximum flexibility. In relation to patrons, a noise management policy would be produced in accord with WHO guidelines and the Beer and Pub Association guidance. He believed this was entirely consistent with the council's licensing policy.

With respect to issues raised by the objectors, Mr Coppell explained that the noise effects were determined by the noise assessment rather than a projection of what would happen. The noise assessment informed that the effects would be easily managed if the proposed conditions were imposed. In terms of the lack of risk assessment referred to by the objector, as the risk was principally noise, this was covered by the noise assessment. There were mitigating measures in place and with the conditions proposed, officers would be given maximum flexibility.

In response to a Member question, Mr Connor confirmed that at this stage there were no concrete plans to reopen in the current Covid climate; however, he would expect that the majority of the external area would be open, rather than covered when conditions permitted.

When asked what measures were being proposed to ensure customers leave the premises quietly, and not in great number, Mr Connor confirmed that egress from the property after 10.30pm on extended evenings of service would be solely from the Kings House gate, which was the furthest away from the two areas of concern identified.

In terms of the request for variation on the sale of alcohol from 7am, Mr Connor clarified that as the premises hosted a large number of corporate functions and had a number of leisure guests, this would allow for the sale of alcohol with a breakfast or as part of a function.

Mr Connor also confirmed that the licensing/environmental health team had not been consulted on the proposed conditions due to Covid and the working capacity of the consultants providing the acoustic report over the festive period. Having taking experience and legal advice into consideration, it was deemed that the wording and limits would be subject to approval by the relevant bodies.

Acknowledging that a noise management plan had not yet been provided, Mr Coppell suggested that the following addition be made to the end of the first sentence of condition two - that a noise management policy be provided "that is acceptable to the council". This would ensure that a dialogue takes place between the applicant and the council to produce a workable outcome.

Mr Connor confirmed that the existing small speakers in the external terrace areas would continue to be used to play incidental background music for the extended hours, should the variation be granted.

He also confirmed that the testing had been carried out during Covid restrictions but prior to the current full lockdown. As a guide, and pre-Covid, on a busy evening there could be 1000-1100 people on the premises until closing time. Prior to the current national lockdown, 500 people could be on the premises; there were 90 covers seated on the rear terrace and 50 covers on the front terrace and 36 on what was referred to as the drive.

The baseline of the testing was questioned since it was carried out in winter during a global pandemic. The noise concerns raised by objectors concerned 11 pm onwards.

Mr Coppell clarified that sound was monitored between 8.30pm and 9.30pm on 19 December, the week before Christmas and it was highlighted that ambient noise did not really drop off until quite late.

A short adjournment was agreed to allow the applicant to consult with his client.

Upon resumption, Mr Connor proposed an additional condition that external areas be only used for seated capacity in the external hours of service and this would not exceed the restrictions in place under the Covid limitations for its operation.

On behalf of the Queens Hotel, Mr Charalambides questioned how the sub-committee could be satisfied that this variation could work if left to officers to determine in consultation with the applicant. He asked whether this would be in the wider public interest and in accordance with the principles of the Licensing Act.

The Chair emphasised that the conditions needed to be measurable and enforceable and asked the applicant to elaborate how such conditions could be properly consulted upon to manage the nub of the issue, i.e noise.

The applicant clarified the conditions as follows:

- An addition to the end of the first sentence “which is acceptable to the council.”
- On extended hours of service egress is solely to be from the Kings House gate which represented another measure of noise control.
- That the external areas in the extended hours are only to be seated and thereby limited to the seating limit. He elaborated by saying that given the timing of the acoustic report of 19 December-there was full seating capacity that day- it represented an accurate measure that the applicant had offered to restrict.

Councillor Mason reminded the applicant’s representative that residents had previously been subjected to distress from a late night extension of a nearby premises and asked what control the premises would have as people were leaving the establishment at 2am disturbing the neighbourhood.

In reply, the applicant’s representative referred to the applicant’s willingness to stagger people leaving the premises and thereby addressing the concerns of

residents. Mr Connor added that the security team could assist in managing the dispersal and exit from the premises within the boundary but beyond that could not mandate behaviour.

The Chair moved to debate reminding Members of the Licensing Policy and that if they wished to deviate from policy, clear reasons should be given.

One Member could not support the application as he felt it was in breach of at least two of the licensing objectives. There was a record of a small, but significant, number of complaints at the premises. There was also uncertainty about the use of the marquees and operating plan going forward. He supported the reasons the speaker representing the objectors had set out for rejecting the application.

Another Member expressed the opinion that the decision was even harder currently due to pressures of Covid and ensuring that the decision was the right one to enable the recovery of the town. The noise report was referred to, stating that the sub-committee did not often receive these from the applicant, and although it was submitted late and during Covid, it provided more information which would be considered given the circumstances. The conditions volunteered by the applicant during the meeting were welcomed, showed that the applicant was willing to adapt. The Member was minded to approve to enable the applicant the flexibility it needed going forward and did not think it conflicted with the licensing objectives. However the Member wanted to see conditions attached regarding the egress in line with those suggested by the applicant earlier and limiting the outside numbers to seated only.

A Member was happy with the granting of the extension to 7am in the morning, but with the condition of limiting sales to people who were seated and having a table meal which would deal with any potential crime and disorder issues.

There were a number of concerns regarding late night noise issues:-

- The potential impact on the well-being of the occupants of flats in Queens Circus and at the Queens Hotel and other residents in the area which may be very challenging to meet.
- Alcohol enhanced voices were uncontrollable.
- The noise report was carried out at a time not indicative to the actual noise level due to it being done in winter, less traffic, windows not open.
- The noise level base line dropped off significantly between 2300 – 2400 hours.
- A number of issues with regard to public nuisance arose from late night noise attributed mainly to noise from music and from people.
- Even with modifications and conditions it would be difficult to fairly assess as they were quite vague.
- Putting conditions on now, the details of which would have to be worked out afterwards, would be a challenge, and without adequate consultation with local people and businesses, there was a lack of confidence that this would prevent public nuisance.
- The conditions were not robust enough for approval, for example, the positioning of speakers and direction they face.

- Not sufficient detail and not happy leaving that to Officers to undertake a comprehensive piece of work, so not comfortable with outside noise control.
- Although neither the Police nor Environmental Health Officer objected, due to the noise issues, there was no confidence that the variation could be approved.

With regard to objections from residents on the grounds of crime and disorder, a Member noted and accepted their concerns, but stated there was no evidence directly linked to this premises. Once people were away from the premises they were responsible for their own conduct and thus could not tar this premises with their misbehaviour.

In summary, the Chair stated he was happy to approve the extension to 7am from 10am with the condition of no off-sales between 7-10am and sales limited to table meals, but was not in favour of an extension of outside late night sale of alcohol and recorded music on grounds of preventing public nuisance, as he lacked confidence that significant mitigation was in place in terms of the noise impact on local residents.

In his right of reply, Mr Coppell QC, stated the real issue was whether in the opinion of the sub-committee the conditions proposed with the amendments put forward really addressed the noise concerns. He made the point that it was very tempting to make assumptions about noise nuisance and asked the sub-sub-committee to think of the science behind noise nuisance. He felt that the music and noise concerns that had been spoken about, could easily be controlled by a noise management policy. He continued they had also offered further clarification. He said it would be a shame if it was not within their ability to fashion a condition, whereby the officers could get down to the detail, so that it could be approved by the sub-committee. Mr Coppell accepted that the sub-committee would wish to have any conditions accepted by other bodies to ensure they were workable and enforceable but urged them to make a decision that, with some tweaking, would be acceptable to the licensing policy and that struck a balance between the two sides.

The meeting was adjourned to allow the sub-committee to take legal advice.

On resuming the meeting, the Head of Law explained the legal advice given and reminded members of the licensing objectives.

Following the advice of the Head of Law, the sub-committee determined that they could and should split the application into two parts.

First part - to approve the variation of the hour to permit sale of alcohol from 0700 with the conditions of no off sales between 0700 and 1000 and alcohol only served with a table meal.

For : 3

Against : 0

Abstain : 0

Granted subject to conditions approved.

The sub-committee concluded that in the absence of any objections to this, and based upon the reasons given by the applicant, it would be unreasonable to

refuse this part of the variation. However, based upon the proposed usage by the applicant, and to promote the licensing objective of prevention of crime and disorder; the sub-committee believed it was reasonable to impose the conditions.

Second part: to approve the application to extend the terminal hour for external use of the premises.

For : 1

Against : 2

Abstain : 0

Refused

The sub-committee concluded that in light of the numerous objections from interested parties, primarily in respect to late night noise, that despite the conditions which were offered, the sub-committee did not feel they were sufficiently clear or enforceable, and that the licensing objective of prevention of public nuisance was not met by this part of the variation.

The acoustic report was only submitted late in the process, and was not available to objectors or Responsible Authorities to comment on.

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

None.

David Willingham
Chairman