

Minutes

Licensing Sub-Committee

Wednesday, 11th November, 2020 10.30am

Attendance

Cllr J Cloke
Cllr Fryd

Cllr Keeble

Officers Present

Paul Adams	-	Principal Licensing Officer
David Carter	-	Environmental Health Manager
Dave Leonard	-	Licensing Officer
Alastair Lockhart	-	Corporate Governance Solicitor
Jean Sharp	-	Governance and Member Support Officer

565. Appointment of Chair

Members **RESOLVED** that Cllr Keeble should chair the meeting.

566. Administrative Function

Members were respectfully reminded that, in determining the matters listed below, they were exercising an administrative function with the civil burden of proof, i.e. 'on the balance of probabilities'. The matter would be determined on the facts before the Sub-Committee and the rules of natural justice would apply.

567. Application to Vary the Premises Licence - Dusk, Ongar Road, Pilgrims Hatch, Brentwood. CM15 9SS

An application was received on 3 July 2020 from Mr Kaizad Cassady on behalf of Sisu Enterprises Ltd. in respect of ***Dusk, Ongar Road, Pilgrims Hatch, CM15 9SS***. The premise was a multi-cuisine, fine dining restaurant and lounge, with function room.

The applicant initially sought to remove two conditions attached to Annex 3 of the current premises licence granted following a Licensing Sub-Committee hearing on 1 October 2019, namely;

- There should be a second interior door at the front entrance (3/1), and
- Noise limiters should be installed in the outside space in discussion and agreement of the Licensing Department of the Council (3/7)

Additionally, the applicant sought the provision to supply alcohol for consumption on the premises from;

Sunday-Thursday 1200hrs-2330hrs & Friday & Saturday 1200hrs-0130hrs

The hours of opening had also been amended to;

Sunday-Thursday 1200hrs-0000hrs & Friday & Saturday 1200hrs-0200hrs

One valid representation had been received from the Responsible Authorities.

Mr David Carter, Environmental Health manager at Brentwood Borough Council had concerns relating to noise nuisance. He maintained that, since Dusk's opening, there had been a substantial increase in the number of complaints received, largely as a result of the use of the lounge area, which as it was designed to comply with the smoking legislation was required to be at least 50% open, which significantly reduced any noise attenuation from the structure and, effectively, operated as an outside area, with associated noise from customers and any amplified music played in the area.

There had been 15 representations against the application received from Other Persons. The concerns raised by local residents generally related to the noise nuisance being caused by the playing of late-night music in the outdoor lounge/smoking area and the subsequent dispersal of patrons in an otherwise quiet, semi-rural location.

Matters recorded in the Operating Schedule (Section O of the application form) would become conditions on the licence if this application was granted, unless modified by this Committee. In this instance, Mr Shakil Islam, one of the directors of Sisu Enterprises Ltd., had submitted an accompanying statement advising what steps would be taken to address and counter the conditions he was seeking to remove from the licence, this would become the following conditions:

- Thick curtains and thick pergola glass would be installed at the front door to ensure a significant reduction in noise escape beyond the premises
- No regulated entertainment would be conducted outside the premises. Music would be played only within the premises.

In respect of the application seeking the provision to supply alcohol for consumption on the premises, the applicant had not yet nominated a designated premises supervisor. If granted, the mandatory condition applied:

No supply of alcohol may be made under this licence

- a) At a time when there is no designated supervisor in respect of it or,*
- b) At a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.*

The application was initially heard by the Licensing Sub-Committee on 7 September 2020 but the hearing was adjourned to 28 September 2020 when the applicant introduced a supplementary supporting document with less than 5 working days' notice. The document, a noise impact assessment sound report, contained very technical information and it was considered necessary that all parties should be given a sufficient period to scrutinise the document.

On 10 September 2020, Sisu Enterprises Ltd. submitted a further application for a minor variation to amend the premises plan to include a second interior door at the front entrance. The purpose of this was to enable the licence holder to now comply with Annex 3 condition 1 of the current licence, thus obviating the need to have the condition removed from this application and, perhaps, allaying some of the concerns raised by those making representation. There were no representations against the minor variation and an amended licence with the updated premises plan was issued on 1 October 2020.

Consequently, a second supplementary statement from Mr Shakil Islam dated 20 September 2020 was submitted amending this application and clarifying that he no longer wished the removal of Annex 3 conditions 1 & 7 from the licence and the application was now purely to include the provision to supply alcohol for consumption on the premises and to extend the hours of opening.

The Licensing Manager introduced the report and Mr Carter, the Council's Environmental Health manager, and local residents Mrs Bashir and Mr Billington addressed the Sub-Committee.

The applicants' representative, Mr Mahmood, addressed the Sub-committee in support of the application.

Having listened to all the representations, members of the Sub-committee retired to consider their decision.

In coming to a determination of the application the Sub-committee must carry out its functions in accordance with the Licensing Act 2003 with a view to promoting the licensing objectives:

- (a) the prevention of crime and disorder;
- (b) public safety;

- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

The Sub-committee in making its determination had also had regard to the Authority's own licensing statement and guidance issued by the Secretary of State under Section 182 of the same Act.

Having regard to the above and taking account of the representations made at the hearing the Sub-committee decided to grant the variation as sought but with the added condition:

"Customers must not be permitted to consume any alcohol on the premises other than alcohol sold or supplied under the authorisation of this licence."

The Sub-committee took the view that allowing for on sales would promote the licensing objectives by regulating the sale of alcohol on the premises as opposed to the continuance of the present "bring your own" policy. Thus the licensing objectives prevention of crime and order / prevention of public nuisance / public safety would be promoted.

In regard to the extension of opening hours to start at 12 midday the Sub-committee took the view that this measure would help to support a responsible premises.

Members returned to the hearing and their legal advisor Mr Lockhart advised all present of their decision which would be confirmed in writing following the meeting.
