

Licensing Sub Committee (Panel Hearing) Minutes

Date: 12 September 2019

Time: 10.05 am - 12.53 pm

PRESENT: Councillor A E Hill (in the Chair)

Councillors Ms A Baughan and C B Harriss.

44 INTRODUCTORY REMARKS BY THE CHAIRMAN

The Chairman welcomed everyone to the meeting and following introductions he set out the procedure that would be followed during the hearing.

It was confirmed that a set of revised conditions had been submitted and were contained within the Panel's bundle.

45 APOLOGIES FOR ABSENCE

None.

46 DECLARATIONS OF INTEREST

There were no declarations of interest.

47 THE OLD BREWERY, 84 HIGH STREET, MARLOW, SL7 1AX

The Panel considered an application under s.17 of the Licensing Act for a premises licence in respect of The Old Brewery, 84 High Street, Marlow, SL7 1AX

Ms Caroline Steven, WDC Licensing Team Leader, outlined the case to the Panel as detailed in the report, and explained that the application under consideration was for a new premises licence for The Old Brewery, 84 High Street, Marlow. A current licence is in force for these premises and it was confirmed that this licence would continue in force regardless of the outcome of the hearing until it was either surrendered, suspended or revoked. It was therefore possible that, if the current application was granted in whatever form, that two licenses would be in force at the premises and any conditions attached to either premises licence would apply.

The new application sought to extend the opening hours at the premises by one hour until 03:00 on Friday and Saturday nights. Additional conditions were also offered within the operating paperwork.

The application had been advertised in the required manner and as a result various comments had been received. The police had agreed additional conditions with the applicant. Control of Pollution provided a record of noise complaints relating to the premises.

In addition, twelve representations had been received from local residents. It was confirmed that Mr Ian Sloman's representation had since been withdrawn further to the additional information recently provided by the applicant.

Some of the residents were in attendance at the hearing and it was noted that everyone had seen the papers relating to the hearing and it was proposed not to read all the representations of those who were not present. The Chairman confirmed this was acceptable.

In relation to the application itself, the Panel's attention was drawn to the relevant parts of the Council's Licensing Policy and the Statutory Guidance, in particular 2.17 which referred to the use of conditions to control noise nuisance and suggested steps such as keeping doors and windows closed, or preventing the use of outside areas after a certain time. It also referred to the possible use of noise reduction materials and equipment.

Paragraph 2.21 dealt with matters which were considered to be outside of the control of the licensee in that they occurred away from the premises in question.

Paragraph 3.17 listed matters which the authority may particularly take into account, such as, measures to reduce noise nuisance and anti-social behaviour.

In determining the application, the Panel were required to take into account the Council's policy and the Statutory Guidance and any decision made, or conditions imposed, must be done so in order to promote the licensing objectives which underpinned the legislation. These were:

- The prevention of public nuisance
- The prevention of crime and disorder
- Public safety
- The protection of children from harm

The Panel must also take into consideration the representations made and the evidence submitted both in writing and orally at the hearing.

Any decision taken must be appropriate and proportionate and take into account the Human Rights Act and relevant EU legislation covering the right to a fair hearing, respect for private and family life and peaceful enjoyment of possessions.

In determining the application, the Panel could take any of the following decisions:

- Grant the application as applied for;
- Grant the application subject to modifications; or
- Reject all or part of the application

In answer to questions, Ms Steven confirmed that premises were able to operate with multiple licences although it would have to comply with the conditions of all the licences. The applicant's legal representative did not agree that the conditions of both licences would have to be complied with if the application was granted and stated that the applicant would be able to decide which licence the premises would operate under. There was a difference of opinion on this legal point but as it was not directly relevant to

the issue of whether the licence should be granted the applicant's legal representative agreed to forward to the Legal Advisor a copy of Counsel's Opinion in support of her position after the hearing.

Mr Stuart Goodbun, WDC Environmental Health Technical Officer, explained that historical complaints had been reviewed when the application had been received. He explained that Environmental Health were keen not to see a repetition of noise nuisance. A Noise Management Plan (NMP) had been submitted by the applicant which had raised a number of points and queries such as how complaints procedures would be managed when raised? No staff training details had been submitted. Mr Goodbun raised the question of how communication with SIA (Security Industry Authority) trained staff would take place Mr Goodbun explained that he was keen to work with the applicant prior to the adoption of the new licence – should it be permitted. He believed that there was much ambiguity within the Applicant's Evidence Bundle.

The Solicitor on behalf of the applicant, stated that no representation had been made by Control of Pollution, as evidenced in the WDC report and therefore his representations should not be taken into consideration by the Panel when making their decision.

Mr Andy Dean, Licensing Officer, Thames Valley Police stated that he had been in discussions with the applicant and offered a number of conditions to be placed on the licence which they have agreed to, should the licence be granted.

In response to questions in relation to the recent incident at the premises, Mr Dean stated that he could not make any comment due to ongoing investigations.

The Solicitor, on behalf of the applicant, confirmed that CCTV (Closed Circuit Television) had been provided to the police in relation to the incident. They accepted that extreme caution had to be exercised due to the investigation not yet being completed.

Mr Dean did not have any figures with him in relation to whether footfall had increased at the premises since the recent brand change although no increase had been noted.

Mr Dean confirmed that the recent incident did not change the position of Thames Valley Police. He also confirmed that the incident occurred during normal operating hours. If the premises were deemed to have failed, then action would be taken.

One resident explained that he had spoken to police officers in Marlow High Street who had commented that they believe their presence was necessary in relation to the behaviour of customers at The Old Brewery. Mr Dean could not comment as he was unaware of this.

Mr A Dooley, on behalf of the Hand and Flowers premises asked why the recent incident that occurred at The Old Brewery could not be taken into consideration by Thames Valley Police. It was explained that the Panel had information in front of them and that questions about the incident could be asked; however, due to ongoing investigations, Mr Dean was unable to comment further.

Mr Dooley then stated he could not understand the benefit of increasing the opening hours as he did not know who benefitted. He also explained that the Hand and Flowers had concerns as they owned properties around Marlow which are used as Guest

Houses, in particular one in close proximity to The Old Brewery. Mr Dooley explained that guests had complained of being verbally abused by customers from The Old Brewery premises and he believed that the increase in opening times would not be good for Marlow. He also explained that public nuisance was an issue as well as public safety particularly in light of the incident which occurred recently. He believed that this behaviour did not help Marlow's reputation.

Mr A Onions, Marlow resident, explained that he had lived in Marlow for the last 42 years and therefore knew it well. Since the Cross Keys had closed and The Old Brewery had become a Sports Bar, he believed there had been an increase in anti-social behaviour. There had been many problems with people being drunk, being sick and banging on ground floor windows of private properties and whilst it could be argued that the people doing it were not from The Old Brewery, this anti-social behaviour normally took place around the time that the premises closed. Having spoken to the police, they confirmed heroin use was an issue. All of the above had increased since the re-branding. Mr Onions stated that he was in the process of installing CCTV, at some considerable expense, to identify the perpetrators. He also questioned the reasons why the premises wanted to remain open until 03:00 other than to make more money.

Mr B Savidge, Marlow resident, explained that a meeting had been held between some residents and the manager of The Old Brewery at which time some agreements were made although this was not reflected in their application or further amendments. It was agreed at the meeting that the front courtyard area would be closed to glasses and alcohol at 23:00 hours and that all external doors and windows would be closed from 23:00 hours and that the music level would be reduced from 00:30 hours. If the premises had two hundred customers, the level of noise would increase due to the loud music. Mr Savidge saw no value in staying open on New Year's Eve until the following day's opening hours. Mr Savidge also explained he had driven past the premises as he lived a few yards from there and had seen people out on the pavement drinking which was unacceptable as it hindered passers-by. If late hours were to be approved, then this should be retained within the building itself along with the promised security. Mr Savidge explained that he lived in the Brewery development and often had glasses, cans and bottles thrown over the gates which were closed at 22:00 hours. Mr Savidge also explained that when the football World Cup was held in 2018 on the occasion when England won their game, all the customers spilled out onto the road which had to be closed off by the police as a consequence. The question was raised why the staff could not control their patrons and bring order. There seemed to be no control or management.

Ms K Mulliss, on behalf of the Hand and Flower and Marlow resident, explained that noise was the main issue as it was mainly abuse due to intoxication. She explained that every weekend guests would complain. There were issues of smashed glass, urinating against the walls etc. Opening until 03:00 hours was asking customers to get even more intoxicated due to the extra time allowed. Ms Mulliss believed this was not what Marlow needed. She also explained that she was a resident of Marlow and did not wish to see anyone taking drugs. She stated that some local residents had children whose parents would not want them to see the behaviour of the customers at The Old Brewery as they could believe it was an acceptable way to behave.

Mrs C Wenn, Marlow resident, explained that she lived a few doors away from the premises. She also explained that their neighbours, who had submitted objections,

could not attend the hearing but that their objections stood as submitted. Mrs Wenn explained that they were regularly disturbed by noise from the premises although they had not complained in the past for fear of reprisals. She explained they accepted when they moved to the property in Marlow that there would be noise due to being a town centre location. It was noted that plants had been stolen from the front of their property and that broken glass and litter was left there too. However, she did agree that it was impossible to know if this was down to customers of The Old Brewery. Marlow was a beautiful and historic town with some amazing places to eat and drink but that to carry on drinking until 03:00 hours seemed inappropriate to the locality.

Mr R Wenn, Marlow resident, explained that there were a number of objections in relation to the one hour extension and he believed there should be more vigilance about the current licence. There was concern in relation to the rebranding which had taken place, the way the pub promoted alcohol and the way local residents were treated by the staff at The Old Brewery. A meeting was held on 28 August 2019 and that Mr Wenn had attended, in good faith, however, it was felt that the applicant's representatives had arrived unprepared and only asked if residents had any questions. Mr Wenn believed that the meeting would be about how the premises would tackle the issues if the application was granted. Verbal assurances were given at the meeting of the 23:00 hours curfew in the courtyard which, he believed, was the reason that the recent incident was, in fact, relevant as it had occurred just a short time after.

Ms Clare Eames of Poppleston Allen, solicitor on behalf of the applicant, explained that Luke Jones, Area Manager of The Old Brewery had worked for the brewery for a number of years. She commented that only three complaints had been received in the past. The application had been submitted after full consultation with the authorities. The new licence was an opportunity for a new operating schedule to be put in place as the current licence had hopeless conditions on it. Ms Eames believed that the new licence would place residents in a better position. Ms Eames confirmed that if the new licence was granted at the hearing with appropriate conditions, the old licence would be surrendered.

Ms Eames also explained that Stonegate had over seven hundred premises across the country all of which were privately owned and operated in High Street in towns. One third of those premises which were placed within residential areas already had licenses until 03:00 hours and had not been subject to any challenge, so they understood the issues. When representations were received they believed it important to listen to them and had often liaised locally across the country. Ms Eames explained that the meeting on the 28 August was for local residents to meet with Luke Jones and Indrit Bala (DPS) and the intention was not for the meeting to go the way it did.

There had been no representation from Control of Pollution. The Noise Management Plan was a "living document" and amendments will be made. The reference to the front door being left open was a typographical error.

Ms Eames explained that the premises was working closely with the police in relation to the recent incident that took place and should any concerns come to light as a result of the investigation they would be addressed with the help of Mr Dean of Thames Valley Police.

It was explained that in many towns across the country the company invests money in premises and as part of refurbishments etc. an increase of hours would be carefully considered in light of customers' requirements.

Ms Eames processed all applications for the company and in reference to their application, no customers would be permitted onto the premises beyond 02:00. She stated that the premises were not currently at peak capacity. The company realised they were under the microscope and that irrespective of whether the new licence was granted or not they would promote the licensing objectives. Indrit Bala and Luke Jones were currently trialling changes in the outside area in that customers would only be allowed outside after 23:00 if they wished to smoke.

The applicant's legal representative indicated that they were prepared to agree to a condition limiting the number of persons allowed in the outside area to smoke after 11.00 pm but she wished the number to be increased to 30. The manager of the premises stated that 20 was reasonable and you could not fit more than 20/25 people outside.

In response to a comment from the Panel, Ms Eames stated that the application was not about what was going on in Marlow but about promoting the licensing objectives. There had been some communication with the Hand and Flowers although the licence holder had not received any complaints from residents. Ms Eames believed that all the issues were not the responsibility of The Old Brewery and therefore was unsure how a resolution could be achieved. She also explained that the applicant would work with WDC Control of Pollution officers regarding the Noise Management Plan. Ms Eames recognised that the Panel could add further conditions to the licence if they wished, although expressed caution as no representations had been received from responsible authorities in opposition of the later hours. She believed they had met the test as far as conditions were concerned.

Mr Indrit Bala stated that at weekends, the wall speakers were turned off at a certain time and that he walked around the premises ensuring sound levels were down. He also explained he would be happy to work with residents in the future.

In response to questions, Ms Eames confirmed that they would accept a condition meaning that no drinks would be allowed outside the premises after 23:00. In reference to conditioning noise reduction it was noted that any conditions imposed would have to be concise and clear.

Mrs Wenn stated that she should not be made to accept the additional hour just to accept the conditions on the new licence.

Concerns were raised following the, in the residents' views, unsuccessful meeting on the 28 August due to the lack of trust in what the licensee was promising compared to what would actually be delivered. The residents explained that the reassurances they sought were not forthcoming at the meeting. It was noted, however, that residents were safeguarded under the conditions and that there were measures whereby complaints could be dealt with. Mr Goodbun explained that residents could keep diaries for at least 2 weeks of when disturbances took place and once the diaries had been submitted to Control of Pollution, sound monitoring equipment could then be installed in various resident's houses so measure the levels of sound/noise. It was noted that diaries had been issued in the past but that they had received none back.

Mr Goodbun confirmed that complaints from the Hand and Flowers Guest House would be treated differently to residents due to the transient nature of occupants because they were not disturbed on a consistent nature.

Ms Eames confirmed that a dispersal policy statement was contained within the Noise Management Plan and that all doors were closed, except for access and egress. It was also confirmed that Indrit Bala was the single point of contact in respect of complaints and that he had supplied local residents with his mobile number.

Ms Eames stated in respect of door staff that Indrit Bala would risk assess by considering whether a particular night would be busier than normal and would act accordingly by ensuring extra door staff were employed. The company they used was local and assurances were provided that if an additional SIA was required, one could arrive promptly after being called. The door staff had 'clickers' meaning they could count people going in and out ensuring that numbers never exceeded 200 within the premises. Ms Eames accepted that any risk assessment would have to take place prior to 21:00 hours if Door staff were in place from 21:00 until after the premises were closed. Ms Eames accepted a condition of limiting the number of smokers permitted outside at any one time after a certain time but stated that if the outside area was closed then customers would simply go out on the street.

It was also confirmed there were two CCTV cameras concentrated on the outside area.

The Chairman thanked everyone to attending the hearing and explained that he and the Panel would go into private session to make their decision.

The hearing closed at 12:12

During their deliberations the Panel took into consideration all the written and oral evidence presented at the hearing, the legislation, Statutory Guidance and the Council's Licensing Policy. In furtherance of the licensing objectives of prevention of crime and disorder and to strike a balance between the human rights or residents and the rights of the premises licence holder the Panel agreed:

To refuse the additional hour requested on Friday evenings and Saturday but otherwise to grant the application subject to the conditions agreed with the police but redrafted to be enforceable and to impose the following additional or revised conditions:

Noise Management Plan

A Noise Management Plan will be submitted and approved in writing by Control of Pollution of Wycombe District Council within 14 days of submission. Once approved it must be maintained and applied.

Restrictions on the use of the permitted outside area

- The permitted area shall be restricted to the fenced area to the front of the premises to be marked with a blue line on the premises licence plan.
- No drinks shall be allowed in the permitted area after 23:00 hours.

- No more than 20 persons shall be allowed in the permitted area after 23:00 hours and only then to smoke.

SIA Door Supervisors

- On Friday and Saturday nights at least two SIA registered door supervisors from an accredited company must be on duty from 21:00 hours until 30 minutes after closing for the first 200 customers.
- The need for additional door supervisors will be risk assessed in 7 days in advance, such risk assessment to be in writing and retained for 12 months.
- All records shall be made available to the police or an authorised officer upon request.

Restrictions on re-entry

There shall be no re-entry after 00:00 hours until the premises is closed to the general public.

RESOLVED: that the application be granted subject to the matters as laid out above.

Chairman

The following officers were in attendance at the meeting:

Stuart Goodbun	- Environmental Health Technical Officer
Liz Hornby	- Senior Democratic Services Officer
Caroline Steven	- Licensing Team Leader
Alaka Thomlinson	- Solicitor
Hilary White	- Paralegal