

SOUTHEND-ON-SEA BOROUGH COUNCIL

Meeting of Licensing Sub-Committee B

Date: Tuesday, 13th July, 2021

Place: Virtual Meeting via MS Teams

Present: Councillor K Mitchell (Chair)
Councillors S Buckley and N Folkard

In Attendance: A Brown, T Row, A Penn, P Pearse and P Richards

Start/End Time: 10.00 am - 12.40 pm

187 Apologies for Absence

There were no apologies for absence.

188 Declarations of Interest

No interests were declared at the meeting.

189 Fellinis, 34-36 Elm Road, Leigh-on-Sea, Essex SS9 1SN - Application to Vary a Premises Licence

The sub-committee received a report of the Executive Director (Neighbourhoods and Environment) concerning an application by Mr Robert Sutherland of RDS Law, acting on behalf of Rococo (Leigh) Ltd, trading as Fellini's located at 34 – 36 Elm Road, Leigh-on-Sea, Essex SS9 1SN, to vary the Premises Licence at Fellini's, 34-36 Elm Road Leigh-on-Sea, Essex SS9 1SN. The variation sought an amendment to the condition on the existing licence that had been offered by the applicant, and subsequently imposed by the sub-committee at its meeting on 8th October 2020. This limited the number of patrons permitted for the purpose of dining and drinking on the terrace/balcony to 16 (sixteen). An increase in the total number to 48 (forty-eight) persons was now being sought. The overall capacity at the premises and all other conditions on the licence would remain unchanged.

The application was presented by Mr Sutherland, the Applicant's Solicitor. The General Manager of the premises, Mr Chaka was also in attendance and gave evidence.

The sub-committee noted that representations to this application had been received from the Licensing Authority and the Council's Environmental Health Team in their capacity as Responsible Authorities. Mr Penn and Mr Pearse attended the meeting to present their objection for these authorities respectively and gave evidence. An objection had also been received from Leigh Town Council. Councillor Cracknell attended the meeting to present their objection and gave evidence.

The sub-committee noted that letters of support had also been received from two local residents in respect of the application. One of these residents, namely Ms Kelly, attended the hearing and gave evidence.

The objectors' concerns related to the licensing objective regarding the prevention of public nuisance, in particular, the potential of noise arising from the cumulative effect of voices from a significantly increased number of customers in a raised, outside area and the disturbance this may cause to neighbouring residents. This could be exacerbated when alcohol was consumed. The noise generated by human voices was difficult to control or negate. The increase in noise generated would be further amplified through reflection of sound from solid surfaces in an external environment. It was also contested that there had been insufficient time, due to covid lockdown restrictions, since the granting of the licence with the restriction on the number of people on the terrace for the premises to demonstrate adequate control of the outside terrace.

Concerns of public safety were also raised, given that this area was used as an emergency escape route. It was highlighted, however, that the Fire Service had raised no representation to the application and that this matter would be controlled through the Regulatory Reform (Fire Safety) Order 2005.

At the hearing, the sub-committee heard that the premises had been operating outdoors (where permitted) and through off-sales in line with government advice during the restrictions imposed as a result of the Covid pandemic. Additionally, the overall capacity on the terrace had been increased to 48 persons on 24 occasions on Fridays and Saturdays between 27th April and 10th July through the use of Temporary Event Notices. No complaints of noise or disturbance had been following any of these events. A noise management policy for the premises had been prepared by Big Sky Acoustics setting out how the management of the premises would control and manage noise from the dining terrace area. A copy of this was circulated in advance of the meeting. Copies of photographs illustrating the terraced area were also circulated in advance of the meeting.

Ms Kelly also explained that she had visited the premises during these occasions and stated that there had been no issues. The rear garden of her property faced the terraced area and she had heard no increase in noise above that normally experienced.

The Responsible Authorities questioned the capacity approved through the use of the Temporary Event Notices, as both were of the belief that the capacity specified on the Notice was 30 persons. The applicant explained that the Temporary Event Notices enabled the increase of the capacity of the terrace to 30 people. Another part of the terrace was used for off-sales from another part of the premises which then enabled them to achieve a capacity in the outside area to 48 persons.

The robustness of the evidence from the occasions the capacity had been increased to 48 persons under the Temporary Event Notices was also questioned. It was suggested that the public would have been minded to tolerate any nuisance caused on the basis that the events were purely temporary and support such businesses following the impact of the Covid pandemic. A permanent increase in the capacity to 48 every day may, however, generate complaints.

The lack of planning consent for the use of the terrace was also raised. The sub-committee disregarded this point on the basis that this is a matter for the planning authority.

At the hearing when summing up the evidence, and having regard to the representation by Leigh Town Council, the Applicant suggested that whilst the variation sought was to increase the capacity of the terrace to 48 persons, by way of compromise he may be minded to accept a reduction of the increase in the capacity sought to 36 persons until 9.00 p.m. with the capacity remaining at 16 persons from 9.00 p.m. until 10.00 p.m. The timing for the last serving on the terrace would be 7.00 p.m.

The sub-committee listened to all the evidence and submissions and read all the documents. It had regard to the Statutory Guidance Notes and Southend-on-Sea Borough Council's Statement of Licensing Policy. It also considered the four licensing objectives namely the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm as they related to this application. Each contested application is decided on its merits.

The sub-committee was mindful that each of the responsible authorities are experts in their respective field (paragraph 9.12 of the Revised Guidance issued under section 182 of the Licensing Act 2003 refers). In considering the matter, the sub-committee had regard to paragraph 2.17 and 2.18 of the Revised Guidance, in particular, "conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises" and that "the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.

Additionally, paragraph 9.44 of the guidance states "...As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination." Furthermore, a key protection for the community where problems associated with the licensing objectives occur, was the possibility of reviewing the licence.

On the basis of the evidence presented to it and after considering all the relevant issues, the sub-committee concluded that the promotion of the licensing objectives would not be undermined by the granting of the application with an amendment. The sub-committee therefore:

Resolved:-

1. That the application for the variation of the licence be granted as follows:

Annex 3 - Conditions attached after a hearing by the Licensing Authority shall be amended to read:

The external terrace area shall be limited to a maximum of 30 patrons only until 21.00 hrs. From 21:00 hrs until 22.00 hrs the maximum capacity shall not exceed 16 (sixteen) patrons only. The last booking for the use of the terrace shall be 19.00 hrs. For clarity, customers will be seated at tables with waiter/waitress

service and the sale of alcohol for consumption on the terrace shall be linked to the purchase of a substantial meal.

2. All other conditions on the licence shall remain unchanged.

Chair: _____