

SOUTHEND-ON-SEA BOROUGH COUNCIL

Meeting of Licensing Sub-Committee B

Date: Tuesday, 7th December, 2021

Place: Committee Room 1 - Civic Suite

Present: Councillor K Mitchell (Chair)
Councillors A Dear and N Folkard

In Attendance: Councillors C Mulroney
E Anakwue, T Row, A Penn, P Richards and M Newton

Start/End Time: 10.00 am - 3.15 pm

743 Apologies for Absence

There were no apologies for absence.

744 Declarations of Interest

The following interests were declared at the meeting:

(i) All members of the sub-committee – Non-pecuniary interest: one of the objectors is known to them as a fellow Councillor;

(ii) Councillor Mitchell – Non-pecuniary interest: one of the objectors who was not present is known to her.

745 The Vine 149 Leigh Road, Leigh-on-Sea, SS9 1JF - Application for the Variation of Premises Licence

The sub-committee received a report of the Executive Director (Neighbourhoods and Environment) concerning an application by Mr Andreas Artemi for the grant of a variation of a Premises Licence at The Vine 149 Leigh Road, Leigh-on-Sea, SS9 1JF. The variation sought to remove a condition that had been imposed on the current licence which requires the premises to operate predominantly as a restaurant. During the consultation period, however, the Applicant amended the application following discussions with the Licensing Authority, in their capacity as Responsible Authority, to replace the condition that they had sought to remove from the licence with the following conditions, as follows:

1. As a minimum, food will be available within the following hours:

- Mondays to Fridays 12.00 to 14.00 and 16.00 to 21.00;
- Saturdays 12.00 to 21.00; and
- Sundays 12.00 to 19.00 which may be ordered & consumed anywhere within the licensed area. A minimum of 50 seats shall be set out at tables at all times.

2. The premises shall have in place and operate a Noise Policy and Risk Assessment. This policy shall specifically include but not be limited to:

- Noise related information and management controls;
- A review of current and potential noise sources;

- An acoustic consultant's report;
- Noise mitigation measures and their subsequent evaluation;
- A noise complaints procedure (including any communicated through the council)
- A log of complaints and associated actions;
- Noise monitoring actions including locations, frequency and duration;
- Relevant staff training.

All of the above are to be made available to the council and Essex Police upon reasonable request, and a copy of the policy shall be lodged with the Environmental Protection Team and Licensing Authority. Contact details shall be published for residents to use in the event of noise related complaints.

3. The premises shall operate noise mitigation measures in accordance with their Noise Management Policy and risk assessment, subject to securing approval from the relevant authority in relation to the use of measures including movable acoustic barriers.

The application was presented by Mr M Bell, the Applicant's Licensing Consultant. The owner of the premises, Mr A Artemi, and the General Manager, Mr J Mayers were also in attendance and gave evidence.

The sub-committee noted that representations to this application had been received from the Licensing Authority in its capacity as Responsible Authority. Mr Penn attended the meeting to present their representation and gave evidence. An objection had also been received from Leigh Town Council. Ms H Symmons, Town Clerk, attended the meeting to present their objection and gave evidence. Representations to the application had also been received from 29 residents, although one of these (Mr Ridgewell) had subsequently withdrawn their representation. The Environmental Health had also objected to the application but subsequently withdrew their representation following the amendment to the application. A number of the residents attending the hearing, six of whom namely Mr and Ms Holmes, Ms Karlake, Mr Newman, Mr Battram and Mr Elliott spoke at the meeting and gave evidence. The objectors' concerns related to all four of the licensing objectives, , in particular, these can be summarised as follows: the venue's change from a restaurant to a bar; the non-compliance to the existing conditions of the licence being predominantly operated as a restaurant; noise and disturbance from loud music; noise and disturbance by patrons of the premises both inside and outside particularly late at night; extremely intoxicated patrons leaving the premises cause noise, disturbance, shouting, fighting etc in the streets nearby late at night; the effect of the anti-social behaviour and public nuisance on young children living in the area; the disturbance to families in the area late at night when trying to sleep; the potential for increase in crime and disorder by intoxicated persons; persons urinating, fighting and drinking in the streets; urinating and vomiting in residents' front gardens; bottles and broken glass in the residential streets nearby; intimidation of lone women passing the premises by patrons; the food provided at the premises was bought in from other restaurants/take-aways nearby and not prepared on the premises; the removal of tables for eating would create a larger area for people to stand and drink alcohol.

The residents alleged that many of these problems were currently being experienced and expressed concerns at the potential of these existing problems being exacerbated should the variation of the licence being sought be approved and the premises essentially becoming a bar/nightclub in a residential area. It was

highlighted that recent publicity regarding the premises and the premises' website and social media sites, such as Facebook, promoted a DJ playing dance music at the venue, TVs showing Sky Sports and a bar environment rather than having a restaurant focus. The sub-committee heard evidence and viewed video footage that had been submitted by the residents in attendance of the incidents referred to in their representations.

There were also concerns that the extension of hours would further exacerbate the existing problems. This representation was, however, deemed irrelevant as there were no proposal to amend the permitted hours on the licence.

The Licensing Authority's representation was on the basis that the Council had received a number of complaints of noise and anti-social behaviour relating to these premises. These also related to the "restaurant" condition, which the Applicant was seeking to be removed, not being complied with at all times. The Applicant, however, disputed the Authority's interpretation. Officers of the Licensing Authority had sought to work with the Applicant to resolve the matter, but complaints had continued to be received. The Licensing Authority therefore believed that the licensing objectives relating to the prevention of crime and disorder and the prevention of public nuisance would be undermined should the application for variation be granted on the basis that the Applicant had failed to assess the risks posed to the local area by their proposal and that the Applicant had failed to adequately demonstrate how they would manage any potential risks or had included any positive proposals to do so.

The Applicant's Licensing Consultant contested that the Applicant was not complying with all the conditions on the premises licence, including operating predominantly as a restaurant. The running of the premises would remain unchanged should the application be granted and would still be run as a restaurant. The application was being sought to remove any ambiguity of the interpretation of the "restaurant" condition. The wording of the existing condition was very ambiguous and unclear with archaic terms, such as "covers" and was therefore hard to clearly interpret or enforce. There was no legal definition of the term "restaurant" within the Licensing Act 2003 or associated guidance. The word "predominantly" could also be interpreted in different ways in the context of the existing condition. The proposed wording of the new condition offered by the Applicant would provide clarity and precision, be unambiguous and enforceable. The Applicant's Licensing Consultant also offered to surrender the provision set out in the existing condition permitting the 12 occasions each year for pre-booked events where the condition would not apply.

The Applicant's Licensing Consultant explained that the re-wording of the condition would enable the premises to operate in a similar manner to the operating model exercised by the Wetherspoons chain. Food would still be available during the hours set out in the application but that customers would be able to sit at tables with only a drink if required. A copy of the menu was displayed at the meeting.

The Applicant's Licensing Consultant challenged the allegations of the residents that the drunk and disorderly behaviour by intoxicated persons could be attributed to the premises. Many of the representations were from residents some distance from the premises or without clear or direct visibility of the entrance. A map illustrating the location of the properties of the residents who had submitted

representations was displayed at the meeting. A snap indicative survey how and where patrons dispersed after leaving the premises late in the evening, together with a survey of the levels of foot traffic passing the premises late in the evening, was also produced which supported the assertion that the problems alleged were caused by other people who were not patrons of the premises. Moreover, paragraph 2.21 of the guidance issued under the Licensing Act 2003 stated that "Beyond the immediate area surrounding the premises, these (issues relating to public nuisance, and anti-social behaviour) are matters for the personal responsibility of individuals under the law. An individual who engages in antisocial behaviour is accountable in their own right".

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 heard that the volume of the music played by the DJ was on Friday and Saturday nights was set at an appropriate level and was played through a noise limiting device in any event. There were a number of similar premises within the Leigh area and immediate vicinity. Additionally, the Police and Environmental Health Service were both experts in their respective field (paragraph 9.12 of the Revised Guidance issued under section 182 of the Licensing Act 2003 refers) and neither had objected to the amended application. Furthermore, a key protection for the community where problems associated with the licensing objectives occur, was the possibility of reviewing the licence. No such review had been requested by any of the responsible authorities or residents. Without any factual or meaningful evidence of the alleged issues being experienced by residents it was difficult for the Applicant to investigate or take appropriate action resolve the matters alleged. Where possible appropriate action/investigations were undertaken by the Applicant in response to such allegations.

The sub-committee heard the Applicant was extremely experienced and was mindful that the operations of the premises could adversely affect sections of the community through noise nuisance. He was responsive and responsible and had been extremely proactive in addressing the residents' complaints and concerns. A number of measures had been introduced by the Applicant at significant expense. These included the employment of registered door staff, a taxi management/marshalling service, undertaking regular noise checks in the immediate vicinity of the premises, the employment of a professional acoustic engineer to identify any areas of concern and issues of noise breakout/nuisance and prepare report, the preparation of a noise management policy and risk assessment, the purchase of temporary portable acoustic barriers on the highway immediately outside the front of the premises to prevent noise breakout from the premises to nearby residential properties. An example of the barriers and photographs of their assembly and removal at the premises from the CCTV footage were displayed at the meeting. These barriers had been hired but, following a successful trial of the barriers, the Applicant was now in the process of purchasing a number of them and had submitted an application to the Highway Authority to ensure the appropriate licence could be granted to site these on the

highway on Friday and Saturday evenings. The benefit of the barriers was acknowledged by the Licensing Authority, who had witnessed these in operation on two separate occasions. Residents, however, pointed that whilst they were effective at reducing noise break out at street/ground level, they had little benefit to flats and properties at first floor level and above. Video footage of the noise checks and levels recorded were displayed at the meeting. This indicated that the alleged levels of noise breakout from the premises was minimal and below the background noise levels of passing traffic etc. The Applicant also offered the opportunity for any resident to contact him to discuss any concerns or issues they may have to find a mutually appropriate solution or to report any incidents of concern when they occurred.

The Applicant's Licensing Consultant explained that the viability of the business at the premises may be jeopardised should the application not be granted.

The sub-committee was mindful that there was no legal definition of the term "restaurant" in the Licensing Act 2003 or the associated guidance. It acknowledged that the existing Condition requiring the premises to operate predominantly as a restaurant could therefore be considered slightly ambiguous and could be interpreted in different ways. The sub-committee noted the concerns that had been expressed by residents at the alleged incidents of public nuisance and anti-social behaviour. It also acknowledged the proactive measures undertaken by the Applicant to address their concerns. It was, however, mindful that the continued use of the portable acoustic barriers would be subject to permission being granted by the Highways Authority, which was not guaranteed.

On the basis of the evidence presented to it and after considering all the relevant issues, the sub-committee concluded that the wording of the existing condition inferred that the focus of the licensed premises was that alcohol was ancillary to the provision of food. This condition had been added to the premises licence when granted to ensure the promotion of the four statutory licensing objectives and consistency with the operating schedule. The sub-committee noted that whilst there was no definition of the term "restaurant" in the Licensing Act 2003 or the associated guidance, most dictionaries consider a restaurant akin to "a place where people pay to sit and eat meals that are prepared, cooked and served on the premises." The food provided at the Applicant's premises is supplied ready cooked by other food outlets/restaurants nearby and plated in the Applicant's kitchen, then served. The premises also has the benefit of late-night refreshment included on the current licence, although this is not utilised by the Applicant. This was apparent from the hours specified in the wording of the proposed new condition offered by the Applicant. The focus of the premises would therefore change with food becoming ancillary to the sale of alcohol should the variation be granted. The sub-committee believes that the licensing objectives would be undermined should the application be granted. It was therefore:

Resolved:-

1. That the application to vary the premises licence be refused.
2. That, for the purposes of clarity, the sub-committee interprets the existing condition on the licence to be that the premises should be operate as a restaurant (i.e. a place where people pay to sit and eat meals that are cooked and served on the premises) at all times the premises is open to the public, save for the 12

occasions a year (no more than 2 in a calendar month) where a pre-booked event is to take place and where the police licensing team and the licensing authority have been provided with at least two working days' notice of the event. A "cover" is interpreted to mean a place setting for the purposes of eating a meal.

Chairman: _____