

MINUTES

LICENSING OF ALCOHOL AND GAMBLING SUB-COMMITTEE

20 MAY 2019

Councillors: Bhinder
P Hearn
R Sutton

Officers: Nathan March Licensing Team Leader
Sally Mcdonald Lead Licensing Officer
Usman Mohammed Barrister

OTHER PERSONS PRESENT:

Item 3: 196 High Street Berkhamsted:

Amanda Worth– Applicant
Lyndsey Simpson – Applicant’s business partner and speaker for the Applicant
Town Councillor Anthony Armytage – Objector representing Berkhamsted Town Council
Tom Ritchie – objector

Item 4: Mode, 156 Marlowes Hemel Hempstead:

Darren Miles – Applicant
Frazer Harrison – Designated Premises Supervisor at Mode
Jonathan Smith, Poppleston Allen Solicitors – representing the applicant
Peter Lansdell – representing Rodney Bassett, objector
Dan Ross - objector

The meeting began at 2.30 pm

1 MINUTES

The minutes of the meeting held on 15th November 2017 were not signed as no members that had attended that meeting were present at this meeting to confirm they were a true record.

2 APOLOGIES FOR ABSENCE

There were no apologies for absence.

3 DECLARATIONS OF INTEREST

There were no declarations of interest

4 PREMISES LICENCE APPLICATIONS UNDER THE LICENSING ACT

2003

The sub-committee were required to consider an application to vary a premises licence for the following premises:

Carluccio's
196 High Street
Berkhamsted

The Chairman introduced herself, the members on the sub-committee and the officers present, and asked the applicants and those persons present that had made representations to introduce themselves. At this point Mr T Ritchie explained that he had made his representation in his capacity as a ward councillor, but was no longer in that role. He explained that he had discussed his attendance with the Licensing Team given the situation, but had received confirmation that he could still attend and speak.

The Chairman asked the members of the sub-committee to confirm that they had read the agenda, and this confirmation was given.

Members were asked if they had any interests to declare in respect of this premises. No interests were declared.

The Chairman asked N March if the legal requirements had been complied with and this was confirmed.

The Chairman then invited N March to introduce the application.

N March initially clarified that, to avoid any confusion, whilst the report referred to the premises as Carluccio's this was purely the address of the premises as it appeared on the licence which had recently been transferred to Copper House Bars Ltd (the applicant for the variation). The premises was 196 High St Berkhamsted.

N March then set out the variation applied for as follows:

The addition of live and recorded music indoors, between 08:00 and 01:00 Thursday to Saturday (i.e. early hours of Sunday morning);

Late night refreshment to be extended by an hour indoors and outdoors Thursday to Saturday. The addition would take this licensable activity to 01:00.

Finally to extend the sale of alcohol by an extra hour until 01:00 Thursday to Saturday.

N March explained that when a variation was applied for to an existing licence, only the variation itself could be considered. Therefore the Committee was being asked to consider the impact of the addition of indoor music and the extended hours for alcohol and late night refreshment and would be unable to consider any restrictions in regards to any of the existing licensable activities.

Two representations had been received during the consultation, one from Berkhamsted Town Council and one from an individual who had been a Ward Councillor at the time of the application and had made representation in that capacity. These were set out on pages 31 and 33 of the main report respectively. Both objections referred to similar concerns. The sub-committee should note that

concerns relating to the outdoor furniture on Market days, or the addition of conditions in this regard could not be considered, as these fell within the hours of the existing licence provision. The other concerns raised related to potential nuisance caused by late night drinking and live music, and the possibility of disruption to the neighbouring properties.

The fact that the area is currently a 'no drinking zone' was also referred to in the objection, and, though this could be considered by the sub-committee, it should be noted that should the sub-committee grant the variation applied for, having a licence permitting the sale of alcohol would mean that the existence of any public alcohol restrictions would not have effect for the licensed premises.

No objections were received from responsible authorities. Although the Planning Department responded originally with some concerns as mentioned with in the report, those had now been resolved.

The applicant had submitted supporting documents as they were permitted to do, and these had been circulated as part of the reports. A further submission was made that had not been picked up by the licensing team at the end of the previous week, but had been circulated on the morning of the hearing, simply confirming that there were no planning concerns regarding the application.

The Chairman then invited the applicant's business partner Lyndsey Simpson to address the sub-committee.

L Simpson explained that there had been some confusion between the planning application and the licensing application. Planning had agreed the amended operating hours, and therefore the applicants had decided to apply to vary the premises licence to allow licensable activities up to the hours permitted by the planning application, rather than submit a completely new licence application. The applicant would have approached the Town Council if they had been aware of the process in this respect. A member of the Planning team had since visited the site on Market day, and had confirmed that the premises was operating fully within the permissions that had been agreed.

Some of the content of both representations referred to neighbouring properties – the premises was located within a totally commercial zone in the town, but there were some apartments on the other side of the road, and a retirement complex located further along on Lower Kings Road.

L Simpson confirmed that all parties had been involved in consultation during the planning process, and referred the sub-committee to a letter from the Town Hall Trust which had been included in the late submissions pack. The Town Hall Trust operated above 196 High Street, within the same buildings, and had their own premises licence. They were shared occupiers with the applicants, and also their Landlord. The letter confirmed the Trust's support for the applicants' business, confirming that they had no objections to the variation, and that the applicants' business made a positive contribution.

With regard to the representations received, L Simpson explained that none had been received during the planning process, furthermore that they had created a hosted policy and an agreement with local taxi services, both as a direct outcome of

consultation with residents – in fact there were residents of the complex on Lower Kings Road were customers at the premises. A letter of support from one of those residents was also included in the late submissions pack, which indicated that there was no detrimental impact on them.

In response to the issue around the market, a statement was included in the late submissions pack confirming that the applicant's had a Pavement Licence, and the operation of the business did not cause a nuisance to the market. Taking into account the responses received, the applicants did not believe they were creating a nuisance to any parties.

L Simpson confirmed to the sub-committee that their intention was to close at 01:00, as they did not want to be 'the last place open for a drink', and would be happy to concede 30 minutes so alcohol sales would cease at 00:30, and the premises would close fully at 01:00, if that amendment was considered appropriate.

With regard to live music, the premises was a fixed venue, so no regular live music events were planned – there might only be specific functions such as New Year's Eve, but nothing was confirmed. The applicants would be happy to remove live music from the licence and use Temporary Event Notices for live music events, but confirmed that they wished to retain the provision to extend the hours for recorded music.

L Simpson concluded by saying that all the applicants would like was a level playing field with other premises on the High Street – an example of a comparable premises was the Gatsby, which operated with a pavement area at the front, in a predominantly residential area. Their understanding was that no complaints had been received since the Gatsby had been operating. 196 High Street was in a commercial zone. The permission to sell alcohol for consumption off the premises would only be for the purpose of enabling the sealing of high end wine bottles via the use of a gas preservation system once they had been opened on the premises, therefore allowing the customer to take the unfinished bottle away. The wines for sale in the premises were not available on the High Street, so this method allowed the applicants to satisfy the premium wine sales. The provision of off sales were not included in their menus.

In response to a question about the use of Temporary Event Notices from Councillor Bhinder, N March clarified that background music did not require a licence, but with regard to providing live music with Temporary Event Notices, it was better to include it as an activity on the premises licence in order to apply the conditions on the licence to control it.

The Chairman then invited the objectors to make their submissions.

Councillor Armytage, representing Berkhamsted Town Council, firstly confirmed he was a member of the Town Planning Committee, then made the following statement:

Concern had been expressed about the all-day consumption of alcohol on the High Street, which paid no regard to the DPPO that existed in that area. (This was clarified as a Designated Public Places Order, which allows alcohol to be removed from persons upon the request of a Police Officer).

The premises was located next to the Town Hall, which is used by groups of young people.

The extended area interferes with pavement traffic and adds clutter. Councillor Armytage referred at this point to a recent incident where one of the flower troughs had turned over in close proximity to passing pedestrians. A picture of this was circulated.

The retirement apartments would be affected by increased noise, as would functions at the Town Hall – although it was noted that the applicant's submission had partly clarified this.

Councillor Armytage summed up by asking that the sub-committee pay regard to Dacorum Borough Council's Licensing policy.

The Chairman then invited Mr T Ritchie to make his submission.

T Ritchie said that he was concerned that the extension to hours could be used by successors if the premises changed hands, which could have a potential impact in the future. However, some of the comments made by the applicant had been helpful, and he was happy that his concerns relating to off sales had been clarified.

T Ritchie observed that the Town Hall Trust and Market fund were one and the same – they claim the right to use the pavement, but do not pay for its cleaning or maintenance, and that was a problem for the town.

This premises, unlike the Gatsby, the premises to which it had been compared, was on the public pavement.

T Ritchie went on to say that his main concern was the extended use of the premises, it was not about today's customers, but the potential for problems in the future, for example drinkers in a changed establishment until 01:00. Additionally, at 16:00 the town was full of children. If the applicants were willing to remove live music from the application there would be some control.

T Ritchie summed up by saying he would be happy to restrict his representation to the extension of hours outside the front of the premises on a public pavement until 01:00, particularly with the concern about disruptive drinking.

Councillor Sutton observed that children must already pass several premises on the High Street with tables and chairs outside.

T Ritchie responded that planning applications had been turned down in the past, and no pubs had outside seating space.

Councillor Bhinder said he felt reassured regarding the applicant's references to live music and off sales, but was concerned about future impact, and asked if the way forward could be to limit live music and apply for Temporary Event Notices.

N March confirmed that it would be inappropriate to consider future applications for the premises – any changes to the way the premises operated would have to go through the relevant processes. Furthermore, there were options for responsible

authorities and other persons referred to in the Licensing Act to call the premises in for Review if problems arose.

The applicants were then invited to sum up.

L Simpson confirmed that the building in which they were situated was already licensed until 01:30. They would be willing to concede on the issues already raised, but there would be financial implications for them in doing that. The application under consideration did not cover 16:00, when children were on the High Street – the premises was already licensed at that time.

The Olive Tree further along the High Street is licensed and has outside seating.

Two planters had fallen over since the premises had been operating, the first time when they were being placed outside, and the second – which had been photographed - when it had been pushed very hard.

There are safeguards in the lease of the premises, which should protect it for the future.

The premises has full planning permission and Town Council consent.

The Chairman asked if either Councillor Armytage or T Ritchie wished to sum up.

T Ritchie replied that the Town Council had clearly objected to the licence application, and felt that there had been confusion between planning permission granted and the view of the Town Council.

The Chairman thanked all parties for their contribution, and the sub-committee then retired into private session to consider the application and submissions both oral and written.

Resolved

The sub-committee had reviewed the report of Nathan March, Licensing Team Leader at Decorum Borough Council.

The Applicant, Amanda Worth, had served upon Decorum Borough Council, in its capacity as the licensing authority, an application to vary premises licence on 15 March 2019.

Berkhamsted Town Council, represented by Cllr Armytage, and T Ritchie in his capacity as ward councillor during the consultation period for the application, had submitted representations.

The Applicant was present at the meeting to determine the application. She was accompanied by Lyndsey Simpson, her business partner, who was presenting for the Applicant.

Evidence considered:

In reaching its decision, the sub-committee considered:

1. The report of Nathan March prepared for this sub-committee, which included a copy of the additional written submissions from the Applicant.
2. Oral submissions made by the Applicant.
3. Oral submissions made by T Ritchie and Councillor Armytage.

In the present case, the sub-committee was required to consider whether to modify the conditions of the licence, reject the whole or part of the application or grant the application.

Decision:

The sub-committee resolved for the application to be granted. The sub-committee were satisfied that the concerns raised in the objections had been satisfactorily addressed by the Applicant. The sub-committee were also satisfied that the Licencing Authority and other responsible authorities had powers available to them in the event that issues arose following the granting of this application.

APPLICATION FOR GRANT OF PREMISES LICENCE

The sub-committee were required to consider an application for grant of a premises licence for the following premises:

Mode
156 High Street
Hemel Hempstead

The Chairman introduced herself, the members on the sub-committee and the officers present, and asked the applicants and those persons present that had made representations to introduce themselves. .

The Chairman asked the members of the sub-committee to confirm that they had read the agenda, and this confirmation was given.

Members were asked if they had any interests to declare in respect of this premises. No interests were declared.

The Chairman asked N March if all legal requirements had been complied with and this confirmation was given.

N March was then invited to introduce the application.

N March explained that the application was for a grant of a new premises licence for the 'Mode' premises on Marlowes in Hemel Hempstead. The premises previously had a premises licence covering exactly the licensable activities as had currently been applied for. The original licence was lost when the company that held it was dissolved in November 2018.

Full details of the application were shown on pages 38 and 39 of the main report. All activities were applied for between 09:00 and 02:00 Sunday to Thursday, and 09:00 to 03:30 Fridays and Saturdays, with an additional hour on British summertime and a

non-standard timing for New Year, which was from 10:00 on New Year's Eve, until the terminal hour of New Year's Day.

Seven objections were received during the consultation period, all of which were from local residents and were contained in the main report on pages 64 through to 69. These objections all cited concerns of public nuisance, disorder and anti-social behaviour in the area. The concerns raised were based on the experiences of objectors during the operation of the premises under the previous licence.

The Licensing team was aware of three recorded complaints in relation to the premises since 2015. Two related to noise inside the premises, and the third to noise and disorder outside the premises.

No objections were received from responsible authorities during the consultation. A response from Planning stated that the premises would require planning permission to change the use of the premises from that of a public house to a night club, which was not a relevant consideration for this sub-committee and should not affect a decision on the application.

A number of documents had been submitted by the applicant ahead of the hearing as they were entitled to do. These had been circulated and included with the reports. Within these documents there was mention of having a taxi rank reinstated near to the premises which the applicant believed would assist in dispersing patrons. The documents submitted gave a very positive indication of this happening, however, at the time of the hearing there was no such rank and whilst enquiries had been made as described in the supporting documents, this request was currently in the process of being considered, and there was yet to be any decision made.

J Smith, representing the applicant, enquired about objectors name and address information, which had been omitted from the public documents. U Mohammed clarified the procedure about the consideration of written representations.

The Chairman then invited the applicant's representative to make their submission.

J Smith responded by outlining the proposed hours then made a statement as follows:

The premises opened as Verve in 2014, and was subsequently renamed Mode. However, the company holding the premises licence was dissolved in late 2018, and, in accordance with s.27 of the Licensing Act, the premises licence lapsed as a result. Since the lapse was reported to the applicant, he had carried on trading by using Temporary Event Notices, but as there were limits in respect of the use of those Notices, they were now used up and the premises was not currently trading.

The applicant, Darren Miles, had operated in this business for 30 years, and had had 9 premises in Hemel Hempstead, He was of good character, and was a qualified fire arms instructor.

The licence application requests exactly the same hours and activities as previously operated, and conditions the applicant had put forward were set out on pages 26-27 of the report. A brief overview of some of the conditions was given, including:

- Full staff training carried out by the Designated Premises Supervisor;
- Two other personal licence holders employed at the premises;
- A zero tolerance policy on drugs;
- Search policy;
- A minimum staff ratio of 1:100, with a minimum of two door supervisors on at any one time – this can increase to six if required;
- Sixteen CCTV cameras, which can be watched remotely, and a member of staff capable of downloading the images on the premises always available;
- The operation of Challenge 25;
- Toilet attendants at the premises, in radio contact with the door teams;

The applicant has held discos for children at the venue, at these times all alcohol was removed from the fridges, and extra staff, including a child welfare officer were in attendance.

A MENCAP charity night was held on the first Wednesday of every month.

The premises had previously been opening on Fridays and Saturdays, and customers were charged an entry fee, between £5.00 and £9.00.

There was a smoking area to the rear of the premises, which minimised the risk of smoke affecting the residents of the flats.

The premises had a dispersal policy.

Lighter music was played towards the end of the evening.

There was a taxi rank located nearby.

The local MP had been approached as the applicant would like to see a taxi rank reinstated directly outside the premises.

J Smith went on explain that, upon examination of the representations the following points should be considered:

- The premises had been operating in that location for five years;
- Some of the representations were from owners who let their properties, so not living there;
- One representation referred to property values, which could not be considered by the sub-committee as it was not relevant;
- The premises was not looking to operate all week, and the activities applied for were exactly as they were before the licence lapsed.

The applicant had had conversations with one of the Landlords, but reading the representations, they could not be sure who were residents and who were not. The Chairman replied that the sub-committee would be considering the content in front of them.

J Smith explained that the applicant felt that residents had been misled as to the nature of the operation of the premises going forward.

With regard to the residents' concerns about vomit and urination in doorways, the Designated Premises Supervisor did monitor the area surrounding the premises, but there was the presence of street drinkers in that area.

There had been a complaint when the premises first opened, at which time Dawn Ryder, Environmental Health Officer, visited, listened, and advised the applicant as to an appropriate level of sound. As a result, the applicant purchased a noise limiting device, and the level of noise was measured up on the roof parallel with the flats. The complainant was advised to contact Environmental Health if there were further problems, but no further complaints were received.

In 2015 there was a complaint concerning noise breakout from the skylight. No further complaints had been received since then.

The premises was located in a town centre with a mix of residential and commercial properties which was a suitable venue for live entertainment.

Several clubs were located in the High Street, and their customers came into the town centre to visit fast food establishments, proving that there was movement of people from licensed premises to other venues.

The applicant had a dispersal policy, and was aiming to get the taxi rank moved in line with this.

No representations had been received from either the Police, or Environmental Health, showing there was no evidence of reports of crime and disturbance in respect of the premises.

The applicant had had conversations with the Landlord, who wanted to develop above the premises, and have a restaurant on the site. However, the applicant employs 30 people whose lives would be affected if the club ceased trading.

The applicant consulted with the club's neighbours but had received no response.

The sub-committee had no questions for the applicant.

The Chairman then invited the objectors to make their submissions.

P Lansdell confirmed that he was attending to represent Mr Bassett. It was established that Mr Bassett's representation was set out at Annex B5 of the report and that written confirmation of P Lansdell's attendance had been provided.

P Lansdell made the following points:

Verve had not been opened for years, and up until it ceased trading, Mode was only open infrequently.

It was very negative to have late night clubbing around a predominantly residential area.

There was anti-social behaviour in the area such as defaecation, urination and vomiting.

P Lansdell also referred to some incidents and issues which were not relevant to the application or Mr Bassett's representation and therefore could not be considered

D Ross had previously confirmed he was attending in his capacity as owner of 45 The Square Marlowes, and it was established that this representation was set out at Annex B1.

D Ross also stated his intention to speak on behalf of the Freeholder.

D Ross made the following points:

There was a difference between governing the properties and actually living in them. The block dated from the early 1960s, and the properties within it were single glazed. There was an actual gap of 12 inches between the floor of Flat 43 and the music in the club below.

There was a good mixture of people living in the block, but the residents were exhausted from listening to deafening music until 04:00.

The only comparable premises to this one was Reds Bar in the High Street, which was located in a basement, therefore limiting the sound in residential properties above.

It was all about residents being able to get a good night's sleep and the residents and the club having a harmonious relationship.

The times requested were very late, and some residents had to get up at 05:00 to go to work.

Number 43 had a window right behind the smoking area – the thumping noise from the club caused that resident's tables and chairs to vibrate.

Many residents didn't want the club, but felt their complaints fell on deaf ears.

D Ross then put forward some recommendations from the residents:

For the premises to remain open, but with the following proposed operating times:-
Monday to Thursday and Sunday – to close at 23:00
Friday and Saturday – to close at 01:00;

Noise levels to be capped at a level agreed with Environmental Health;

For a minimum of 2 door supervisors, day and night;

For the applicant to provide security in the smoking area at the rear of the premises;
and

For professional soundproofing to be added to all the flats and the premises itself.

The Chairman invited J Smith to respond to the points raised.

J Smith responded as follows:

D Ross had referred to the experience of living in the block, but he did not live there.

With regard to the request for soundproofing, an inspection had been carried out by Environmental Health, and as a result of this the skylight was soundproofed.

With regard to the comment on the residents' complaints falling on deaf ears, the applicant was unable to determine who had made the complaints.

The hours proposed by the objectors would put the applicant out of business.

All residents had been written to, and in 2015 following the complaint, the applicant had carpeted the complainant's flat.

The applicant confirmed that Reds Bar was not soundproofed, as he lived in close proximity to it.

A number of residents had moved into the flats since the club had opened.

The provision of two door staff, as per the objector's request, was already proposed as a condition on the premises licence.

J Smith commented that they wished the residents themselves had been present at the meeting.

Councillor Bhinder asked for clarification about the soundproofing installed on the roof.

D Miles explained that at the meeting between Dawn Ryder and his employee Jayne Scott, levels were set via radio communication from the roof to a level that was satisfactory to Environmental Health.

Councillor Bhinder then asked about the 10 metre limit for smokers outside a premises. J Smith confirmed this was already in place.

J Smith added that with regard to concerns that residents' complaints were not being listened to, the applicant was prepared to provide a contact telephone number for residents should issues occur. It was confirmed that this number would be provided to all residents.

N March advised that no complaints had been received. P Lansdell replied that people had not known about the application.

All parties were then invited to sum up.

D Ross summed up by saying that the residents felt that finish time of 03:00 was way too late, and people need to be able to function – it was not acceptable to not be able to get a good night's sleep.

J Smith summed up as follows:

The residents who 'live it' were not in attendance at the hearing..

The applicant was willing to offer a condition to provide a contact phone number. With regard to paragraphs 9.12 and 9.15 of statutory guidance, the Police had not made representations, and there was no evidence to link anti-social behaviour mentioned to the premises.

The premises had been a club for five years.

The Chairman thanked all parties for their contribution, and the sub-committee then retired into private session to consider the application and submissions both oral and written.

Resolved:

The meeting was for the purposes of considering an application to grant premises licence for Mode, 156 Marlowes, Hemel Hempstead.

The Committee reviewed the report of Nathan March, Licensing Team Leader at Dacorum Borough Council.

The Applicant, Darren Miles, had served upon Dacorum Borough Council, in its capacity as the licensing authority, an application to grant premises licence on 25 March 2019. Objections had been received from other residents in the area. Peter Lansdell, representing Mr Rodney Bassett, and Dan Ross, representing himself and Peter Down, speaking on behalf of the objectors.

The Applicant was present at the meeting, represented by Jonathan Smith, solicitor, to determine the application.

Evidence considered:

In reaching its decision, the sub-committee considered:

1. The report of Nathan March prepared for the sub-committee, which included a copy of the additional written submissions from the Applicant.
2. Oral submissions on behalf of the Applicant made by his solicitor.
3. Oral submissions made by Peter Lansdell and Dan Ross.

In this case the sub-committee was required to consider whether to grant the licence subject to any conditions.

Decision:

The sub-committee gave serious consideration to the objections received.

The sub-committee resolved to grant the application. The premises had been operating for a number of years. The Applicant was an experienced licence holder. The sub-committee considered he was aware of his obligations.

The sub-committee were encouraged that the Applicant, following a noise complaint, had installed a noise limiting device.

The sub-committee also considered that the timings applied for were not unreasonable given the location of the premises.

The Applicant was, however, encouraged to provide the residents with a contact number.

The Meeting ended at 5.00 pm