

MINUTES

LICENSING OF ALCOHOL AND GAMBLING SUB-COMMITTEE

23 MARCH 2021

Present:

MEMBERS:

Councillors Bhinder, Hearn (Chairman) and Link

OFFICERS:

Sally Mcdonald	Lead Licensing Officer
Nathan March	Licensing Team Leader
Nargis Sultan	Legal Governance Team Leader (Litigation)
Trudi Angel	Corporate and Democratic Support Officer (Minutes)

OTHER PERSONS PRESENT:

A Clarke – Applicant
P Warne – Applicants Representative (TLT Solicitors)
W Farrell – Representative of Greene King
Councillor Cloughton – Objecting on behalf of local residents

The meeting began at 10.00 am

1 **MINUTES**

There were no minutes to be signed at this meeting.

2 **APOLOGIES FOR ABSENCE**

There were no apologies for absence.

3 **DECLARATIONS OF INTEREST**

There were no declarations of interests.

4 **THE OLD MILL PUB**

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

The Old Mill
London Road
Berkhamsted
Hertfordshire
HP4 2NB

The Chairman asked if all legal requirements had been complied with and N March confirmed they had.

The Chairman asked N March to introduce the report.

N March advised that the application was to vary the licence of the Old Mill in Berkhamsted.

The application seeks:

- Authorisation to vary the layout of the premises to include the licensing of two car parks at the premises to permit the sale of alcohol with this being conditioned in that area until 22:00.
- The removal of certain conditions on the licence, and the addition of others. No changes to the hours or licensable activities are applied for.

During the consultation period one of the proposed conditions was checked with the applicant's agent as it appeared to contain an error, this condition is shown in section 4.7 of the report. The applicant has advised that the mention of 'maximum' in this condition is an error, and in fact this should say 'minimum'. As the applicant has confirmed that the conditions should say minimum this should be reflected in the condition should the Committee grant the licence with that condition as proposed by the applicant.

With regards to the proposed conditions, it is noted that the proposal in the application is to remove a condition that places a requirement on the licensee during any entertainment, with one that would only have effect when regulated entertainment is taking place, given deregulation having a significant impact on when entertainment is regulated, the proposed condition is considered to be much narrower than the existing condition that has been applied to be removed. Section 4.7 of the report covers this also.

During the consultation, there were 8 representations received, all from residents. No representations were received from the responsible authorities.

The full content of the objections is included as annex D.

In summary, the key issues raised are as described in section 4 of the report (starting page 9):

- The area that is covered by the licence has been applied to be extended. As a result of deregulation this will also mean that both live and recorded music will be permitted, whereas at the moment only live music can take place as a result of the car park being part of a workplace.
- Objectors are concerned about entertainment being permitted. The committee cannot attach conditions that relate to directly entertainment as this is not

relevant to the application, however, conditions relating to the management of the premises as amended by the variation which will assist in the prevention of public nuisance, can be considered if these are felt to be appropriate

- The risks posed by the premises being next to a waterway are raised as a concern and are considered relevant, but at the same time a balance of personal responsibility compared to that of the licensee should be considered, and it is also fair to say that most licensed premises will be situated next to a hazard of some sort, just more usually a road.
- Parking concerns are not relevant to this application, this is because the licensee cannot be held responsible for the decisions of any customers who cannot park on site, and customers parking away from the premises must comply with any parking restrictions and laws around avoiding obstructions, this is not the responsibility of the applicant.
- Some objectors have questioned why the applicant has applied to vary the licence in the way that they have, and have proposed alternative ways that the licensee could have chosen to approach this. There are a variety of benefits to the licensee including how they can approach the sale of alcohol, should the variation be granted, and it is entirely the applicant's choice, what they would like to apply for.

He welcomed questions from the committee.

There were no questions for N March.

The Chairman invited Mr Warne, the applicant's representative, to address the committee.

Mr Warne advised he had submitted a letter in advance of this meeting which set out in detail the points he would be raising and he hoped members had a chance to digest that information. He also apologised for the error in the conditions, as highlighted by N March.

He summarised that the application was effectively to allow use of the external bar and to amend the conditions but he wanted to reassure residents that it didn't mean the licensed areas will be used all of the time, nor will they be looking to permanently change the nature of the premises. He advised that Mr Clarke had only been at the premises since October 2019 so hadn't actually had much time to operate it as one would have liked to. He has invested over £100k, employs 20 staff (increases to 30 in the summer), and takes his licensing objectives very seriously. The point of this application was not to jeopardise any of that or the way the premises has been running as it has generally been well supported by residents. The application takes into account where we are now but was also future proofing the premises.

He explained that during the past year of the pandemic and the lockdown, Mr Clarke had delivered in the region of 350 meals through a charity called Open Door, had set

up a community shops to try and help those residents who couldn't get hold of basic items and had invested a further £15k of his own money that he didn't recoup in trying to assist the community.

He referred to a letter by Robert Jenrick, Secretary of State for Housing, Communities and Local Government, in July 2020 which stated communities should pull together, everything will need to be outside for Covid safe measures and asked councils and local authorities to take a light touch towards enforcement. That was later backed up in August 2020 with the Business and Planning Act which allowed for extended use of external areas and reductions in conditions on licences for use of extra external areas and that legislation is going to be extended until September 2022.

When Mr Clarke reopened the premises he was trying to strike a balance. He put on some entertainment outside on Saturday evenings between 6-9pm to try and bring some normality back to his customers. He also arranged for Jazz music to play on the first Sunday of each month between 2-4pm. During these times Mr Clarke took decibel measurements from inside the marquee and at the end of the car park nearest to local residents and these measurements were at a fairly low level. It was worth emphasising that there was a lot of public support for Mr Clarke and his team, people said they felt safe at the premises and that Mr Clarke put a lot of work into his Covid secure measures. The inspections carried out by officers at various times were all satisfactory.

Mr Warne referred to the external bar. He said external bars were something that members of the committee had probably come across, even before Covid was around, due to the increasing popularity. He said external bars served two very good functions; one being the constant point of supervision, and the other prevents pitch points around doorways, people carrying glasses in and out and also staff carrying food in and out. He commended the external bar as actually promoting the licensing objectives, irrespective of Covid, but at the moment being almost essential due to the most recent government announcement.

Mr Warne explained that when Covid restrictions are no longer in place entertainment will go back to inside the premises, however Mr Clarke would like to be able to do events outside occasionally. Officers from Environmental Health will be invited to the premises to carry out sound testing levels for any outside entertainment.

He advised that no representations were received from the Police or Environmental Health department. He stressed the importance of this as the guidance on page 6 states *Authorities need to look at the Police as the main source of advice on crime and disorder*, and paragraph 9.12 states *each responsible authority would be an expert in their respective field, likely that a particular responsible will be the licensing authority's main source of advice*. He raised these points because the committee would have had to take it seriously if those authorities had raised concerns, but the fact that they haven't suggests they have no issues with the operation of the

premises. Mr Clarke has tried and will continue to try and work closely with any residents that have concerns and wants to work with him going forward.

Mr Warne drew attention to one of the representations within the report where there was reference made to a customer urinating in the canal. Mr Clarke advised that anyone behaving in this way would be immediately removed and barred from the premises as this behaviour would not be tolerated. Staff will be monitoring the marquee and are trained to identify people who are trying to leave the marquee towards the canal to politely remind them to stay away from that area. There will be supervisory measures in place to try and prevent customers heading that way.

Another important point was raised about groups of youth's antisocial behaviour and crime. He advised there was an incident where a group of people did arrive one evening, they were intoxicated and were refused entry. He said they did cause a scene but disappeared when the Police were called. Mr Warne felt it was good and proactive management that prevented that incident escalating into something more and he didn't feel it was fair to blame Mr Clarke for that groups behaviour.

He proposed two conditions that the applicants were asking the committee to consider:

- I. No more than two events with live or recorded music to be permitted outside (including within any marquee or other temporary structure) to be held per calendar month. Regulated entertainment during such events to be finished by 21:30 hours.
- II. Following the removal of all restrictions placed on licensed premises under Covid regulations (currently the health protection coronavirus restrictions steps England regulations 2021, but to include any regulation replacing it) customers will not be permitted to eat or drink in any area designated as car parking or canal side parking on the plan attached the premises licence after 22:30 hours.

He welcomed questions from the committee.

Councillor Bhinder asked Mr Warne to elaborate on the medium to long term plans. Mr Warne advised that the medium to long term plans were to have a marquee and external bar for the summer in the future, but to move regulated entertainment inside apart from on the odd occasion.

Councillor Bhinder said he would prefer to see the venue supplying permanent monitoring of sound levels. Mr Warne advised that one of the conditions stated there had to be sound checks outside during any music events which has been done previously anyway. The music outside will be limited and on a permanent basis.

The Chairman noted that the last drinks served would be at 22:00 hours and felt that additional supervision would be required after that time. She asked Mr Clarke how he would address that. Mr Clarke replied either he or his general manager are on site at

all times and the outside area is continuously monitored by staff. He felt he was very rigid in his approach and doesn't stand for any trouble.

The Chairman sought clarification on the table service that would be provided. Mr Clarke explained they had been operating table service only for up to six people at one table and they had been using an App for customers to order their food. Staff were also available outside to assist anybody that wasn't able to use the App. When the rules start to be relaxed and larger parties can meet, the App will remain in place for people to order.

Councillor Bhinder queried if there was any CCTV in place. Mr Clarke advised there was CCTV outside and he was looking at extending that into the car parking area. He said he has a camera set up in Old Bank Lane and there will be another temporary camera put in that space as well.

The Chairman invited Councillor Claughton to address the sub-committee.

Councillor Claughton read the following statement:

"I've been asked by a number of my residents to represent them in objecting to this licence variation. Although 'The Old Mill' itself is in Berkhamsted East, it's on the boundary with my ward of Berkhamsted Castle. As the rules require, I am confining myself to points that have been made in the formal objections by my residents. (These are D1, D2, D3, D5, D6 and D8 of Annex D to the paper.)

Residents object to the granting of a permanent licence to serve alcohol in the car parks at The Old Mill on the grounds of: prevention of public nuisance, public safety, the protection of children from harm and the prevention of crime and disorder. They accept that some latitude is necessary during the Covid-19 restrictions and are genuinely supportive of the pub's considerable efforts to operate successfully in these extremely difficult times. But this should not at the expense of their own wellbeing and they see no reason why a permanent licence should be granted for the car-park area.

In response to the pandemic restrictions, the pub erected a tent in its car park last summer and served food and drink outside. It was able to do this within its existing licence. If, though, it wanted to have a temporary bar outside, this could be done in a small area near the existing beer garden and entrance to the restaurant. It doesn't require the licensing of the whole of the car park.

Residents think that this application is not in order to support existing business during the pandemic, but to grant new rights that will lead to the pub becoming a new, tented, event venue in a quiet and predominantly residential area of the town, which is in a Conservation Area alongside the Grand Union Canal Wildlife Corridor. Once Covid restrictions are lifted, residents see no reason why The Old Mill can't return to being a thriving Gastro-pub, much loved by the local and wider community.

Prevention of Public Nuisance

Last summer, The Old Mill not only served food and drink in its tented area, but also held events involving loud music, which destroyed the peace of at least ten households. Although musical entertainment has been deregulated nationally for smaller events, this does not include amplified, recorded music. However, residents fear that if this licence variation were approved, amplified, recorded music would automatically be allowed under the Live Music Act 2012. And it's not just the music. Last summer, residents say, voices could be heard screeching, shrieking and swearing, and pub-goers were conducting sing-alongs for hours. The landlord apparently felt the impact of the noise from these events was 'negligible', but residents have video evidence showing that this wasn't the case. In fact, they say, Environmental Health officers expressed shock, when they heard the volume of noise. Given that the landlord claimed last summer to be checking that the sound was at an acceptable level, residents have no confidence in the undertakings given in the licence application about a noise-check log. Nor will curtailing the activity later in the evening do anything to mitigate nuisance caused during the day to those sitting in their gardens, or in the early evening, when young children are being put to bed. Residents say that the high level of noise has caused enormous amounts of stress, anxiety, disruption and even depression for many families in the local community.

Public Safety

There is also the problem of car parking. If an application for the whole car park were granted, The Old Mill could potentially lose most of its parking space. The tent in the car park last summer led to a significant increase in the number of vehicles being parked both on the main road (in cycle lanes) and in the adjacent Bank Mill Lane. On busy evenings, they were parked bumper to bumper on this narrow lane, which has a blind bend, no footpath and only minimal lighting, thus posing a danger to pedestrians and other road users.

Safety concerns also arise from watercourses. The car park has the River Bulbourne running through it and it is adjacent to the Grand Union Canal. There are other pubs on the canal, of course, but this is particularly dangerous, given that it is a very big area with capacity for a large crowd and the fact that the atmosphere of last summer's events was more 'party' than quiet beer garden. This is important, because the area is away from the pub and less likely to be adequately supervised. Last year, neighbours witnessed an intoxicated woman being pulled back from the edge of the canal, as she vomited into it. And several customers have been witnessed urinating into the canal.

The Protection of Children from Harm

Residents feel that if the variation were allowed, it would provide easier access that could be detrimental to older children. 16-18 year-olds could 'slip in' and buy alcohol from a 'pop-up bar', which would be harder to do if they were sitting down at a table to order. Youths were seen last summer, congregating at the Esso garage nearby, then going into the car park to listen to the music and join the 'after-party'.

The Prevention of Crime and Disorder

Some residents are concerned that a situation like this will attract drug dealers, as the car parks of The Old Mill are very open to the main road. The variation would make it more challenging to implement Government safety measures and would increase the local Police and Police Community Support Officers' burden and workload.

Conclusion

In summary, while residents are sympathetic to the need for temporary measures to help the hospitality industry during the Covid pandemic, they believe that this application for a permanent change to The Old Mill's licence is not needed for this purpose and is likely to lead to a long-term change in the nature of the pub—one that is incompatible with its location and likely to be extremely detrimental to people who live in the area as well as to local children. They urge the Sub-committee to refuse this application.”

The meeting was adjourned at 11.07 am so that the sub-committee could deliberate.

At 12:00 the committee held a minutes silence to remember the victims of Covid-19.

Decision:

The Committee has resolved to grant the application with additional conditions:

1. Any area of car park used for licensable activity shall be cordoned using café style barriers to contain customers within the licensed area at all times whilst this areas is being used for the consumption of alcohol. These barriers will be removed outside of the hours when consumption of alcohol takes place within this area.
2. Licence holder to keep a complaint log and make this available to the Police and Local Authority upon request

In additional to these conditions, the committee have also accepted the proposed conditions volunteered by the Applicants namely;

- No more than 2 events with live or recorded music to be permitted outside (including within any marquee or other temporary structure) to be held per calendar month. Regulated entertainment during such events to be finished by 21:30 hours.
- Following removal of all restrictions placed on licensed premises under Covid Regulations (currently The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021- but to include any regulation replacing it), customers will not be permitted to eat or drink in any area designated as car parking or canal side parking on the plan attached to the premises licence after 22:30 hours.

The remainder of the Licence conditions remain unchanged.

The Committee also note from Annex 2 of the Licence that the Licence contains conditions and obligations upon the Licence Holder to prevent anti-social behaviour and noise nuisance from occurring. The Licence Holder is reminded to maintain these obligations.

The Committee consider that the additional conditions attached following the hearing on 23 March 2021 will further address concerns raised by residents in their representations with regard to this application.

The Meeting ended at 12.05 pm