

LICENSING COMMITTEE HEARING

MONDAY, 28 OCTOBER 2019 - 11.00 AM



PRESENT: Councillor M Humphrey (Chairman), Councillor D Connor and Councillor Miss S Hoy

APOLOGIES: Councillor Mrs K Mayor

OFFICERS IN ATTENDANCE: Linda Albon (Member Services & Governance Officer), Michelle Bishop (Licensing Manager) and Colin Miles (Legal Representative)

LH7/19 **DETERMINATION OF AN APPLICATION FOR A VARIATION TO A PREMISES LICENCE MADE UNDER THE PROVISIONS OF THE LICENSING ACT 2003**

Members considered an application for a variation to a premises licence made under the provisions of the Licensing Act 2003 in respect of The Sportsman, Elm.

The Chairman introduced the Panel and the others present were:

David Johnson, co-owner of The Sportsman
Peter Goldman, co-owner of The Sportsman
Oliver Tookman, co-owner of The Sportsman
Robert Starr, co-owner of The Sportsman

Kim Stewart, neighbour

Craig Stewart and other neighbours of the Sportsman were also present as observers.

The Licensing Manager, Michelle Bishop, outlined her report.

The Chairman invited questions relating to the report.

- Councillor Hoy asked if a change of hours from midnight to 1.00am would affect the times of people drinking in the garden. Michelle Bishop explained it is the sale of alcohol which is the licensing activity and not the consumption. Councillor Hoy said that in theory then, people could drink until, for example, 3am as this was not a licensable activity whether alcohol was being sold or not. Michelle Bishop confirmed this to be correct unless there was a specific condition prohibiting this.
- Councillor Hoy asked about live music; if we rejected their application today, would The Sportsman still be able to apply for a Temporary Event Notice (TEN)? Michelle Bishop advised that they could, however only the police or Environmental Health colleagues can object to a TEN as it does not go out for formal consultation. A premise can submit 15 TENs per year over a 21-day period.
- Councillor Connor asked for clarity that if The Sportsman applied for a TEN it would mean residents would have no input. Michelle Bishop confirmed that was correct. He also asked it to be confirmed that they would limit their live music events to six per year finishing at 7.30pm. Michelle Bishop agreed that was the additional condition.
- Councillor Humphrey questioned the objections stating that many of them looked very similar and asked if there was a reason for this, and why so many were typed rather than handwritten. Michelle Bishop advised that a number of objections were received via email and agreed that

many were in a similar format. She believed some form of notification was sent around the local community regarding the application.

The Chairman invited David Johnson as spokesman for The Sportsman to present the case for the application.

David Johnson raised nine brief points in submission to support the application:

1. The licence amendments seek only to regularise activity that has always taken place.
2. The management team is very experienced with over 20 years in the licensed trade. There are currently three licensed members of staff and a further two will be added next year.
3. The owners have made a very substantial investment in the pub, having adhered to all the stringent and expensive rules and regulations of restoring a run-down Grade II listed property. Investment has ensured the viability of the pub to the benefit of the village as a whole.
4. The variation in hours is only sought on a contingency basis. We do not operate to the full extent of our current licence. We have trimmed back our opening times from 11.30 to 12.00 to reflect customer demand and financial viability. Only on occasions during international sporting campaigns would we seek to open earlier. The nature of tournaments and the way the fixtures are drawn do not always make it possible to submit a TENS in time.
5. We read the objections carefully and noted their formulaic and orchestrated nature. We feel the objections could be compared to the 22-signature petition whereby the objections do not stand on their own merits as different objections.
6. With around 4,000 residents in Elm, the number of objections represents 0.05% of the population. We currently have 1,800 people following The Sportsman on Facebook. All followers are either fully supportive or ambivalent to the licence amendments. Only positive comments are on our Facebook page, which is available for all to see.
7. The pub has reopened with the intention of providing a community hub. The average age of our patrons is 50+ and a number of community groups convene at the pub. We also support the church and village school for our charitable work and offer various fundraising events throughout the year, with our mantra being that money raised in the village gets spent in the village.
8. There is much misinformation regarding the land at the back of the pub. We intend to use it only for non-licensable purposes, including overflow car parking at busy times. We will extend this to when there is a parking issue during church functions. We are the first custodians of the pub to recognise and act on this issue. We realise this is not relevant for licensing purposes but we thought it worth stating given the nature of complaints.
9. We would like to highlight that none of the responsible authorities have raised any objections. Also, we have been asked if we would like to be considered for the parliamentary pub of the year as MP Steve Barclay's submission.

Councillor Humphrey thanked David Johnson.

- Councillor Humphrey asked David Johnson if the condition of holding live music events six times a year was in addition to the number of TENS they could apply for or would they not be using their full quota, as although the applicants have conceded to having six events finishing at 7.30pm, there is no restriction on their applying for further events and putting in seven or eight for example. David Johnson replied it is the intention to hold only six live music events a year but could not promise there might not be more if they feel a need but realistically there was no intention of applying for 15 TENS. He said that by putting in the variation they are being open and honest about their requirement. He pointed out that having people within the pub with Personal Licences meant they could also submit TENS.
- Councillor Hoy said that if we are allowing six today and 15 through the premises TENS, we could end up in a situation where we have a ridiculous amount.
- Oliver Tookman said it was important to understand the intention behind it.
- Colin Miles pointed out that offering six events does not restrict the applicant to holding six

events only. Oliver Tookman said that offering six meant they would not have to apply specifically for them. Councillor Humphrey reminded all that TENs applications would be referred to the responsible authorities and there is also the opportunity for premises to be called for review.

Councillor Humphrey advised that there were no responsible authorities present to ask questions and therefore invited Kim Stewart to ask questions of the applicants before presenting her submission.

Kim Stewart asked the applicants to clarify how many events they were planning a year, expressing her fears for the loudness of the speakers if placed outside and associated noise from people attending the events. She said that they were asking for six events but had admitted they could ask for more and this was of great concern. Councillor Humphrey said although he understood the question, he wanted to point out that if the variation is refused today, with a concession for six in the year finishing at 7.30pm, without that the premises has the opportunity to apply for 15 TENs of which Mrs Stewart would not be consulted on, and these could go on with live music outside until, say 11pm in the evening. Therefore it is a question of balance; do we accept the proposal for six events as goodwill? If it does not turn out to be the case, he has already made the point that the pub is always open for review and the opportunity is available to challenge excessive noise through Environmental Health.

Councillor Hoy asked permission from the Chairman to ask the applicant a further question. In one of the objections, mention was made of a noise limiter previously in place that is now not working, is that correct? Peter Goldman replied that there had been a limiter but unfortunately it had been stripped out during the refurbishment.

The Chairman invited Kim Stewart to make her submission.

Kim Stewart pointed out that the objections were mostly the same because everyone had much the same problem and went on to state the many reasons behind the objections to the application. She admitted that the pub has been beautifully restored but the activities are not suited to a quiet village and she does not believe they can be trusted to keep music to a level as stated by Justin Hanson, Senior Environmental Health Officer.

Councillor Humphrey invited questions. There were no questions from the applicant.

- Councillor Connor asked Mrs Stewart how long she had lived in her house. Mrs Stewart replied 4.5 years.
- Councillor Hoy pointed out there were a number of references to Environmental Health but noted there were no representations from them. Michelle Bishop confirmed that the Environmental Health team have been involved with the concerns of local residents. Justin Hanson had sent in a letter that was in the report originally to confirm that he has no objections to this application; he is currently working with the neighbours and the applicants regarding the noise but this time he had no objections or representations to make to the variation application. Mrs Stewart advised that Justin Hanson did not visit to witness when loud music was being experienced at a weekend.
- Councillor Humphrey pointed out that Mrs Stewart had brought her house knowing it was next door to a pub. Mrs Stewart admitted this was correct and they did have music events there, karaoke etc. which was fine until they put the speaker onto her adjoining wall. Councillor Humphrey asked how the last 12 months compared with previously bearing in mind he knew the pub had been shut for 18 months to 2 years. Mrs Stewart said it was fine until they put on the outdoor music events, also people that frequent these events are louder than they used to be. Lunchtimes are quiet and there is no problem. However, the last 12 months have been horrendous.

Councillor Humphrey said there were some comments around the earlier opening and although that has not been an issue with what we have just heard, could the applicants clarify that 8am opening is not something that you intend to do every morning. Peter Goldman confirmed it was not.

Councillor Humphrey thanked Kim Stewart for her contribution, stating he appreciated it was not an easy process.

Peter Goldman asked if he could respond to a point Mrs Stewart had made. When the music is set up for live music events, they never change the volume or turn it up as suggested, he can only think that the base sound level drops as night goes on. Justin Hanson set out the levels and they categorically stay there and he wanted to make that point clear.

Councillor Humphrey said there was a point he had meant to raise regarding quiet dispersal and asked what process the applicants have in place. He is aware the pub is well signposted with notices asking patrons to respect the neighbours, which he noted on the site visit, but it is not always easy getting people to respect that. Peter Goldman said they are working with more focus on that now but probably 80% of the people attending their events are from the village so they are walking to their homes; we do not get vast swathes of people coming from afar.

In summing up, the Chairman pointed out that whatever is determined today is open for challenge. With a licensed premises there is always the opportunity to call it for review.

The Panel adjourned at 11.35am for deliberation and reconvened at 12.25pm. The Chairman made the following statement:

The Sub-Committee is convened today to hear an application for variation for the premises known as The Sportsman, Main Road, Elm, where relevant representations have been received from other persons.

The discretion of the Sub-Committee has been invoked and we now take this opportunity to revisit the existing premises licence and to consider the variation application.

The current licence is dated 6 July 2017 and is valid from 20 June 2019. The licence was transferred to the current Premises Licence Holder, Elmsport Limited, on 20 June 2017, being the Applicant before us today.

Those present today:

Other persons:

Mrs Kim Stewart, and others as observers.

For the applicant:

David Johnson
Oliver Tookman
Peter Golding
Robert Starr.

We have heard in person from:

Kim Stewart
David Johnson.

And we have read the committee papers before us.

We note that there have been a number of relevant representations from 'other persons', mainly those in the immediate neighbourhood of the premises. We have disregarded those representations that are irrelevant to the promotion of one or more of the licensing objectives.

The objections to the variation relate to the following licensing objectives:

- The prevention of public nuisance
- The protection of children from harm.

We note that there have been no representations from any of the Relevant Authorities, so we are only concerned with 'other persons'.

The Applicant states today:

- The variation seeks to regularise activities
- Management Team is very experienced
- Pub is a benefit to the village
- Plenty of residents in support of the variation on Facebook – but we have not been shown evidence of this today
- The extension hours are largely for event purposes

I do not propose to go through each written representation in turn, as these can be found in the papers. I will summarise these representations.

Residents are concerned with the following as detailed by Mrs Stewart:

Public Nuisance

- An existing level of noise nuisance from amplified music within and without the building. For example, noise can be heard emanating from within the premises and from speakers placed outside the fabric of the building. Also, noise from customers using the garden area to the front.
- There is a perceived concern of an increase in noise pollution should the hours be extended and the rear external area be licensed for entertainment.
- Nearly all of the representations complain of an unacceptable existing level of noise emanating from the premises.

We note the contents of the noise diary attached to one of the representations, beginning 16 March 2019 to 15 September 2019.

There has been mention of customers leaving the premises noisily at closing time, disturbing residents as late as 1am.

There is a concern that the earlier time for the sale of alcohol, this being 8am daily, will also add to noise disturbance but earlier in the day than already exists.

Protection of Children from Harm

The representations here relate to the earlier time for the sale of alcohol. Residents are concerned with the possibility that children may be affected in some way on their way to school by the earlier sale of alcohol.

Mediation has been attempted and the Applicant has offered to remove the rear garden from the proposed licensed premises plan, and to limit the number of times per year the front garden area is used for live music events to six per year, ceasing at 1930 hours.

The Applicant has also taken this opportunity to amend the conditions in the Operating Schedule. These can be found at Annex 2, so I will not go through them now.

In our deliberations we were referred to:

- The Government Guidance issued under the Licensing Act
- Our own Statement of licensing policy.

We found that there are issues with the premises but are content that the mechanisms to deal with these are available to residents and the licence holders are mindful of their responsibilities. We believe the amended Operating Schedule will go some way towards alleviating residents' concerns.

We grant the variation subject to the following conditions:

It is our decision:

- To accept and amend the Conditions as contained in Annex 2;
- The rear garden area will not form part of the licensed premises;
- The front garden will be licenced for licensable activities. However amplified live and recorded music is permitted six times per calendar year – 1st January to 31st December and must cease at 7.30pm. This does not affect the licensee's option to apply for Temporary Event Notices
- The extended hours for licensable activities are granted as applied for.

Any person aggrieved by this decision can Appeal to Peterborough Magistrates' Court within 21 days of notice of the decision. There would be a fee payable.

Councillor Humphrey concluded by saying that the Committee has every sympathy with the residents and would urge they use Environmental Health and the review process should the need arise.

12.32 pm

Chairman