

Licensing Sub-Committee

Minutes - 2 December 2016

Attendance

Chair Cllr Alan Bolshaw (Lab)

Labour

Cllr Keith Inston
Cllr Anwen Muston

Conservative

Employees

Joanne Till
Sarah Hardwick
Mike Hooper

Section Leader - Licensing
Solicitor
Democratic Services Officer

Item No. *Title*

1 Apologies for absence

There were no apologies for absence.

2 Declarations of interest

No declarations of interest were made.

3 Licensing Act 2003 - Application for a Variation of a Premises Licence in Respect of Hollybush, 494 Penn Road, Penn, Wolverhampton, WV4 4HU

An application for the variation of a Premises Licence in respect of Hollybush, 494 Penn Road, Penn, Wolverhampton, WV4 4HU, had been received from John Gaunt & Partners on behalf of Marston's PLC, the Premises Licence Holder.

Ms J. Till, Section Leader (Licensing), provided an outline of the variation application, drawing attention to an administrative error in the report – Paragraph 2.3 should have stated 'The application is to add areas to licensable activities', not to add hours. Ms M. Hazlewood, John Gaunt & Partners on behalf of the applicant, confirmed that the summary was accurate.

The Chair drew attention to concerns raised by local residents that Notices of the application were not displayed for the necessary length of time in appropriate positions. J. Till, Section Leader (Licensing) said that responsibility lay with the applicant and that the Licensing Authority did not routinely check where Notices had been erected. M. Hazlewood said that the Notices had been properly displayed on the public highway (Penn Road) with the correct distances between Notices as per the regulations. They were also erected on the side road point of access.

M. Hazlewood presented the application on behalf of her client, stating the following:

- Ms A. Passmore had been the Designated Premises Supervisor (DPS) for 18 months;
- The nature of the proposed variation was as detailed on page 8 (Appendix 1) of the report but, to summarise, it would be an extension of the licensed but related only to a new external area and only sought sales of alcohol and late night refreshments. The area had previously been used as a beer garden;
- The site was now very different to how it had been in the past and the applicant understood the residents' concerns but Marston's intended to adhere to its 'F Plan' – food, families, female friendly, forties and fifties.

In advance of the meeting, M. Hazlewood had spoken to the residents that had raised objections about the evolution of the site. She requested permission to circulate plans detailing this. Ms S. Hardwick, Senior Solicitor, said that would be permitted should the Chair and the objectors agree to it, which they did.

The meeting adjourned to allow the clerk to make copies of the site plans, which were accompanied by copies of the premises food and drink menu to highlight the 'F Plan' focus of the establishment.

The meeting reopened and copies of the site plans were circulated. The Senior Solicitor emphasised that only licensable activities were to be considered, not matters of planning policy.

M. Hazlewood talked through the site plans, which detailed amendments to the Licence made in 2010 and 2014 along with the current proposals, making specific reference to the following in relation to the current application:

- The additional external areas for which the sale of alcohol would be extended were detailed in green. The patio area would retain a 10pm curfew;
- The reason for the application was to enable the food trade to grow. Staffing levels had already been increased by more than double due to demand ('dry' sales currently amounted to approximately 70% and 'wet' sales, including soft drinks, 30%) but there was a need to be able to deliver the same quality of service throughout the premises. Previously, smokers could have dined on the patio but that would restrict families from eating there. The aim therefore was to have defined smoking and smoke-free dining areas;
- Local residents had been invited to look around the premises and a number had;
- The application did not request to extend the licensed hours or amend conditions, it was solely to extend the licensable areas;
- Local residents had raised concerns regarding late night alcohol sales but the fact that they had not realised that sales until 1am were already permitted showed that they had had no adverse effect nor had the Police or Environmental Health raised any concerns.

Following the above submission, all present were invited to ask questions of the applicant.

In response to questions from the Sub-Committee, A. Passmore, Ms. J. Elliot and M. Hazlewood stated the following:

- The greater space and capacity should not correlate to an increase in noise levels as the newly licensed areas would receive the same levels of policing as existing areas and they were geared towards dining, not 'vertical drinking';
- The most sensitive location had been selected for smokers. It was on the cross roads where there was heavy traffic. The British weather was such that most people would not want to sit outside after 10pm. Usage of the area was expected to be very transient;
- Food would not be served outside after 9pm and diners would have a one hour window (until 10pm) to consume it. After that, diners would be politely asked to move indoors to ensure that the Licensing Conditions were not breached. Common practice used at other Marston's restaurants was to encourage customers to comply by citing the Licensing Conditions and signage could be increased if necessary;
- Due to the focus on dining it was very rare for customers to behave rowdily. There were few customers after 10pm.

In response to questions from those that had submitted objections to the application (Mr V. Harris, Ms C. Haynes, Mr R. Ash, Mr B. Clarke and Mr B. Greatrex on behalf of Mr J. Greatrex), A. Passmore, J. Elliot and M. Hazlewood stated the following:

- New barriers had been installed that could restrict access to the car park. Previously there had been 'pull-up' barriers that would get stuck;
- Customers would be required to leave by 11:30 (a business choice, not a Licensing Condition);
- More customers did not mean there would be more noise;
- The new dining area for smokers would close at 10pm and smokers would be asked to move to the front of the premises. Increased signage stating times would be erected;
- A. Passmore was investigating a solution to the car park lighting, which had been a concern to local residents;
- The application did not include an extension to the period for which alcohol could be sold;
- The intention had been to sell alcohol in the rear external area until 11pm but that had been brought forward to 10pm following the concerns raised by local residents. The licensed area at the front would remain until 11pm;
- The site had not been extended. It was possible that it had appeared smaller in the past as access to some areas had been closed off;
- Minor variations may have been made to the conditions of the Licence. As minor variations there would not have been a legal obligation to directly consult or notify local residents. A white Notice detailing the variations would have been erected on site;
- Alcohol had never been served in the areas not currently licensed. The consumption of alcohol, which was not a licensable activity, may have occurred there;
- Licensable activities and Planning Policy were two separate jurisdictions, the latter of which could not be considered at this Hearing;
- Where patrons chose to park when the car park was full was not the responsibility of the DPS nor was she aware of where they parked;
- Food would be served internally until 10pm and externally until 9pm;
- Only on New Year's Eve would last orders would be extended beyond 11pm.

No questions to the applicant were put forward by the Senior Solicitor or the Section Leader (Licensing).

No representations were made by the Responsible Authorities.

All those that had submitted objections to the application were invited to make representations in addition to those submitted in advance of the meeting. Following each submission, all present were invited to ask questions.

V. Harris stated that he had nothing further to add. No questions were put to Mr Harris.

C. Haynes stated the following:

- She felt clearer regarding the application;
- She thought that it was remiss with regard to where and when the Notices had been erected and that there had not been six Notices posted. It was something that needed to be addressed if there were future applications as it had caused unnecessary stress for locals;
- Copies of the Licence, with amended conditions if granted, should be sent to local residents to safeguard them from any future issues;
- The lights in the car park continued to be a statutory nuisance;
- Loud stereos from cars in the car park were a nuisance. Signage stating 'No music' could help.

No questions were put to Ms Haynes but Councillor Inston suggested that the issues that she raised could be alleviated if local residents, as a group, met with the DPS every three months.

R. Ash stated the following:

- Himself and his wife had checked out licensing restrictions and the outdoors area had been a concern. However, having met with the applicant and attended today's Hearing his main concern now was the ability for minor amendments to be made to Licensing Conditions, which could be an easy way to gain extensions in the future without notifying local residents;
- He had no issues with the new car park barriers, which he thought would be a great help;
- The car park lights were an issue but he recognised the health and safety issues involved;
- He took issue with the positioning of the Notices for the application being considered.

No questions were put to Mr Ash.

B. Clarke stated the following:

- He drew attention to the second paragraph of his written submission in which he stated that he had not been aware of any Notices on display on the premises or the boundary of the premises until they were pointed out by a neighbour. He added that there were only two Notices on Penn Road and none on Hollybush Lane. He felt that this was wrong and that homes that backed on to the premises should have been notified;
- Having heard the applicant's submission, he still objected to the application as he felt that it invited people to stay for longer and later;
- There had been historical, not recent, issues regarding noise as customers left via the car park;
- The premises and the Licensing Authority had a duty of care for local residents.

In response to questions asked by the Sub-Committee, Mr Clarke said that going back 7, 8, 10, 12 years ago he had reported incidents on the premises to the Police. The last complaint that he had made was to the brewery in November or December 2010. In years gone by he had gone on to the premises with dogs to confront troublemakers, as well as having patrolled the area with a previous landlord.

B. Greatrex, on behalf of J. Greatrex, made no further statement but sought clarity regarding the legislative requirements in relation to providing due notice of amendments to the variation of a Premises Licence. The Senior Solicitor provided this.

No questions were put to Mr Greatrex.

All parties were afforded the opportunity to make closing statements.

B. Greatrex, on behalf of J. Greatrex, made no further statement.

B. Clarke stated the following:

- There appeared to be a paradox with regard to the hours that the establishment said the intended to operate and the signage on the premises that stated 'Christmas entertainment from 8 till late';
- The ethos of the 'F Plan' was something of a paradox as parents would surely have put their children to bed in the evening';
- The interests of the business were being put over the interests of the community.

R. Ash made no further statement.

C. Haynes made no further statement but requested that local residents be notified of any future variations to the Premises Licence.

V. Harris made no further statement but sought clarification with regard to the opening hours as detailed on page 21, Appendix 3, of the report.

M. Hazelwood, on behalf of the applicant, stated the following:

- The application had a very limited scope, it was solely specific to the areas detailed in green in the circulated plans;
- No representations had been received from the Police or Environmental Health. This was very important in licensing terms, specifically paragraphs 9.12, 9.41 and 10.10;
- The reality was that the premises had a traditional licence but since 2010 it had moved away from a focus on 'wet' sales to food sales. The change in clientele had been evidenced by the fact that the complaints referred to by objectors relating to the consumption of alcohol were all historic and not in the period since 2010, despite there having been a Licence permitting sales of alcohol until 1am (although the consumption of alcohol was not a licensable activity anyway);
- Marston's and the DPS wanted to transparently operate within the Licensing Act in a responsible manner and with a responsible approach to policing that promotes the Licensing Objectives and protects people;
- As evidenced by the objectors, no issues had arisen since 2014 when the patio area was introduced;
- The DPS would be happy to meet with local residents to discuss matters that fall outside of the Licensing remit.

All parties, with the exception of the Solicitor and Democratic Services Officer, withdrew from the meeting to enable the Sub-Committee to determine the matter.

The parties were invited back to the meeting and the Chair advised them of the decision of the Sub-Committee, which was read out in full by the Senior Solicitor.

Resolved:

The Sub-Committee have taken note of all of the written concerns raised regarding the application to vary a Premises Licence in respect of The Hollybush, 494 Penn Road, Penn, Wolverhampton, WV4 4HU, including the representations of those that spoke at the Hearing both for and against the application.

Having considered the views of all concerned, the Sub-Committee has decided that the application to vary the Premises Licence, as applied for, is granted.

The Licensing Sub-Committee do recommend:

That, on a three-monthly basis, the Premises meet with local residents to discuss any proposed future changes to the Premises Licence and/or any issues arising from operation under that Licence

Finally, such conditions as are specified on or are consistent with your Operating Schedule will be attached to your licence and any mandatory conditions required by the Act.

Written confirmation will be forwarded within the next five working days.

All parties have a right of appeal to the Magistrates Court within 21 days of the date of this Hearing.