

LICENSING SUB-COMMITTEE HEARINGS

21 OCTOBER 2013

Present :- Councillor Nick Cope (Chairman)
Councillors Mary Blandon and Michael Lilley

Appointment of Chairman

Declarations of Interest

There were no declarations of interest.

Applications under the Licensing Act 2003

The Head of Professional Services submitted a report in relation to the following application for determination by the Sub-Committee, in accordance with the provisions of the Licensing Act 2003.

• The Stockwell, 18 West Stockwell Street, Colchester

The Sub-Committee considered an application to vary the premises licence in respect of The Stockwell, at 18 West Stockwell Street, Colchester

In Attendance

Applicant Mr Morgan

Objectors Mr Murray, Dutch Quarter Association

Councillor Frame

Ms Colquhoun

Mr Lavelle

Mrs Lavelle

Mrs Webb

Mr Inkster

Mr Silk

Mrs Kavanagh

Licensing Authority Mr M Nelson, Food Safety & Licensing Manager

Mr C. Samuel, Legal Services

Mr S Swain, Licensing Specialist Unit

Mrs S White, Licensing & Committee Co-ordinator

Mrs White outlined the application. At the start of the hearing, Mr Inkster queried the validity of the application in that whilst the application was on behalf of Hamilton Bailey Limited, the company address provided was the address of the premises and not the registered address of the company. Moreover, although Mr Morgan signed the

application as a director of the company there was no evidence that he was such. There was a short adjournment for Mr Morgan to provide a record from Companies House that he was a director, and Counsel's opinion was obtained to the effect that the application was valid.

The Sub-Committee noted that 16 relevant representations had been received from interested parties, some of whom were in attendance to address the Sub-Committee on their representations. The Sub-Committee noted the majority of the objections concerned the licensing objective of the prevention of public nuisance. There had been one representation from planning in respect of the application but no representations from any of the other responsible authorities had been received.

The legal representative advised the Sub-Committee, at the start of the hearing, that a number of the representations mentioned alleged breaches of the planning consent at the premises but these were not matters that could be considered by the Licensing Sub-Committee in reaching its determination on the application. The application would be considered on its own merits and in relation to the four licensing objectives only.

In presenting the application Mr Morgan explained that he did not want to change the nature of the premises but was responding to the requests of patrons in seeking to provide films and plays at the premises. He expressed his desire to work within the community and gave examples of the type of events held at The Stockwell which included such things as wine tasting and the Ramble and Roast. Permission was sought to have plays on the premises as a number of actors were employed as staff and would like to stage short plays. With regard to the provision of films, it was intended to show classics from the 1940s and 1950s. It was anticipated that these would be shown in the Secret Garden Room, which was specifically insulated to prevent vibration from noise, during the winter months otherwise it would be necessary to artificially blackout the Room. The earlier opening hours for the premises were sought to respond to the demand from some patrons for early morning coffee. A number of residents, in asking questions of Mr Morgan, expressed the view that the changes requested went against the philosophy of the enterprise which was as a restaurant. Mr Morgan responded that he did not accept this and was simply responding to requests from those people who used the premises and had asked him to provide a greater range of events.

Mr Morgan explained that the premises attracted couples and in his opinion the variations requested would not change the demographic of those who patronised the premises and attract a younger more rowdy crowd. There had been no police incidents at the premises and the Police had not made representations in respect of the application. In responding to the points made in the representations about people being outside the premises Mr Morgan explained that there had been an incident in the summer when guests from a wedding had used the garden and been outside the premises and also an incident last week when a wake had been held at the premises and people were outside the premises but that these matters had been dealt with when it was realised there was a problem.

Mr Morgan was asked about the Ghost Hunt that was currently being advertised for times that were beyond the premises' permitted hours and the Sub-Committee was

informed that there were no licensable activities taking place at the event and any other issues in relation to the use of the building were planning matters.

Environmental Protection were asked to give details of any noise complaints it had received and Mrs Parkin explained that there had been issues with the kitchen extraction unit and the air cooler but these were being dealt with outside of licensing and were not matters for the hearing. In addition, more recently, an issue had been raised in relation to the use of the internal staircase and this was being looked at and would hopefully be resolved shortly as the applicant had been made aware of the problem. With the exception of these complaints there had been a few specific complaints of noise from people outside the premises and noise from deliveries but these were not at a level that would constitute a statutory nuisance. The premises had been monitored almost every weekend by officers on the weekend noise service and during this time a possible breach in hours had been witnessed and reported to licensing. Mr Morgan explained that the people witnessed in the premises on this occasion were staff who, having burnt the food preparation for the next day, had to do further food preparation. In addition he commented that the extraction unit would be switched off when the kitchen closed at 22.30 and not when staff left the premises which had often been the case previously.

In asking questions of the applicant, a number of the residents had requested that the hours be kept as they were and expressed concern at the extension of hours and therefore of disturbance. Mr Swain confirmed that the application did not provide for drinking up time so the premises closing time would remain the same. Mr Morgan stated that he had believed that drinking up time was automatic and Mrs White informed the Sub-Committee that changes to increase the overall opening time of the premises could not be made and the application was as set out in the paperwork for the hearing. The hours requested for plays, films and late night refreshment were within the overall hours the premises was already licensed to operate. The emptying of bottles at the premises was raised and Mr Morgan expressed doubt that this noise was from his premises.

In response to concerns about people smoking outside the premises and in particular adjacent to a neighbours window, Mr Morgan explained that he had taken measures to ensure this stopped and that smoking was now at the curtilage of the building. He had also taken steps to avoid noise nuisance from slamming of doors at the side of the premises by installing shutters. Mr Murray addressed the Sub-Committee on behalf of the Dutch Quarter Association and reiterated a number of points made by other objectors in their representations to the Sub-Committee in relation to noise and nuisance. Mr Samuel asked, given that residents stated they had had no reason to complain when the premises traded as a pub and that a wide variety of problems were now alleged, why no action had been taken to bring a review of the premises licence. In response to this Councillor Frame stated that the pub had been used by local people who had been careful to use it in a way that did not give rise to problems whereas the premises was now used by non-residents of the Dutch Quarter. Mr Murray stated that residents tended to talk about the problems in groups rather than log formal complaints as they didn't know how to make complaints. In summing up the objectors asked that the application be refused as an extension would create more noise and nuisance in the area and risked bringing the problems of the night time economy into the Dutch

Quarter. Mr Morgan, in summing up asked that the application be granted to enable him to respond to the requests of patrons of the premises to provide a small number of additional events on traditionally quiet days of the week.

RESOLVED to permit:-

- The performance of plays indoors for the following hours -
Mondays and Tuesdays from 17.30 to 22.30
Sundays from 14.30 to 21.30
- The provision of films indoors for the following hours -
Mondays and Tuesdays from 17.30 to 22.30
Sundays from 14.30 to 21.30
- The provision of late night refreshment, indoors for the following hours
Fridays and Saturdays from 23.00 to 23.30
- The premises to be open to the public for the following hours -
Mondays to Sundays 10.00 to 23.30

Seasonal Variations – Christmas Eve 10.00 to 00.30
New Year's Eve from 10.00 to 01.00 on New Year's Day
Bank/Public Holidays from 10.00 to 00.00

Subject to the following conditions –

- No bottles/glass to be collected from the premises between the hours of 18.00 and 08.30.

Reasons for the Determination

In arriving at the decision the Sub-Committee considered each point very carefully. It noted the representations, arguments and evidence presented by all parties including the applicant and other parties under the Licensing Act 2003.

The Sub-Committee being familiar with the area found that whilst it was a residential area, The Stockwell Arms Public House had been located on the site for a great number of years and had operated with the benefit of a premises licence for hours in excess of those of the existing premises. It was noted that residents had been aware of the presence of a public house when moving into the Dutch Quarter. The Sub-Committee noted the alleged breaches and complaints in relation to the premises and that no application had been made to review the licence. The Sub-Committee also noted that a number of the concerns raised related to matters that were not within the remit of the Sub-Committee and were more properly dealt with under planning legislation.

The Sub-Committee noted the comments from Environmental Protection in relation to noise nuisance from the premises and noted that action was being taken under environmental and planning legislation in order to deal with noise and odour nuisance from the extractor and cooling units. The Sub-Committee was mindful that it was not appropriate to seek to use licensing legislation when alternative primary legislation was available. The Sub-Committee noted that a small number of complaints had been made to Environmental Protection concerning general noise and nuisance from the premises and use of the premises beyond its permitted hours and that monitoring of some issues was ongoing but the level of complaints was not at a high enough level to be regarded as a statutory nuisance.

The Sub-Committee felt that the case made by the objectors in relation to undermining the licensing objective of the prevention of public nuisance by granting the provision of plays and films was not proved to justify the refusal of this element of the application or the imposition of further conditions. The hours requested by the applicant were within the overall opening hours of the premises and did not necessitate an extension in the terminal hour of the licence. Mr Morgan had stated that films were to be shown in the Secret Garden room at the rear of the premises which was totally insulated for sound vibration. The Sub-Committee also noted that no opposition was raised or reference made at the hearing to the request to open for an additional hour in the morning from 10.00 to 11.00 in order to serve morning coffee etc. It was considered that in granting this element of the application the licensing objectives would not be undermined. With regard to the addition of 30 minutes on a Friday and Saturday night for the provision of late night refreshment, the Sub-Committee did not consider the case was proved that this would lead to an increase in public nuisance providing as it did, food and hot drinks, towards the close of the evening.

The Sub-Committee noted the residents' concerns regarding traffic movements in the area but this matter was not within the Sub-Committee's remit. The Sub-Committee also noted the concerns raised regarding smokers outside the premises. The Sub-Committee noted Mr Morgan's assurances that he discouraged smokers from remaining outside and that he had made an effort to move them from underneath an adjoining property's window. The Sub-Committee was mindful of the regulations made under the Health Act 2006 which meant that smoking was not permitted in enclosed public places and acknowledged the difficulties that the location presented. It was acknowledged that smokers could use the public highway without restraint bringing them, potentially, into conflict with local residents.

The Sub-Committee had regard to the concerns of residents in relation to the collection of glass and bottles from the premises and determined to impose a condition limiting collections to between the hours of 8.30am and 6.00pm in order to minimise the disturbance to local residents.

In considering the request for an additional half an hour on a Friday and Saturday night for the sale of alcohol, the Sub-Committee considered that the case made by the applicant was not proved. The Sub-Committee was concerned that the application did not provide for a period of drinking up and found that the applicant had not presented sufficient evidence to demonstrate that granting the additional half hour for the sale of alcohol would not undermine the licensing objective of the prevention of public

nuisance. The applicant had provided insufficient evidence as to how he intended to deal with drinkers in this period. It determined therefore that this element of the application should not be granted.

Residents were reminded that they had the right to request a review of a premises licence if problems occurred once the varied licence was in operation.