

BROMSGROVE DISTRICT COUNCIL

MEETING OF THE LICENSING SUB-COMMITTEE

THURSDAY 6TH AUGUST 2015 AT 6.06 P.M.

PRESENT: Councillors B. T. Cooper, P. Lammas and P.L. Thomas

Officers: K. Barnett and Sayful Alom and Mrs. P. Ross

Also in attendance: Mr. G. Bridgewater, Applicant, Mr. H. Thomas, Harrison Clark Rickerbys Solicitors, Applicant's Representative, Sergeant R. Field, Bromsgrove Safer Neighbourhood Team, West Mercia Police, Mr. J. Aust, Premises Licence Holder, on behalf of Love 2 Love, Bromsgrove.

10/15 **ELECTION OF CHAIRMAN FOR THE MEETING**

RESOLVED that Councillor B. T. Cooper be appointed Chairman of the Sub-Committee for the meeting.

11/15 **APOLOGIES**

No apologies for absence were received.

12/15 **DECLARATIONS OF INTEREST**

No declarations of interest were received.

13/15 **PROCEDURE**

The Chairman opened the Hearing and introduced the Members of the Sub-Committee and officers present to the applicant, so that no person who may be in a position to influence the Sub-Committee withdrew from the meeting room with the Sub-Committee when the Sub-Committee considered its decision at the conclusion of the Hearing.

The Chairman welcomed all those present and apologised for the late commencement of the meeting.

14/15 **VARIATION TO A PREMISES LICENCE IN RESPECT OF DOG & PHEASANT, 24 WORCESTER ROAD, BROMSGROVE, B61 7AE**

The Sub-Committee was asked to consider a variation to a premises licence in respect of the Dog & Pheasant Public House, 24 Worcester Road, Bromsgrove, B61 7AE, submitted by Mr. Gary Bridgewater, Elmsvyne Leisure Limited. The application was subject to a Hearing in light of a representation

received from Inspector S. Corteen, Bromsgrove Safer Neighbourhood Team, West Mercia Police and eight representations from other persons. The basis of their representations related to:-

- The Prevention of Public Nuisance
- The Prevention of Crime and Disorder

The Licensing Technical Officer, Worcestershire Regulatory Services (WRS) introduced the report and in doing so informed all those present that the variation application submitted sought to:-

- Extend the hours for Indoor sporting, Live/Recorded Music (indoors & outdoors), Performance of Dance (indoors): Fridays, Saturdays and Bank holidays 10:00 hours – 04:00 hours.
- Late Night Refreshments: Fridays, Saturdays and Bank holidays 23:00 hours – 04:00 hours.
- Sale of Alcohol: Fridays, Saturdays and Bank holidays (Indoors) 10:00 hours – 03:30 hours

In response to the Chairman, the Licensing Technical Officer, WRS, confirmed that one complaint each year had been received in 2013, 2014 and 2015 by Environmental Health, WRS, with regard to noise at the premises. No representation had, however, been received from Environmental Health, WRS with regard to the variation application submitted.

The case for the applicant was then put forward by Mr. H. Thomas, Harrison Clark Rickerbys Solicitors.

Mr. Thomas informed the Sub-Committee that he had requested further detailed information with regard to the police logs for the Dog & Pheasant Public House as detailed on the representation submitted by Inspector S. Corteen, Bromsgrove Safer Neighbourhood Team, West Mercia Police. Mr. Thomas highlighted that he had only just received the information, approximately 90 minutes prior to the commencement of the Hearing. He therefore requested that the usual ten minute time limit in which to present the case for the applicant be lifted.

With the agreement of the Chairman the time limit was waived. The Chairman announced that should those who had submitted representations also require a longer time limit, this would be allowed at the Sub-Committee's discretion.

Mr. Thomas informed the Sub-Committee that Elmsvyne Leisure Limited had operated for ten years and had run a public house prior to that period. The Dog & Pheasant Public House was located in an area of Bromsgrove Town Centre that was seen as a late night entertainment area. The applicant was following recent trends with venues staying open later of an evening. The premises had a mixed clientele, with two distinctive age groups, 18 – 35 years of age and over 35 years of age. The premises offered an open bar area, DJ

booth, pool room and a first floor function room. Those aged between 18 – 35 years of age usually moved from the main bar area to the ‘club’ area situated in the first floor function room. A large proportion of clients who did not want to move to the club area would actually stay in the main bar and pool area if the extended hours were granted.

His client understood that a ‘need’ was not a criterion for granting the variation application, but he was looking at ways to continue to sustain a successful business and the application was being led by customer demand. The variation application was to extend the hours from 02:00 hours until 03:30 hours for the sale of alcohol. Sales would cease at 03:30 hours with clients leaving the premises by 04:00 hours.

His client had sought legal advice after submitting the variation application. Following legal advice and after careful consideration by his client in light of the representations received with regard to public nuisance, his client had decided to amend the application to vary a premises licence and to volunteer conditions as follows:-

- To remove the reference to regulated entertainment being provided outside between 10:00 hours and 04:00 hours.

To include the voluntary conditions:-

- The windows and doors of the premises to remain closed during regulated entertainment after 23:00 hours.
- To install a noise limiting device on the ground floor the specification of which is to be set by a qualified acoustic engineer and approved by Worcestershire Regulatory Services.

Mr. Thomas then provided the Sub-Committee with additional information regarding the contents of the detailed police logs for the Dog & Pheasant Public House from West Mercia Police. Mr. Thomas emphasised that out of the nine incidents shown on Inspector S. Corteen’s representation, only two incidents, were actually associated with the premises and these had been adequately dealt with by the management and staff at the premises. The remaining seven police incident logs had used the Dog & Pheasant Public House as a ‘Point of Reference’. In effect, therefore, the logs provided misleading information as to the correct number of incidents associated with the premises during 1st January 2015 to 31st July 2015.

Mr. Thomas went on to state that, after looking in depth at the police incident logs, there was no actual evidence to suggest that the premises gave the police any concerns with regard to crime and disorder or public nuisance.

When questioned, Sergeant R. Field, Bromsgrove Safer Neighbourhood Team, West Mercia Police, was in agreement that Mr. Thomas’ client had demonstrated that he could operate his business successfully and that the premises was well managed. This was further reiterated by the fact that the police had raised no objections to any of the Temporary Event Notices applied

for at the premises. Mr. Thomas stated that he had felt the need to scrutinise and challenge the police representation submitted, as it was incumbent on the police to ensure that their representation could withstand scrutiny and he was concerned that had his client not instructed him to represent him the police logs for the premises would not have been scrutinised and challenged.

Mr. Thomas then continued and said that, in his opinion, the representation submitted by Love 2 Love, Bromsgrove, was purely a trade objection against competition. Mr. Thomas continued that he felt somewhat disappointed that he would not have the opportunity to question those residents who had submitted representations, based on perception; since they had not taken the opportunity to attend the Hearing in order to attach some weight to their representations. He would therefore ask the Sub-Committee to make an evidence based decision on the variation application submitted by his client.

The Chairman, at this point, took the opportunity to remind Mr. Thomas that in agreement with the Sub-Committee the ten minute time limit had been waived as requested, but he had, at this point, taken over forty five minutes to present his client's case.

Mr. Thomas then briefly referred to Inspector Corteen's representation with regard to 'accumulative effect' in Bromsgrove High Street. Mr. Thomas highlighted that Bromsgrove District Council did not currently have a Cumulative Impact Policy and that the police had other powers available to them in order to control cumulative impact areas. He would ask the Sub-Committee to be mindful that his client promoted the licensing objectives and that he was seeking to vary his current licence in order to sustain his business and to meet customer demand.

At the invitation of the Chairman, Sergeant Field, Bromsgrove Safer Neighbourhood Team, West Mercia Police, who was in attendance on behalf of Inspector Corteen; who had submitted the representation in respect of the variation application; addressed the Sub-Committee.

Sergeant Field agreed that the information as presented by Mr. Thomas on behalf of his client, namely the issues concerning the contents of the police incident logs, was correct and that the Dog & Pheasant had been referred to in the majority of those logs as a 'Point of Reference'. Sergeant Field also agreed, as stated earlier by Mr. Thomas, that the Dog and Pheasant was well managed.

Sergeant Field briefly drew Members' attention to the High Court ruling in Luminar Leisure Limited regarding evidence of crime and disorder away from the immediate vicinity of the premises.

Sergeant Field, in agreement with all parties, then provided additional information to the Sub-Committee, namely the Warwickshire and West Mercia Police, Bromsgrove District Night Time Economy overview for 1st January to 31st July 2015.

The information provided an overview of the night time economy. Sergeant Field asked the Sub-Committee to take into account the representations submitted by local residents and to be mindful of the fact that there was a large population of elderly residents who lived in the vicinity of the premises. Residents had raised their concerns with regard to noise issues at the premises at their local West Mercia Police, PACT (Partners and Communities Together) meetings.

Sergeant Field highlighted that there were seven licensed venues and eight hot food take ways in the Worcester Road area, with the night time economy far more concentrated at weekends. If the variation was granted it could encourage crowds to linger and set a precedent for other licensed premises in the Worcester Road area to seek a variation for extended licensing hours. The police had intervened in the past and had used taxi companies to remove people from the Worcester Road area to avoid them lingering after 03:30 hours. Guidance issued under Section 182 of the Licensing Act states that “In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all parties.”

Sergeant Field therefore requested that the Sub-Committee, when reaching their decision, were sensitive to the needs of the community and listened to the community about perceived problems in respect of noise nuisance in a residential area. If the variation to the license was granted, there would be an increase in the footfall in the Worcester Road area, with a potential for flashpoints in the street leading to an increase in crime and disorder in that area.

Sergeant Field informed the Sub-Committee that West Mercia Police were facing financial constraints and that the night time economy had a significant draw on police resources. There were currently two policing teams whose shifts overlapped between 10:00 hours and 04:00 hours. The police may be unable to respond to incidents that occurred after 04:00 hours. He was not implying that the Dog & Pheasant premises was problematic, however with an increase in the number of premises opening later, it could give rise to an increase in crime and disorder in a residential area.

Sergeant Field continued and referred to Bromsgrove District Council’s Statement of Licensing Policy 2014 – 2019, Section 5 – General Principles

- 5.3 The licensing authority will aim to carry out its licensing functions in a way that promotes tourism, increases leisure and culture and encourages economic development within the District.
- 5.4 However the licensing authority will always try and balance the needs of the wider community, local community and commercial premises, against the needs of those whose quality

of life may be adversely affected by the carrying on of licensable activities, particularly within residential areas.

- 5.5 In particular the licensing authority will attempt to control any potential negative impacts from the carrying on of licensable activities, such as increased crime and disorder, anti-social behaviour, noise, nuisance, risks to public safety and harm to children.

Sergeant Field asked the Sub-Committee to look at the needs of the community and not the economic development of the area, due to the close proximity of the Dog & Pheasant to residential premises. He was in agreement with the community and their perception of a potential increase in crime and disorder and public nuisance in the area.

At the invitation of the Chairman, Mr. J. Aust, on behalf of Love 2 Love, Bromsgrove Premises Licence Holder, who had submitted a representation in respect of the variation application, addressed the Sub-Committee.

Mr. Aust stated that he had listened very carefully to Mr. Thomas and wanted to clarify that his representation was not that of a whinging business facing competition, as there was an element of clients who visited both premises. He was looking after his own business and was Mr. Bridgewater. It was impossible to guess the outcome of the extended hours until the Dog & Pheasant started operating the extended hours applied for. Love 2 Love had a local agreement to close at 03:30 hours and his concern was that, if any incidents should occur, it could prove difficult to determine if those incidents were due to customers leaving his premises or the Dog & Pheasant, both premises could become tarnished. He was happy to take the blame should any of his customers create any issues. He fully understood the reasons why Mr. Bridgewater had applied for the variation.

At the invitation of the Chairman all parties present were given the opportunity to sum up.

In summing up, Mr. Aust stated that his representation was a means of communicating the need to work with the licensing objectives. His underlying concern, as stated earlier, was should any incidents occur it would be difficult to separate the two premises. There would always be a small number of people who stimulate certain activity. It was tough operating a licensed business currently.

In summing up, Sergeant Field asked the Sub-Committee to take into account the two licensing objectives as detailed in the Licensing Technical Officer, WRS report. He accepted that the evidence submitted during the Hearing clearly indicated that the variation should be granted, but again he would ask the Sub-Committee to be mindful and take into consideration the needs and concerns of the local community and not purely economic development and tourism, as highlighted in the Council's, Statement of Licensing Policy.

In summing up, Mr. Thomas emphasised the need to make an evidence based decision. The Sub-Committee had listened to evidence from him and Sergeant Field with regard to the detailed information, he had requested, on the police logs for the Dog & Pheasant. Sergeant Field had not disputed his challenge of those logs and the fact that the premises had been used as a 'Point of Reference' in the vast majority of those logs. Sergeant Field had stated that the premises were well managed and that the police had no real concerns with regard to the premises. Sergeant Field had also stated that looking at the facts the variation should be granted.

In his opinion, no evidence had been provided, that the granting of extended hours, would give rise to an increase in crime and disorder and public nuisance in the area. Members should be mindful of the evidence provided, which detailed what was actually happening in the area, and not take into account what could happen, or perceptions about what could happen, should the variation be granted.

Sergeant Field referred to the Council's, Statement of Licensing Policy, he would ask the Sub-Committee to consider what weight should be attached to this and the weight they should attach to the actual evidence provided. His client had considered and addressed the concerns of local residents with regard to noise issues and had volunteered conditions to address their concerns. He would again ask the Sub-Committee what weight they would give to the representations received and the fact that those who had submitted representations had not taken the opportunity to attend the Hearing to add weight to them.

With regard to the comment made earlier by Sergeant Field and the police shift arrangements; which could impact on police resources after 04:00 hours, was not something the Sub-Committee should take into account.

The Chairman announced to all those present that the decision of the Sub-Committee would be sent to the applicant and all those who had submitted representations within five working days.

Having had regard to:

- The licensing objectives set out on the Licensing Act 2003
- The Council's Statement of Licensing Policy
- The guidance issued under section 182 of the Act
- The Report presented by the Licensing Technical Officer, Worcestershire Regulatory Services.
- The written and oral representations and additional information provided by Sergeant Richard Field, Bromsgrove Safer Neighbourhood Team, West Mercia Police, as a Responsible Authority.
- The written and oral representations made by Mr. J. Aust, Premises Licence Holder, on behalf of Love 2 Love, Bromsgrove.
- The relevant written representations of other parties who had submitted objections to the variation application.

- The application, oral representations and additional information presented at the Hearing by the Applicant's Representative, Mr. Heath Thomas, Harrison Clark Rickerbys Solicitors.

The Sub-Committee has decided to grant the application to vary the Premises Licence relating to Dog & Pheasant, 24 Worcester Road, Bromsgrove, Worcestershire, B61 7AE, as set out in the Operating Schedule and varied by the applicant to remove the reference to regulated entertainment being provided outside between 10:00 hours and 04:00 hours.

The variation was granted subject to the additional conditions volunteered by the applicant's representative which will appear on the amended Premises Licence:-

- The Windows and doors of the premises are to remain closed during regulated entertainment after 23:00 hours.
- To install a noise limiting device on the ground floor the specification of which is to be set by a qualified acoustic engineer and approved by Worcestershire Regulatory Services.

The reasons for the Sub-Committee's decision were as follows:

- The Sub-Committee had noted and considered the written and oral representations made by the applicant's representative Mr. Thomas, including his in depth response to the written representation from Inspector Corteen, Bromsgrove Safer Neighbourhood Team, West Mercia Police; more specifically the detailed information shown on the incident logs, which highlighted that, of the nine incidents recorded against the premises, only two could be said to actually relate to the operation of the Dog & Pheasant, and both of those incidents (one of which related to noise rather than crime and disorder) had been dealt with appropriately by the manager at the premises.

The police in their initial representation highlighted:-

- The previous incidents recorded against the premises during 2015.
 - That a license allowing the premises to stay open until 04.00 hours would result in an accumulative effect in Bromsgrove High Street where other premises were also licensed until 04.00 hours.
 - That the granting of such a license would see an increase in crime and disorder, public nuisance and a risk to public safety.
- The Sub-Committee considered the written representation made by Inspector Corteen and were mindful of the fact, as detailed by Mr Thomas and accepted by Sergeant Field, that the incidents recorded against the premises were, in the main, incidents which had occurred outside, or near, the premises and for which the premises had been used as a 'Point of Reference', rather than there being any substantive concerns regarding the operation of the premises itself. Indeed, Sergeant Field had accepted, without hesitation, that the premises were well managed.

- The reference to 'accumulative effect' by the Police was also somewhat misguided as Bromsgrove did not have a Cumulative Impact Policy and, whilst Members could understand this concern there was no evidence presented which suggested that there would be such an effect; to the contrary, there had been evidence presented by the applicant's representative which indicated that there was no such effect on those dates when the premises had opened until later hours under Temporary Event Notices.
- The additional information presented by Sergeant Field, namely, Bromsgrove District Night Time Economy 1st January to 31st July 2015, did not relate specifically to these premises and simply gave a general picture of the late night economy in Bromsgrove District. The figures contained therein could, in many ways, be regarded as more supportive of the applicant's position than the Police's position.
- The issue raised by Sergeant Field regarding the ability of West Mercia Police to effectively manage the night time economy in the area, as a result of current shift arrangements, was, whilst concerning, a matter which the Police themselves needed to address and, as it was apparent that this particular premises gave rise to little, if any, concern regarding how it was run it would, in principle, be fundamentally wrong to reject the application on this basis.
- The Sub-Committee had also considered the representations made by local residents with regard to noise nuisance with loud music emanating from the premises. Having been advised by Mr. Thomas that his client had taken their concerns seriously, which, to some extent, seemed to be borne out by the contents of some of the representations; and having noted the conditions volunteered by Mr Thomas; Members were of the view that such concerns could be adequately addressed by the imposition of conditions to limit both the volume of any entertainment and its ability to be transmitted outside of the premises by means of open doors and windows. The Sub-Committee were also mindful that no representations with regard to noise pollution had been submitted by Environmental Health, Worcestershire Regulatory Services.
- The Sub-Committee had taken account of the views expressed by owners of local businesses, including Mr Aust who had attended at the hearing, but were mindful of the fact that one of those representations was from a business which did not operate at times when the premises was open, and the other representation had more than a slight 'commercial interest' element apparent from its contents.
- The Sub-Committee took the view that all of the evidence presented to it, rather than those matters of simple conjecture, pointed to the fact that this was a responsible operator, running a well-managed premises, and the promotion of the licensing objectives would best be served by granting the variation applied for, subject to those conditions volunteered to deal with any remaining concerns regarding the potential for noise nuisance. Clearly, if proper evidence subsequently came to light regarding actual problems at

the premises, rather than perceived problems, then it would be open to the police or local residents or any other responsible authority to seek a review of the licence.

The following legal advice was given:

- that the Licensing Objectives must be the paramount consideration;
- that the Sub-Committee may only have regard to the representations which promote the four licensing objectives; and evidence relevant to those objectives.
- the Sub-Committee must consider only those matters directly relevant to the premises.
- that although the police had reported problems with behaviour of members of the public in Bromsgrove town centre linked to the late night economy, there was currently no “cumulative impact” policy in place which the Sub-Committee needed to take into account. In the absence of such a policy the usual considerations under the Licensing Act apply with the emphasis on evidence based representations.
- the Sub-Committee must consider the application to vary the licence and not the original licence.
- In imposing conditions the Sub-Committee must ensure that they are appropriate for the promotion of the licensing objectives.

An appeal to the Magistrates’ Court against the Sub-Committee’s decision must be lodged within 21 days of the date on which written confirmation of the decision is received by the Applicant.

The meeting closed at 8.28 p.m.

Chairman