

**BROMSGROVE DISTRICT COUNCIL**

**MEETING OF THE LICENSING SUB-COMMITTEE**

**MONDAY, 9TH JULY 2018, AT 10.32 A.M.**

PRESENT: Councillors R. L. Dent, H. J. Jones and M. A. Sherrey

Observers: Councillor L. J. Turner

Officers: Mrs. V. Brown, Mr. D. Etheridge, Mr. P. Morrish and  
Mrs. P. Ross

Also in attendance: Mr. R. Taylor, Partner, Gosschalks Solicitors  
(Applicant's representative), Mr. R. Davidson, (Applicant), Mr. M. Obery,  
Regional Manager, Enterprise Inns (observing) and Mr. R. Kimberley  
(local resident)

1/18 **ELECTION OF CHAIRMAN FOR THE MEETING**

**RESOLVED** that Councillor R.L. Dent be appointed Chairman of the  
Sub-Committee for the meeting.

2/18 **APOLOGIES FOR ABSENCE**

No apologies for absence were received.

3/18 **DECLARATIONS OF INTEREST**

No declarations of interest were received.

4/18 **PROCEDURE**

The Chairman opened the Hearing and introduced Members of the Sub-  
Committee and officers.

The Chairman then welcomed all those present and explained that  
Councillor L. J. Turner was in attendance to observe the Hearing.

At the request of the Chairman, the applicant, the applicant's  
representative and 'other parties' briefly introduced themselves.

5/18 **APPLICATION FOR VARIATION OF A PREMISES LICENCE IN  
RESPECT OF DUKE OF YORK, 83 BROAD STREET, BROMSGROVE,  
B61 8LN**

The Sub-Committee was asked to consider a variation to a Premises Licence, submitted by Mr. Robin Davidson, in respect of the Duke of York, 83 Broad Street, Bromsgrove, Worcestershire, B61 8LN.

The application was subject to a Hearing in light of four representations received from members of the public. The basis of their representations was on the grounds of Noise Nuisance and Public Nuisance.

It was confirmed that all Members of the Sub-Committee had conducted a site visit. An announced visit to the site for which the variation had been submitted was carried out on Friday 6th July 2018. It was noted that Members were accompanied by the Council's Legal Advisor.

The Council's Legal Advisor clarified for all those present that, the application submitted was for a variation to the existing premises licence as follows:

- To remove a portion of the existing bar servery and to make a smaller bar servery at right angles to it and to install double doors off the lounge area into what would become a beer garden.

The Council's Legal Advisor informed Members that it was not a review of the existing licence or an opportunity for the existing conditions on the licence to be considered. Consideration could only be given to the specific variation to relocate the bar servery to the Games Room and the installation of double doors.

The Council's Legal Advisor further advised Members that the outside drinking area was not regulated by the Licensing Authority and that there was already a condition on the current licence that; the outside drinking area to be cleared of customers by 10:00 p.m.

The Council's Legal Advisor sought clarification from the applicant with regard to the proposed plans, as detailed at Appendix 5 to the report. The applicant agreed to forward a more defined plan to the Senior Licensing Practitioner, WRS. In agreement with all parties present, a temporary more defined plan was provided for the purpose of the Hearing.

The Senior Licensing Practitioner, Worcestershire Regulatory Services (WRS), introduced the report and in doing so, informed the Sub-Committee that the variation was not to vary the hours that the premises were open to the public; it was just to make an amendment to the existing plans, as detailed at Appendices 3 and 4 to the report.

Members were further informed that four representations have been received from members of the public, as detailed at Appendix 5 to the report. No representations had been received from any of the Responsible Authorities.

The Senior Licensing Practitioner, WRS, continued and stated that the variation application should be considered in accordance with the four licensing objectives, Section 182 of the Licensing Act 2003 and the Council's Statement of Licensing Policy.

In response to questions from Members, the Senior Licensing Practitioner, WRS, confirmed that four complaints with regard to the premises had been received by WRS in February and May 2018. One of the complaints was in respect of the premises changing hands. Two were with regard to noise nuisance from customers who were drinking outside the premises after 10:00 p.m.

At the invitation of the Chairman, the applicant's Legal Representative, Mr. R. Taylor, Partner, Gosschalks Solicitors, put forward the case in support of the variation application.

Mr. Taylor thanked the Sub-Committee Members for their time and explained that he was here to represent Mr. Robin Davidson, the applicant. Mr. Taylor commented that the Council's Legal Advisor, had been very thorough and had covered and clarified everything that he had intended to say on behalf of his client. He would reiterate that it was not a review of the premises licence but a simple variation application, which included the installation of double doors.

In response to questions from Members, Mr. Davidson explained that he had been a Designated Premises Supervisor (DPS) for nine years. He had a history of running pubs without any difficulties. The Duke of York was a sports pub in a densely populated residential area; any issues raised had been dealt with.

Mr. Taylor further informed Members that the pub was due to undergo an £80,000 refurbishment. The concerns raised in respect of noise nuisance would not occur should the new double doors be fitted, as they were self-closing doors; he would assure Members that staff at the pub would ensure that the doors were not propped open. The jukebox in the premises was linked to a noise limiting device and was checked regularly by staff members.

Mr. Taylor further reassured Members that as stated in the existing conditions of the licence, staff would ensure that the outside drinking area was cleared by 10:00 p.m. The proposed double doors could also be locked at 10:00 p.m. as they were not fire doors. Staff would also ensure that all doors and windows remained closed after 11:00 p.m. during the provision of regulated entertainment.

Mr. Taylor commented that, as highlighted earlier, none of the Responsible Authorities had raised any objections to the variation application. If Environmental Health had had any concerns about the premises they would have raised those concerns.

He would reiterate that the pub was situated in a densely populated residential area, but he wanted to reassure the Sub-Committee that Mr. Davidson would ensure that the pub continued to be well managed.

Mr. Taylor highlighted that as suggested in the representations received, there was no evidence from the Police or Environmental Health that the conditions placed on the licence had been breached.

Mr. Taylor drew Members' attention to the fact that the premises licence was reviewed in 2009, the conditions applied then still remained on the current premises licence. Mr. Davidson had taken over the running on the pub in 2009 and there had only been four complaints to WRS in 2018. As stated earlier the proposed installation of the self-closing double doors would help prevent any potential increase in noise emanating from the premises.

In response to further to questions from Members, Mr. Davidson informed the Sub-Committee that he had responsibility for sixteen public houses. He had DPS's who managed the pubs on his behalf. He visited the pubs on a weekly basis to ensure that they were run correctly. All staff were trained and made fully aware of the licensing objectives and the conditions placed on the premises licence.

Mr. Davidson further commented that he had run the Duke of York for nine years and had operated to the conditions of the premises licence and had had no problems, no concerns had been raised by Environmental Health during those nine years. The current pub manager lived on site.

At the invitation of the Chairman, Mr. R. Kimberley, who had all submitted an objection on the grounds of Noise Nuisance and Public Nuisance, addressed the Sub-Committee.

Mr. Kimberley was pleased that the boundary had been clarified at the commencement of the Hearing. However, he was still concerned, since his property was only 10 feet away for the outside drinking area, whereby he could hear bad language from customers using the area and he could smell smoke fumes in his garden. His bedroom window was right by the bar area and he usually retired early, so he did not want to listen to constant noise. Currently the premises only held one event per month; so he was concerned that the proposed changes would result in more events being held each week.

The Council's Legal Advisor reiterated to Mr. Kimberley that as stated earlier the Licensing Authority could not regulate the outside drinking area and that there was already a condition on the current licence that; the outside drinking area to be cleared of customers by 10:00 p.m.

In response the Council's Legal Advisor, Mr, Kimberley agreed that, as stated in his written representation he had maintained a good

relationship with the Duke of York and its landlords, he was even a customer at the premises.

In response to the concerns raised by Mr. Kimberley, Mr. Davidson stated that he was happy to raise the fencing by Mr. Kimberley's property.

In agreement with the Chairman, the Council's Legal Advisor, suggested that, since Mr. Kimberley had already highlighted that he had maintained a good relationship with the Duke of York and its landlords, that maybe he could liaise with Mr. Davidson after today's Hearing with regard to his ongoing concerns and the use of the beer garden and Mr. Davidson's offer to raise the fencing.

In response to the Council's Legal Advisor, Mr. Davidson confirmed that he was happy to provide Mr. Kimberley with a contact number should he experience any future noise nuisance. He was also happy to arrange for signage to be placed, both inside and outside the premises; requesting customers to be respectful and consider the neighbours when leaving the premises.

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 Senior Licensing Practitioner, Worcestershire Regulatory Services.
- The relevant written representations of other parties who had submitted objections to the application.
- The oral representations made at the Hearing by Mr. Kimberley in objection to the application.
- The application and oral representations made at the Hearing by the Applicant, Mr. Robin Davidson and the Applicant's representative, Mr. Richard Taylor, Partner, Gosschalks Solicitors.

The Sub-Committee was advised that the variation sought to permit alterations and to amend the plan that was annexed to the original licence, namely to remove a portion of the existing bar servery and make a smaller bar servery at right angles to it and to install double doors off the lounge area into what would become a beer garden.

The Sub-Committee was reminded that consideration could only be given to the specific variation which was confined to relocating the bar in the Games Room and the installation of the double doors. It was not within the Sub-Committee's remit to make any determination or to impose conditions in relation to the location of the beer garden.

**RESOLVED:** that the variation to a premises licence relating to the Duke of York, 83 Broad Street, Bromsgrove, Worcestershire, B61 8LN, be granted in the terms as set out in the Application.

The Sub-Committee imposed the following condition:

- That signage be placed prominently at the premises, both inside and outside reminding customers that they were in a residential area and to keep noise levels to a minimum, by leaving in a quiet, orderly and respectful manner.

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

- The Sub-Committee considered the written and oral representations made by the applicant, Mr. Robin Davidson and the applicant's representative, Mr. Richard Taylor, Partner, Gosschalks Solicitors.
- The Sub-Committee was advised that an £80,000 refurbishment of the premises was being carried out and as part of this a more defined outside area was being created. Although the creation of the beer garden could not be regulated by the Sub-Committee the applicant was intending that the area would be gated and only accessible via double doors from the lounge. It was submitted that this area would be managed and controlled by staff and closed at 10:00 p.m. in accordance with the existing conditions. The area would not be accessible by passers-by and therefore late night noise created by others would reduce.
- The Sub-Committee noted that the double doors would be self-closing and when questioned upon the possibility of them being propped open, the applicant provided assurances that this would be carefully monitored and managed by the staff to ensure that this did not occur.
- The Sub-Committee noted the applicant's response to the objections raised by local residents and in particular the willingness to work with Mr. Kimberley with regards to the location of the beer garden and the steps that could be put in place to address the concerns raised.
- The Sub-Committee was impressed with the applicant's attitude and understanding of the concerns raised and also noted Mr. Kimberly had included in his objection that he had maintained a good relationship with the Duke of York and its landlords. The Sub-Committee was confident that the applicant would work with the residents to address any complaints that arose.
- The Sub-Committee considered all of the objections and noted that most concerns related to noise levels. However, the Sub-Committee did not consider that there was evidence to support refusal of the application as Members did not consider that the addition of the double doors would undermine the licensing objectives.

- The Sub-Committee considered it significant that there were no objections from any of the Responsible Authorities and in particular Environmental Health.
- The Sub-Committee also noted the conditions on the current premises licence as follows:-
  - That all windows and doors to be kept closed when regulated entertainment was taking place, doors to be opened only for access and egress.
  - That the use of the outside drinking area shall cease at 10:00 p.m.
  - That the Designated Premises Supervisor or responsible person shall ensure that during opening hours the outside drinking area was checked regularly to discourage any inappropriate behaviour.
  - That the Designated Premises Supervisor or responsible person ensured that the outside drinking area was cleared of customers at 10:00 p.m.
- The Sub-Committee was also mindful of the review process that applied to any premises that failed to promote the licensing objectives and the ability of any party to bring the licence before the Sub-Committee should evidence be obtained to prove that the premises was failing to meet its obligations.

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 objections.
- The Sub-Committee must consider only those matters directly relevant to the premises under consideration and must disregard reference to any matters that fall outside of the Licensing Act.
- In imposing conditions the Sub-Committee must ensure that they were appropriate for the promotion of the licensing objectives and related only to the variation application.
- If having granted the variation to the premises licence and problems did occur then the licence could be brought back before a Sub-Committee to seek a review of the decision.

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 was received by the Applicant.

The meeting closed at 11.17 a.m.

Chairman