

Minutes of the Licensing Sub-Committee 4

Tuesday 16th December, 2014 at 10.00 am
in the Council Chamber, The Council House, Dudley

Present:-

Councillor M Roberts (Chair)
Councillors D Hemingsley and E Taylor

Officers:-

R Clark (Legal Advisor), L Rouse (Licensing Clerk) and L Jury
(Democratic Services Officer) – All Directorate of Corporate
Resources.

13 **Apology for Absence**

An apology for absence from the meeting was received on behalf of
Councillor H Turner.

14 **Appointment of Substitute Member**

It was reported that Councillor E Taylor had been appointed as
substitute Member for Councillor H Turner for this meeting of the Sub-
Committee only.

15 **Declarations of Interest**

No Member made a declaration of interest in accordance with the
Members' Code of Conduct.

16 **Minutes**

Resolved

That the minutes of the meeting of the Sub-Committee held on 2nd
September, 2014, be approved as a correct record and signed.

Application to Vary a Premises Licence – The Swan, Stream Road, Kingswinford.

A report of the Director of Corporate Resources was submitted on an application for variation of the premises licence in respect of the premises known as The Swan, Stream Road, Kingswinford.

Michelle Hazlewood – John Gaunt & Partners (Solicitors) representing Marstons PLC, Steve Castle – Area Manager, Marstons PLC, Vince O’Sullivan, Premises Licence Holder, were in attendance at the meeting.

Also in attendance were Mr Glews, Environmental Protection Manager, Directorate of the Urban Environment and six local residents who were objecting to the application.

Following introductions by the Chair, the Licensing Clerk presented the report on behalf of the Council.

Mr Glews then presented the representations of Environmental Safety and Health and in doing so highlighted concerns regarding the potential for noise nuisance.

The premises was currently licensed for late night refreshment from 23:00 to 5:00 Monday to Saturday and the sale of alcohol from 9:00 to 00:00 Sunday to Thursday and 9:00 to 1:00 Fridays and Saturdays. The application submitted related to significant refurbishment of the internal and external areas of the premises, including additional seating booths for dining purposes, re-landscaping and an improved children’s play area. A new external smoking deck area would also be constructed to the rear of the premises. It was noted that the premises was situated on Stream Road between Kingswinford and Wordsley and whilst Stream Road was a busy main road, the area surrounding the premises was residential with most properties being within 20 metres of the premises.

It was reported that whilst the variation did not request a change in the hours or types of licensed activity at the premises, the variation requested that the external areas of the premises were licensed for the retail sale of alcohol and late night refreshment alongside the operation of the interior of the premises.

Concerns were raised by Environmental Safety and Health regarding the potential noise nuisance caused by customers using the rear smoking deck area and the front external patio area adjacent to Stream Road for consumption until 1am.

Mr Glews further reported that prior to the application two complaints had been received regarding noise from the premises in recent years, in particular, a local resident complained in June, 2013, regarding noise from loud music, customers singing and the showing of a football match, alleging that doors at the premises were being left open and in May 2012, a local resident complained about noise from external speakers at the premises.

In concluding, Mr Glews requested that the Sub-Committee consider restricting the hours of use of the front external patio area and children's play area to 10.30pm, as the reduction of road noise from traffic diminishes at that time, and the close proximity to residential properties and, in addition, consider applying the following conditions on the grounds of preventing public nuisance:

- Signage to be prominently displayed on the smoking area of the premises, requesting that customers respect the local residents by keeping noise levels to a minimum while using the smoking area;
- No regulated entertainment is to be take place in outdoor areas;
- The doors and windows of the premises to be closed during regulated entertainment, except for access and egress;
- Signage to be prominently displayed at exits, requesting that customers respect local residents by leaving in a quiet manner.

In responding to a question by Ms Hazlewood relating to the request to restrict the hours of use of external areas to 22:30 hours, as 23:00 hours would be regarded as the hour when background traffic noise diminishes, Mr Glews confirmed that from experience, road noise on Stream Road started to diminish around 19.30 hours and therefore, due to the character of the area and the close proximity of residential properties to the premises, 22:30 hours seemed a reasonable time to restrict the use of external areas.

In responding to a further question by Ms Hazlewood in relation to the number of previous complaints received relating to the premises, Mr Glews confirmed that from the small number of complaints that had been received, it appeared that the premises did not constitute a problem area.

The residents were then invited to present their concerns to the Sub-Committee to which Ms Hazelwood confirmed that she would address the concerns raised in her submission.

Concerns raised by local residents included:

- patrons leaving the premises screaming and shouting;
- excessive noise from patrons using the external smoking area;
- litter left in residents gardens; patrons urinating in and on residents' properties;
- vomit found in residents' gardens; excessive shouting and arguing from patrons on the car park when leaving the premises;
- a person was found asleep in a resident's garden;
- damage caused to a resident's car from an object having been thrown from the premises;
- damage caused to a resident's property from a glass having been thrown through a window;
- a gang of youths brawling outside a resident's property;
- vodka bottles and glasses left on residents' properties;
- children playing outside the premises running around, screaming and shouting;
- headlights and noise from cars and taxis leaving the premises;
- proposal to install a table tennis table outside the premises will create more noise nuisance;
- the legality of the application since some residents had not been consulted and work has already been undertaken.

It was reported that residents feared that the issues that were already in existence would be exacerbated by the proposal to extend the external area of the premises for eating and drinking, and would encourage patrons from other nearby establishments whose licensing hours were restricted, to attend the Swan to continue drinking and would therefore not encourage the premises to be a family friendly eating establishment as proposed. The residents stated that they knew the Licensee and used the premises, commenting that he was a good landlord but feared that he would be pressurised to conform to the brewery's wishes.

A resident specifically referred to a meeting that had taken place with Marstons and the Licensee regarding noise nuisance at the front of the premises and external speakers and stated how disappointment they were that Marstons had not responded to residents to address these concerns. In responding, Mr Castle reported that some issues had been addressed by the brewery, including the felling of some trees that had been used by youths to climb and the installation of a picket fence around the premises to stop patrons sitting on a resident's wall. In reply, a resident confirmed that a picket fence had been erected but not until after an object had been thrown from the premises which had damaged her car.

In response to the claim stated by the objectors that the correct procedure had not been followed in relation to the notification of the application, the Legal Advisor advised that the Licensing Department were happy that the procedure had been followed correctly and advised the Sub-Committee accordingly.

Ms Hazelwood then presented her submission stating that the application submitted by Marstons was to refurbish a strong community public house that was in need of a new lease of life. It appeared that concerns raised by residents related to the external area and proposed changes, and not to the internal of the premises.

It was reported that the premises had operated as a hotel and at the time were permitted to supply late night refreshments until 05:00 hours to residents only, however, the premises no longer had letting accommodation and therefore, an application had been made to reduce the hours permitted for late night refreshment to mirror the standard hours of operation for the provision of hot food and hot drinks until 12 midnight Sunday to Thursday and 01:00 hours Friday and Saturdays. She continued by stating that it was never the intention of the brewery to create a late night kebab style provision for food.

Reference was made to the plan that had been previously circulated to members, and Ms Hazelwood highlighted the proposed changes which addressed some concerns raised by residents, including moving the historic entry point away from a resident's property to create a new pagoda style entrance which should also deter smokers from congregating at this point; improving the play-area and providing a table tennis facility to occupy children in the afternoons; to provide a smoking area at the back of the premises adjacent to the bar area in a contained space away from residents' properties.

Following concerns raised regarding the beer garden, it was noted that the garden had always been licensed and the intention was to increase food orders, especially tea/coffee and cakes, which would be served by waitresses so patrons' behaviour outside the premises would be supervised and dealt with accordingly. It was not intended to provide a late night take-away food venue.

Following concerns raised regarding external speakers, it was reported that the speakers were to provide background music only and not for entertainment purposes and the proposal were to turn off the speakers at 8.00pm.

Following allegations of anti-social behaviour of patrons and crime and disorder, Ms Hazlewood stated that there had been no interaction with the Police, however the brewery noted the allegation raised regarding people leaving bottles, glasses and rubbish on the premises and local residents' properties but this activity cannot all be attributed to patrons of the premises and is often left by people migrating from the nearby town. However, the brewery acknowledged some noise disturbance, especially when patrons left the premises, and signs had been installed for patrons to respect local residents and keep noise levels to a minimum. The use of external speakers had been restricted, and the majority of doors had self-closers and doors and windows remained closed.

In conclusion, Ms Hazlewood stated that the Swan was known as a good community public house, with a well respected and strong Landlord and there was evidence that the brewery had listened to previous residents' concerns and concerns regarding the new proposals and had already addressed some issues.

In responding to a question raised by a Member regarding the substantial increase in the dining facility outside to potentially accommodate 100 diners, and that the later opening hours was likely to attract drinkers from other establishments to drink at the Swan rather than purchase food and, therefore likely to increase noise levels and attract disorderly customers; the Licensee responded that at present, profits decreased between 11.00pm and mid-night and he did not envisage an increase in later diners and that it was his intention to remove several of the benches outside between the months of October and May. The Licensee stated that he had always taken a strong stance against disorderly customers and was happy to turn them away from the premises and was supported by a strong team who undertook regular training on conflict management. He was also agreeable to enforce the proposal to turn off external speakers at 8.00pm as suggested.

In summing up, Mr Glews confirmed that although there had only been a small number of complaints recorded previously with regards to noise nuisance from the premises, he requested that the Sub-Committee consider restricting the hours of use of the front external patio area and children's play area to 10.30pm as it was their opinion that the significant increase in dining facilities to the external area of the premises was likely to cause noise nuisance due to the character of the neighbourhood and their proximity to residential properties and in addition, consider also applying the conditions as stated in the report previously reported.

In summing up, residents requested that the Sub-Committee consider the impact the potential increase in noise nuisance would have and requested that the external usage be restricted as they strongly believed that use of the external areas until 1.00am would be too late and would significantly affect their quality of life.

In summing up, Ms Hazlewood, on behalf of the applicants advised that the intention was to refurbish the premises and license the external activities for the sale of alcohol and late night refreshments to the same hours already in operation in the internal of the premises. Should the license for the outside activities were to be refused, the beer garden would continue as at present. The brewery accepted that 23:30 hours in the week would allow sufficient time to disperse patrons safely from the premises, and that the Licensee was a good strong manager who was prepared to take a strong stance with disorderly patrons and be supported by a good team who were trained to deal with conflict and confirmed the breweries willingness to work with local residents demonstrated by the areas of concern that had already been addressed. Reference was made to guidance relating to the role of the Police, and the non- attendance of Police representation at this meeting.

In responding to a question by the Chair, all parties confirmed that they had been given ample opportunity to present their cases.

The parties then withdrew from the meeting in order to enable the Sub-Committee to determine the application.

The Sub-Committee having made their decision invited the parties to return and the Chair then outlined the decision.

Resolved

That, subject to the below conditions being applied to the premises licence, the application for the variation of the premises licence in respect of The Swan, Stream Road, Kingswinford, be approved.

REASONS FOR DECISION

This is an application for a variation of the premises license for The Swan, Kingswinford.

The premises have undergone significant refurbishment, to increase dining space, and to refurbish the external patio at the front of the premises with a play area and seating. A license is sought for this area for alcohol and late night refreshment. The rear smoking area has also been refurbished, and the license is sought to permit alcohol and late night refreshment also.

Essentially, a license was sought to permit the consumption of alcohol and late night refreshment outside between 12 mid day and midnight Sunday to Thursday and until 1am Friday to Saturday.

12 local residents have made representations about what they perceived to be an application to allow consumption of food and alcohol until 5am. Marstons confirmed that this is not what is sought, and the hours sought are those set out above.

However, only two of the local residents have withdrawn their representations in the light of clarification provided by Marstons. 10 residents have maintained their objections to the increased use of the external areas for late night refreshment and alcohol, even with the concession made by Marstons during the committee to reduce the external hours to 11.30pm, seven days a week.

Environmental Health (Department of Urban Environment) has also made a representation based on noise nuisance, past and potential, and asks the committee to limit the consumption of food and alcohol in all external areas until 10.30pm on all days. It also expressed some concern about external speakers, which Marstons states will be for background music only and turned off externally at 8pm. The Environmental Health officer accepted that this is appropriate and helpful to local residents.

Having heard the significant concerns of the residents about the noise and anti social behaviour in the area, the committee cannot attribute all of their concerns to these premises. It is not clear that all of the noise, empty alcohol bottles, urinating, vomiting and fighting can be attributed to these premises. Some, such as vodka bottles in the car park and gardens, do not come from these premises. However, the residents are clear that some of the noise does come from users of the pub, in that they live very near and have been able to hear this. Some concerns have been reported to the brewery directly and some concerns have been addressed to the manager informally. There is evidence that the brewery has responded to local concerns, albeit that the residents say it has been too slow. However, the Sub-Committee does find that by significantly increasing the space of the external area, the noise nuisance that has occurred from people using the premises, will be very likely to increase. The Sub-Committee notes that this is a residential area, and that there are many houses within very close proximity of The Swan.

The resident's evidence is that they have heard people arguing and shouting in the Swan car park, which is clearly attributable to the premises. More residents assert that persons or groups of persons coming from The Swan have urinated in their gardens/doorways and make significant noise when leaving. The committee accepts that they live close enough to the premises to be able to identify that some of the anti social behaviour does come from The Swan. Whilst the Premises License Holder may not be responsible for behaviour away from the premises, the extension of the use of the external area is highly likely to cause this noise and behaviour to continue in that external area.

The Sub-Committee therefore agrees with the submissions made by the officer from Environmental Health in terms of the noise and nuisance concerns, but finds that 11pm is an appropriate time for the provision of external late night refreshment and alcohol, seven days a week. This is proportionate to the concerns. This time would address the concerns that persons might come from other premises that cease to sell alcohol at 11pm, and then travel to the Swan and drink outside.

In terms of conditions, the Sub-Committee accepts the four conditions put forward by environmental services, except that there should also be signs stating that the premises operate a no tolerance policy of abusive behaviour toward bar staff.

Additionally, further conditions have been accepted by Marstons that all external doors should be self closing, except those which cannot be for child safety reasons and that external speakers should be turned off by 8pm seven days a week. These will become conditions of the premises license also.

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Midland Super Cream

A report of the Director of Corporate Resources was submitted on an application for the renewal of the consent issued to Midlands Super Cream to engage in street trading in Stourbridge Town Centre.

Mr F Calleia, applicant, was in attendance at the meeting.

Following introductions by the Chair, the Licensing Clerk presented the report on behalf of the Council.

It was noted that there were no objectors in attendance at the meeting, therefore Mr Calleia then presented his case.

Resolved

That the application for the renewal of the consent issued to Midlands Super Cream to engage in street trading in Stourbridge Town Centre, be approved.

The meeting ended at 1.20pm.