

HAVANT BOROUGH COUNCIL

At a meeting of the Licensing Sub Committee held on 29 May 2019

Present

Councillors Hart, Keast and Milne

1 Declarations of Interests

There were no declarations of interest.

2 Licensing Hearing - Unit 2, 2 St Mary's Road, Hayling Island

The Sub-Committee considered an application for a Premises Licence in respect of Unit 2, 2 St Mary's Road, Hayling Island.

The following documents were submitted to the Sub-Committee:

- (i) Report of Licensing Officer;
- (ii) Site Map;
- (iii) Application form and email confirmation of amendments;
- (iv) Mandatory conditions;
- (v) Environmental Health representations;
- (vi) Police conditions and email confirmation of acceptance; and
- (vii) Representations.

The Licensing Officer introduced her report and gave an outline of the application and the representations received.

35 members of the public had registered objections to the application and 16 had submitted representations of support. Ms Green, Mrs Rogers, Ms Perkins and Ms White were present to address the Sub-Committee as objectors. Mrs Jablonski (the applicant) and Ms Boxall were present to address the Sub-Committee in support of the application. Mr Moss, HBC Regulatory Officer, was also in attendance to put forward the objection submitted by the Responsible Authority, Environmental Health.

Mr Moss explained that the building currently housed a furniture shop and that the proposal was to convert it into a wine bar with an outside seating area. The outdoor element of the application was the main concern, as there was the potential for a noise nuisance due to it being able to accommodate 30 to 40 people. The building was in a residential area, with two flats above and two houses within 10 to 15 metres. He didn't believe that the location was appropriate for the type of venue proposed.

In response to questions, Mrs Jablonski confirmed that no noise would be generated by the air conditioning, as it would be a silent system fully enclosed in and serving only the cellar. The extractor fan would be a charcoal system with no outside flue.

Ms Green, Mrs Rogers, Ms Perkins and Ms White addressed the Sub-Committee in turn as objectors to the application.

The objectors explained that the application had caused considerable concern within the community due to the potential for noise nuisance and light pollution seven days a week, along with exacerbating the existing parking issues within this residential area. Noise would be generated by patrons during opening hours and the clearing up noise at the end of each day could last up to midnight and include the closing of the proposed metal shutters. The nearby garage had strict operating times imposed on it to prevent a noise nuisance, therefore the same restrictions should apply to a wine bar.

Parking in the area was already limited, with objectors citing highway safety concerns around entering the highway from their premises. Ms White also explained that her daughter had been knocked off her bike. Objectors did not believe that relying on the goodwill of patrons to park in car parks would be effective, particularly if the signage advising them to do so was inside the premises and therefore only seen after they had already parked.

In response to questions, Mrs Jablonski confirmed that metal shutters had only been proposed to stop people using the outdoor seating area when the premises was closed and that she was open to suggestions for alternatives. She also confirmed that the venue could not be sold on to another operator as the lease was non-transferable.

Ms Boxall spoke in support of the application and referred to the written representation that she had submitted. Mrs Jablonski had run previous premises well and it was a wine bar that was proposed, not a pub. In response to a question she confirmed that Mrs Jablonski's previous premises in Elm Grove had been near to a shopping area.

Mrs Jablonski spoke as the applicant. She explained that the clientele attracted to their premises were not rowdy and did not drink to excess. She believed that patrons would respect the request not to park in St Mary's Road, as there were suitable car parks within walking distance. However, she did not believe that parking in St Mary's Road was particularly problematic and she had taken photographs to evidence this.

With regard to noise, the proposed gazebo would have a solid roof to minimize noise transmission and there would be fencing around it. She would be happy to close the outdoor area earlier than the indoor area and confirmed that the venue would not be open Monday to Wednesday unless a private function had been booked. If there were no patrons the premises would close early on the days that it was open. Food would only be served on Thursdays, Fridays and Saturdays. There would be no television on the premises and music would be limited background music and played through a household system.

Being a residential area there was already the potential for car doors to slam in the evening and noise already existed due to the nearby Post Office Sorting Office which operated through the night. There would be no HGV deliveries to the premises and there would be no litter generated as they would not serve food in packets or alcohol for consumption off the premises. Live music had

only been requested on one night per year, New Years Eve, which she didn't believe was unreasonable.

She confirmed that she would be happy to move the location of the gazebo back by two metres, however she was concerned that this might encourage parking at the side of the venue.

Following questions, Mrs Jablonski clarified the design of the proposed gazebo and showed photographs of a very similar structure. The gazebo would have a solid roof, an open front and fence panels on the side. The open area to the front would be the smoking area.

The Sub-Committee had concerns that the noise mitigation measures proposed might not be sufficient and Mr Moss explained that in his experience an open fronted structure with a solid floor, walls and roof could potentially amplify noise.

In response to further questions, Mrs Jablonski confirmed that the two parking spaces on site would be for staff and that smoking and drinking on the pavement would not occur, as this area would not be licensed.

In summing up, Mr Moss recommended that if the application was approved, a full acoustic report be required to cover all details of noise and how it would be mitigated. Noise internally could be mitigated, although the specification of the suspended ceiling proposed to protect the amenity of residents in the flats above was not known. The specification of the sound deadening measures for the proposed gazebo had also not be stipulated and without air conditioning he questioned how the temperature inside the venue could be sufficiently controlled during the summer months without opening doors or windows. The hours for bottle emptying and collection would also need to be restricted. In his professional opinion he felt that mitigating potential noise nuisance from the outdoor area would be difficult.

Ms Green, Mrs Rogers, Ms Perkins and Ms White reiterated their concerns about noise and parking. Whilst it was appreciated that the applicant had held licences for other premises, this was in a different area and much closer to residential properties. Objectors could not see how the noise from the outdoor area in particular could be mitigated. Parking in the area was already difficult and the potential for additional cars generated by the proposed venue gave concerns about the safety of residents and particularly children.

The Hearing adjourned at 2.28pm to consider the application.

The Hearing reconvened at 3.21pm and the Council's Solicitor read the decision to the parties present.

DECISION OF THE LICENSING SUB-COMMITTEE

In considering the matter before them the Sub-Committee had regard to the promotion of the licensing objectives, the Licensing Act 2003, its statement of licensing policy, the statutory guidance issued by the Secretary of State and the written representations.

This application has generated a significant number of objectors and supporters. The applicant states that her previous venture attracted a certain kind of clientele and was beneath some flats. However, that establishment was at Elm Grove in an established shopping area.

The four objectors who spoke at the Hearing, namely Ms Green, Mrs Rogers, Ms Perkins and Ms White all live in close proximity to the proposed licensed premises. They all helpfully explained the impact that the proposal would have on their likely living conditions. We agree with the objectors that we have to consider whether the proposal would be likely to create public nuisance. We have therefore given significant weight to the comments of Mr Moss, the officer from Environmental Health. Mr Moss objects to the grant of the licence because in his view, it is likely to generate noise from patrons in the gazebo which would be unacceptably close to neighbouring properties some 10 to 15 metres away. Furthermore, there are flats above the proposed premises and four flats on the other side of St Mary's Road. Mr Moss made it clear that there would be the possibility of noise generated from within the building causing potential noise nuisance to the flats above from voices, music and a mechanical dishwasher.

We agree with the objectors that this proposed establishment is in the wrong place and is too close to neighbouring properties whose amenity is likely to be adversely affected by noise generated from the proposed premises.

We also have concerns about the impact of customers vehicles on the safety of neighbouring occupiers. We heard from Ms White, who explained that her daughter had been knocked off her bike. We note that there is a pavement on only one side of the road and that parking for customers would be somewhat limited.

In summary, the Sub-Committee is required to discharge its functions with a view to promoting the licensing objectives. In this case, the Sub-Committee has decided that it is appropriate and necessary to refuse the application for a new Premises Licence in order to ensure public safety, prevent public nuisance and to protect children from harm.

We do not doubt that the applicant is a suitable person to hold a Premises Licence. It is just that this proposed premises is in the wrong place.

Appeal: The Applicant, Responsible Authorities and Interested Parties have the right to appeal the decision to the Magistrates' Court within 21 days of receiving official notification of the decision from the Licensing Authority.

The meeting commenced at 1.00 pm and concluded at 3.29 pm