



## **LICENSING ACT 2003**

### **Application for a New Premises Licence**

### **Decision Record**

- APPLICANT:** Mr. Will Hallinan
- PREMISES:** Melford House, Nos. 17 - 19 Church Avenue,  
Farnborough
- DATE OF HEARING:** Wednesday 30th August, 2017
- MEMBERS SITTING:** Cllrs. Liz Corps, B. Jones and J.E. Woolley  
(Chairman)

## DECISION

To grant the application for the premises licence, subject to:

- The mandatory conditions imposed by the Licensing Act, 2003; and
- Conditions consistent with the premises licence operating schedule, including the conditions listed below under 'Other Conditions'.

The latter conditions have been imposed following consideration of the evidence and the submissions made to the Sub-Committee, to promote the licensing objective of prevention of public nuisance and prevention of crime and disorder (with emphasis on disorder rather than crime).

The premises licence shall take effect from 6th September, 2017.

The Sub-Committee is satisfied, on a balance of probabilities, that these steps are appropriate for the promotion of the licensing objectives.

## REASONS

Before the hearing the application for regulated entertainment comprising live and recorded music had been withdrawn and the conditions agreed between the applicant and the responsible authority for public nuisance had also, therefore, been withdrawn.

At the start of the hearing the applicant withdrew his application for late night refreshment as it appeared that what he was intending to do did not require a licence.

The only issue for determination was the application for the supply of alcohol on the premises during the days and hours requested.

In coming to its decision, the Sub-Committee took into account:

- The Licensing Act Section 18, which states that, having regard to relevant representations that are made, the Sub-Committee must take such steps it considers appropriate for the promotion of the licensing objectives;
- The Secretary of State's Guidance issued under section 182 of the Licensing Act 2003, particularly paragraphs 2.15 and 2.16 which advises that the Sub-Committee should concentrate on the effects of the licensable activities on people living and working in the area, which are disproportionate and unreasonable. Paragraphs 2.17 and 2.18 contain advice about conditions with

respect to noise nuisance and state that the approach of licensing authorities should be one of prevention. Paragraph 1.16 advises that conditions should be proportionate, justifiable and capable of being met;

- That the Council's Statement of Licensing Policy 2010–11 has not been formally continued in force or updated to reflect changes in the legislation, and for this reason has placed little reliance on it;
- The written report including all written representations; and
- Oral evidence presented at the hearing.

The licensing officer explained that under the Live Music Act 2012, live and recorded music would be permitted between 8.00 a.m. and 11.00 p.m. at any time the premises were open for the sale of alcohol for consumption on the premises. During this period any conditions relating to such activities would be suspended; it was only if a review of the licence were to take place that it would be possible to consider whether it was appropriate to lift the suspension or add conditions as if music were regulated entertainment.

In addition, a late night refreshment licence was not required where there was no admission of the public and hot food or hot drink was supplied between 11.00 p.m. and 5.00 a.m. to employees or residents of a guest house and their guests.

The applicant would be able to serve a temporary event notice on the licensing authority if he wished to hold an event at which licensable activities would be carried out.

The licensing officer explained also how the indicative distances given in her written report, between the addresses of those making representations and the application premises, had been calculated using Google Maps and were not intended to be accurate. However, as the application for regulated entertainment had been withdrawn, representations concerning those proposals may no longer be relevant.

Concerns about the running of an honesty bar had been investigated but no evidence of that occurring had been found.

The application was not seeking to use the garden for the consumption of alcohol, which would be confined to the buildings. The garden would not form part of the licensed premises.

The applicant explained that he had bought the guest house in 2005, saving it from conversion into flats and transforming it into a highly rated guest house. He was targeting sophisticated business leaders and captains of industry and wanted to market it as a boutique establishment, for which he needed an alcohol licence.

The guest house has 8 bedrooms, normally occupied by solo travellers. Children and families were not its target clientele and were unlikely to be

attracted to the premises owing to the relatively high charges. The dining room seated 10 and, when completed, the games room would have a seating capacity of 12 (the standing capacity was, as yet, unknown).

As an establishment with a largely professional clientele, it was unlikely that people would wish to drink to excess or be rowdy, particularly as they included pilots or trainee pilots undergoing periods of intensive training, where excessive drinking could jeopardise their careers. Guests valued the peace and quiet and would not tolerate a noisy environment. This was apparent from some of the representations made in support of the application.

He also wished to be able to hold occasional open days to show the facilities to businesses who might be considering his guest house for regular bookings, as well as visits by those who currently arranged bookings on behalf of their companies.

The applicant said that he had applied for late night refreshment so that he could have the flexibility to offer it to members of the public if he wanted; however, he now wished to withdraw it and to rely on the exemption under the Licensing Act 2003.

The fact that so many representations had been made against his proposals by local residents had come as a complete surprise to him. He thought some to be exaggerated or expressed in inflammatory language. He pointed out that not all close neighbours had made representations, that no complaints had been made to the Council and that the Police had not made any representations.

He had withdrawn the application for regulated entertainment, which appeared to be the concern of many of the objectors. Notwithstanding that, he was still prepared to implement a number of measures, in order to ensure that both his guests and local residents were not disturbed by noise. This included the fitting of mute switches, a distributed speaker system and engineered solutions to minimise noise pollution.

An advocate, Mr Ashwell, spoke on behalf of 36 objectors who had made representations. He emphasised the quiet, leafy nature of the local area where the guest house is situated. The main concern of local people was the potential public nuisance caused by noise. Despite the withdrawal of the application for regulated entertainment, there was anxiety that noise would be caused if the applicant chose to take advantage of the exemptions under the Live Music Act.

Talking by people smoking outside the buildings would cause noise, the volume of which it would be difficult to control, although he was not saying that people would be raucous, or that Mr Hallinan would not try to control them. In his view, once completed, the games room would attract people outside.

It was not clear what would happen at weekends, when most business clients would not be at the premises.

Based on their view of how they saw he had handled planning issues,

local people had little confidence in any assurances given by the applicant.

#### The Sub-Committee's findings

No representations had been made by the Police with respect to crime and disorder, nor the responsible authority for public nuisance.

It was not able to, and did not, take into account any matter that was not relevant to the application, as amended, or to the promotion of the licensing objectives. This included representations about:

- the potential increase in traffic and car parking;
- the need for licensed premises in the local area (as this is a commercial consideration);
- any effect of granting the application on property prices;
- the grant of planning permission for the games room; and
- whether allowing the application would set a precedent in the locality.

Whilst the Sub-Committee noted that the application no longer requested a licence for regulated entertainment, it did consider the potential impact of noise generally on the occupiers of neighbouring properties if the application to supply alcohol were to be granted. This could come from people going outside to smoke or the leakage of sound on entering or leaving buildings when noisy activities were taking place, which could disturb neighbouring occupiers. It noted that the application for the premises licence was for the sale of alcohol for consumption on the premises, which were defined on the plan as buildings. Consumption of alcohol outside the buildings i.e. off the premises, was not included in the application.

It took into account the measures voluntarily offered by the applicant towards reducing potential noise from the premises in the interests of both his own guests and his neighbours; it also noted his view in respect of the external areas, namely that consuming alcohol was not a licensable activity.

The Sub-Committee decided that a condition preventing the consumption of alcohol in the external areas would address the reasonable concern of the local residents.

A condition restricting the people to whom alcohol could be sold, would address any concern that noisy, drunk or anti-social members of the public, who were neither residents nor guests, would be attracted to the premises.

## **OTHER CONDITIONS**

**(New, amended and deleted conditions consistent with the operating schedule)**

### **NEW CONDITIONS:**

1. Alcohol shall not be sold on the premises otherwise than to persons residing there, their bona fide guests or guests of the owner of the premises by invitation only.
2. No alcohol shall be consumed in the external areas of the premises.