

IN THE MATTER OF :

NEW LICENCE FOR PREMISES LICENCE FOR THE WIGTOX LOUNGE, RAWMARSH

HELEN CLAYTON

APPLICANT

WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT

1. This is an application for a new Premises Licence pursuant to Section 17 Licensing Act 2003. However, a premises has traded on this location for many years and has been a public house and previously a Working Men's Club (WMC).
2. The premises historically traded as a large WMC with an occupancy of 1000 or so persons. Following the demise of the WMC, the premises operated as a separate venue. Both venues focused upon the provision of live and recorded music, large scale events, even pantomimes and was very popular. Since the cessation of trading, the premises has been empty and was becoming derelict. The premises has been purchased by Mr & Mrs Clayton.
3. Mr & Mrs Clayton have undertaken significant capital investment into the premises. However, they were aware that the operation of a 1000 occupancy premises in a residential area was not appropriate and potentially not commercially viable. They have therefore diversified the nature of the premises. Please see item 1. of the Bundle – colour coded plan.
 - Edged blue – this is now residential accommodation comprising of three bedsits along with two separate lets taking over 50% of the previous licensed area.
 - Edged orange – Beauty and treatment rooms – sunbeds and therapies. Approximately 20%.
 - Remainder – approximately 25% to 30% allocated to back of house, mutual toilet facilities and licensed area including bar and coffee bar servery, with ice cream parlour offer.

4. The Committee are also referred to the Bundle submitted by the Applicant and in particular photographs of the interior and exterior of the partially refurbished premises.
5. During the drafting of the application, the Applicant worked closely with the Licensing Authority and took recommendations from South Yorkshire Police and it should be noted that there is no representation from South Yorkshire Police as to the application.
6. During consultation representations were received from Licensing and Environmental Health. Representations from many residents were received, some of which should be noted to be direct duplications of each other and raising matters relating to other jurisdictions, in particular Planning and Highways' matters.
7. The Licensing Sub Committee is asked in their deliberations to consider the weight of such representations and only take note of matters under the Licensing Act 2003.
8. Prior to the refurbishment the premise had no kitchen function. One of the principal offers of the property going forward will be the coffee bar and ice cream parlour which is designed to provide alternative offer to the traditional public houses in the area and sit more closely with the community and those persons frequenting the premises for beauty treatments. The significant reduction in size of the premises and the new layout does not lend itself to the undertaking of large scale events, it is anticipated that the new occupancy level will be approximately 250 person, furthermore unlike in the past there is no formal stage or performance area and this space will only facilitate the provision of entertainment by smaller groups duos or solo artists. Regulated entertainment has been applied for but is not the principal focus of the operation of the venue.

The Licensing Objectives

9. Central to the statutory regime are the four licensing objectives which are the only relevant areas for consideration and licensing objectives. They are as follows
 - Prevention of crime and disorder.
 - Public safety
 - Prevention of public nuisance.
 - Protection of children from harm.

10. The new proposed licensed premises has been designed to provide a pleasant environment for those attending but also protect the amenity of third parties. Points have been raised in relation to the area to the front of the premises. This is limited in space and it is to be noted that the historic roof terrace will not be used. The front area will not operate beyond 23:00 and is covered by 4 CCTV cameras along with direct supervision from the coffee bar server. When in use, will also have the benefit of frequent glass collectors.
11. Within the design of the premises, the amenity of those persons residing approximate to the property being existing residents or those at the converted residential accommodation have been prioritised with acoustic insulation being installed within the building to the satisfaction of the Planning Department, item 6 in the Bundle and closing of windows to the side of the premises from which noise breakout may take place. Please see Bundle photo 2 e. The operating statement contains a number of robust conditions agreed with the Licensing Authority prior to submission.

The Guidance

12. Under Section 182, the Secretary of State is required to issue Guidance to Licensing Authorities on the discharge of their functions under the Act. Section 4(3) requires Licensing Authorities to have regard to the Guidance.
13. So whilst the requirement to have regard to the Guidance is binding on Licensing Authorities, paragraph 1.9 of the Guidance recognises that :

“This Guidance cannot anticipate every possible scenario such as circumstances that may arise and, as long as Licensing Authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an Appeal or Judicial Review and the reasons given will then be a key consideration for the Courts when considering the lawfulness and merits of any decision taken”.

The Application Process

14. Section 17 sets out the procedure for applying for a new Premises Licence Application.

The Role of the Police, Licensing and EHO

15. At paragraph 9.12 of the Guidance it is stated that in their role as a Responsible Authorities, the EHO and Police are experts in their fields and will be the licensing authorities main source of advice. The Licensing Authority must determine on an evidential basis and justified on the evidence before it and not take into account the evidence that is not before it.
16. The Licensing Team and Police by pre-consultation are content with the proposed application. A representation was received from Alan Pogorzelec, the Licensing Manager, in discussions with the Manager the principal concern were as to the monitoring of the external area and problems which arose when the premises was operated previously but in a fundamentally different way. Conditions have been proposed to the Licensing Officer which I will set out at page 3 of the Bundle and that representation is now expected to be withdrawn.
17. The Applicant has endeavoured to speak with the Environmental Health Officer with regard to the content of the representation and particularly how it conflicts with that put forward by the same department in relation to the Planning Application – please see Bundle item 6. The nearest noise receptors will be the residents within the converted part of the premises and it is considered that there is no potential risk to them. Additional sound insulation has been provided to the premises in the form of double glazed windows, well fitting doors and a removal of windows adjacent to residential accommodation. It is considered that the nature of the premises, the level of attenuation, conditions already tendered sufficiently promote the licensing objective over the prevention of public nuisance.

Representations

18. A significant number of representations have been received from residents and two Councillors. In respect of those representations, the Applicant would respectfully submit to the Licensing Authority the following points.
- The current application should not be compared to the operation of the former WMC or public house, the Applicant being different, the licensed space being materially reduced and the basis of the overall operation completely different.
 - Public Nuisance – the potential for noise nuisance from large numbers of persons dispersing from the premises simultaneously is significantly reduced by virtue of the fact that the premises will not be undertaking “turns” nor attracting the same volume of persons.

- Litter – the premises has already committed to and undertaken responsibility for litter in the area. The complaints indicate the existence of prior to opening of the premises and thus, the premises cannot be responsible for that.
- Proximity to patio and children – the premises itself and outside area will be well monitored and managed. The premises is designed to be family friendly and welcoming particularly to females and families with young children. There is no evidence to support the allegation that the presence of the property with a licence will generate aggressive behaviour or abusive language. Suitable barriers have been ordered so as to delineate the extent of the external area.
- Operation of beauty treatments – there is strict licensing around the undertaking of various treatments and these will be required to be complied with.
- Parking is a matter in respect of which Planning is a principal input.
- Security- high quality CCTV system and security system installed.

Determination of the Application

19. The Applicant requests the Licensing Sub Committee to consider the quality of the evidence raised in opposition to the new licence. The Licensing Sub Committee is also referred to photos of work and nature of the layout.

20. The Applicant respectfully submit that the Licensing Authority must take note of the Guidance issued under Section 181 of the Licensing Act.

21. Relevant extracts from the guidance are as follows:

- a) All licensing determined should be considered on a case by case basis (9.42).
- b) The Authorities determination should be evidence based justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve (9.43).
- c) Para 9.12 continues to confirm the Licensing Authority should accept all reasonable and proportionate representations made by the Police unless the Authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the Police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing. *This equal applies to representations raised by third parties.*

- d) Para.9.44 - Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives.
- e) Para 10.10 - The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided.

22. The Licensing Authority should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives, the Applicant contends that the conditions in the Application Bundle at item 3 promote the licensing objectives.

23. It is the Applicant's submission that the Licensing Committee should they consider not granting the application question as to whether this is on the basis of real evidence or speculation and whether the decision falls within the criteria set out in the case of Daniel Thwaites (2008 EWHC 838).

JOHN GAUNT & PARTNERS

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