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Our ref: GH/LIC
Date: 19 February 2020

SPELTHORNE BOROUGH COUNCIL

DECISION NOTICE

In accordance with the LICENSING ACT 2003 s.23

Date of Licensing Sub-Committee: 13 February 2020

Applicant: W H Brakspear and Sons Ltd

Premises: The Phoenix
26-28 Thames Street
Sunbury on Thames
TW16 6AF

REASON(S) FOR HEARING: Relevant representations received from other parties concerning Crime and Disorder and Prevention of Public Nuisance:-

- potential for increase in anti-social behaviour
- potential for increase in noise

DECISION

Granted subject to an amendment of condition 8 of the licence
With effect from 13 February 2020

REASONS FOR DECISION

1. The application is for a variation to the premises licence at The Phoenix, 26-28 Thames Street, Sunbury-on-Thames, TW16 6AF.

Attendance

2. Six people attended the Sub-Committee hearing to make representations. They were:
 - Gavin Mansfield, W H Brakspear and Sons Ltd;
 - Flavio Martignago, Designated Premises Supervisor at The Phoenix;
 - Alice Martignago, Joint Tenant at The Phoenix; and
 - Veronica Flanagan-Hughes, Mimi Griffiths and Neena Spary, Residents.

Evidence

3. The Licensing Sub-Committee considered all of the relevant evidence made available to it at the hearing including:
 - the Report of the Deputy Chief Executive outlining the matter to be considered;
 - written representations from 5 interested parties and oral evidence at the hearing from three of these.

In addition the following documents were circulated prior to the hearing:

- a chronology from the Environmental Health file;
- a table outlining the current conditions of the licence and proposed conditions.

In considering all of this evidence, the Sub-Committee has taken into account the Regulations and National Guidance under the Licensing Act 2003 and Spelthorne Borough Council's Statement of Licensing Policy.

Application

4. The current premises licence holder, W H Brakspear & Sons Ltd., The Bull Courtyard, Bell Street, Henley on Thames, RG9 2BA made an application to vary the licence on 4th December 2019. The application has been amended twice since its submission at the request of the applicant.
5. The application now seeks to vary the licence to specify the following activities and respective timings and includes a proposal from environmental Health representation to which the applicant has agreed:

- 5.1 To vary the permitted hours for the sale of alcohol from the outside bar to be 11.00 - 22.00 on Thursday, Friday, Saturday and Bank Holidays.
 - 5.2 To vary the permitted hours for opening and access to the garden to be 11.00 - 23.00 on Thursday to Saturday and 11.00 - 22:30 on Bank Holiday Sunday.
 - 5.3 To amend condition 5 to read "The outside bar will close at 21:00 hours on Sunday to Wednesday and 22:00 hours on Thursday to Saturday and Bank Holiday Sunday".
 - 5.4 To amend condition 6 to read "The garden will close at 22:00 hours on Sunday to Wednesday and 23:00 hours on Thursday to Saturday and 22:30 hours on Bank Holiday Sunday".
 - 5.5 To proceed with the removal of condition 7 and the amendment to condition 8 as outlined in the Representation from Environmental Health such that it states "Signs will be displayed prominently in the garden informing customers that they must be mindful of the presence of local residents. Last orders for the garden bar is 21:00 hours on Sunday to Wednesday but 22:00 hours on Thursday, Friday, Saturday and Bank Holiday Sunday. The garden will close at 22:00 hours on Sunday to Wednesday but 23:00 hours on Thursday, Friday and Saturday, and 22:30 hours on Bank Holiday Sunday"
6. The required notices were displayed and published in The London Gazette (Hounslow) on 27 November 2019.
 7. The application generated 5 representations from interested parties and one raising no objection from a Responsible Authority, Senior Environmental Health Officer.

EVIDENCE

Background

8. The premises are located at 26-28 Thames Street, Sunbury, with a beer garden opening onto the River Thames. It is surrounded, on both sides, by residential properties.
9. The premises was issued a licence under the Licensing Act 2003 when the Act came into force in 2005. The current Premises Licence was attached to the Report of the Deputy Chief Executive.

10. The current licence permits the supply of alcohol on Monday to Saturday from 11.00 to 23.00 and Sundays from 11.00 to 22.30 and the sale of alcohol from the outside bar from 11.00 to 21.00.

11. There were restrictions on the use of the garden as below:-

- The outside bar shall close at 21:00 seven days a week
- The Garden shall close at 22:00 seven days a week
- After 22:00, a maximum of six customers will be allowed in the garden
- Signs will be displayed prominently in the garden informing customers that they must be mindful of the presence of local residents and that last orders for the garden bar is 20:30 and that the garden must be vacated by 22:00
- A minimum of 150 seats will always be provided for customer use in the garden whenever the premises are open for licensable activities
- Waiter/waitress service will be available to customers in the garden
- There will be CCTV camera coverage of the garden whenever the premises are open for licensable activities
- Management and staff will monitor the garden and if necessary will request that customers respect the proximity of local residents.

12. The current licence does not include regulated entertainment of live and recorded music nor late night refreshments.

13. A routine licensing inspection of the premises in December 2019 did not highlight any licensing issues or concerns. It was noted that although the new DPS Flavio Martignago (17.06.2019) held a meeting with the local residents when he first took over, this had not continued as required by the Licensing condition. However anecdotally Flavio Martignago and Alice Martignago state that they have spoken to the residents individually whilst they were using the bar.

14. There were 4 Temporary Event Notices recorded on the Licensing system since the change of the DPS. These are as follows:-

- 2019-08-10 Extension of hours for the garden to 22.00 to 24.00, 16-08-2019 to 18-08-2019

- 2019-08-14 Extension of hours for the garden 23.30 (24.00), 31.08.2019 to 01.09.2019
- 2019-08-23 Extension of hours for the garden 22.00 and 24.00 for 2 days
- 2019-10-24 Halloween night 23.00 on 31.10.19 till 1am on 1.11.19

There were no reports of nuisance caused by these events.

15. There was one recorded noise complaint made to Environmental Health in August 2018. It was regarding noise and disorderly behaviour from patrons, including an allegation that an empty bottle of rum had been thrown into the complainant's garden. Noise monitoring sheets were dispatched to the complainant, however these were not returned.
16. The Joint Enforcement and Community Safety Teams have no records of any litter problems related to this public house and its immediate surrounding area.

Applicant

17. The applicant's agent, Mr. Gavin Mansfield, stated that following a period of poor management involving three previous tenants and a licensing review in 2016, Spelthorne Borough Council correctly imposed conditions on the licence of The Phoenix. Since then, the applicant had aimed to work closely to comply with the imposed conditions to enable residents to have a peaceful existence. Mr. Mansfield explained that he had worked hard to make improvements to meet the licensing objectives and appointed two responsible tenants, Flavio and Alice Martignago, who were highly regarded and had a history of managing well-run pubs in the area.
18. Mr Mansfield outlined that he would like to change the current licensing conditions back to original conditions, enabling the new tenants to run a successful business. Mr Mansfield highlighted that the garden is of significant importance in running the business however the residents' situation is also important and therefore residents were consulted on a regular basis when making the decision to amend the current conditions.
19. Mr Mansfield highlighted that four temporary events had taken place during the tenure of Flavio and Alice and not a single complaint had been received.
20. Ms Alice Martignago spoke on behalf of the DPS, Mr Flavio Martignago, stating that since taking over the tenancy of the pub in June 2019, steps had been taken to improve the business whilst also seeking to engender good relations with the local community by focusing on:

- Food
- Serving alcohol to over 21s
- Implementing door supervisors
- Strong regard to health and safety
- Dispersal in an orderly fashion ensuring compliance with current licensing conditions
- Looking after the best interests of the community
- Promotion of the licensing objectives

21. Ms Martignago explained that currently, patrons are asked to leave the garden at 21.50 and at 21.45, door supervisors collect glasses and ask customers to finish their drinks or pour them into plastic glasses. The bar indoors continues for one more hour, until 23.00.

22. Ms Martignago stated that by changing the licensing conditions to permit access to the garden for one extra hour (until 23.00) on certain days, it would permit the dispersal of customers in a more orderly fashion as patrons would naturally leave the pub an hour after food stopped being served. This would prevent the current arrangement which involves a large number of people being forced at 22.00 to either go into a small area indoors or outside onto a narrow path by the road at the front of the pub. Ms Martignago suggested that this was a health and safety concern which could cause disturbance to the neighbours. Ms Martignago explained that if the garden were open until 23.00, it would be easier to coordinate the dispersal of patrons as less patrons use the garden at this time.

23. Ms Martignago explained that she had been successfully running the White Horse pub for around 6 years and had plans to also make The Phoenix successful as it had been in the past, with the garden in full use.

24. Ms Martignago outlined that The Phoenix is a summer pub and for 8-9 months of the year it is quiet. The pub's biggest selling point is the garden used in the summer months. Extending the hours of access to the garden will allow control of the garden to be easier and safer.

25. Ms Martignago explained that she had had many conversations with the neighbours of the pub and understands their concerns. During their last meeting in January, the neighbours were concerned about glasses and empty bottles outside. Ms Martignago explained to the neighbours that it is unlikely the bottles had come from The Phoenix as door supervisors are appointed at the doors to prevent patrons from leaving with glasses or bottles. Ms Martignago stated that there is an off-licence shop nearby and other pubs which may have caused the problem. Ms Martignago highlighted that once patrons left the pub, the tenants were no longer responsible for their behaviour.

26. In response to a question from the Sub-Committee, Ms Martignago explained that the current clientele consist of regulars, retired individuals

and locals who come into the pub for the food. Ms Martignago confirmed that it will take time to enhance the pub's current reputation and the tenants are taking steps to make the pub more family friendly by focusing on food. The food stops being served at 21.00 however during the summer, the tenants plan to organise barbecues in the garden until 21.00 for special events.

27. In response to a question from the Sub-Committee, Ms Martignago explained that they had not received any complaints regarding the management of The Phoenix since taking over in June 2019 however if a complaint were to arise, the tenants would take steps to address the issue with the individual making the complaint.

28. Ms Martignago added that the resident, Ms Victoria Flanagan-Hughes', husband had been a regular customer at their pubs before he passed away and had followed the tenants when they changed pub ownership, suggesting that he trusted their judgment.

29. Mr Mansfield agreed that health and safety was a concern when asking patrons to disperse in a mass at 22.00 and the problem would be mitigated by extending the use of the garden until 23.00. Mr Mansfield added that he took the residents' concerns into consideration and therefore proposes that the garden is open until 23.00 for only 3 days per week and that realistically, this would only occur during the summer months of the year.

30. Mr Mansfield concluded by stating that he takes his responsibility seriously and has taken steps in the past to remove previous tenants from their positions where management of the pub was in issue. Mr Mansfield explained that such a process takes time and the current tenants have signed the lease for the pub for 5 years, confirming that they are invested in the pub for a long term and also wish for both the success of the pub and positive relations with residents. Mr Mansfield added that he visits the pub between 6-10 times per year to ensure the pub is being managed smoothly.

Representations

31. A written representation was received from a Responsible Authority (RA), Senior Environmental Health Officer, confirming that no complaints had been received since Alice and Flavio Martignago became tenants of the pub. The RA noted the responsible management of other pubs whereas complaints had been received in respect of those premises before and after the tenure of Flavio Martignago. The only point made by the RA is to amend condition 8 to display a sign outlining the times for garden closure and last drinks to reduce any conflict when staff close the garden bar and ask customers to leave the garden.

32. Written representations were received from five parties, raising objections to the variation application under the licensing objectives as follows:

Prevention of crime and disorder

- Extending the opening hours would lead to an increase in anti-social behaviour and drug use.

Public Safety

- Concerns regarding a general build-up of refuse, including broken glass and cigarette butts left by the patrons.

Prevention of public nuisance

- Increase in later opening nights in the garden will lead to an increase in:
 - Noise from the garden
 - Noise when patrons are ordering taxis
 - Swearing and litter thrown into gardens

Protection of children from harm

- There were no concerns raised specifically in relation to protecting children from harm.

33. Three residents who had submitted written representations made oral representations at the hearing: Veronica Flanagan-Hughes, Mimi Griffiths and Neena Spary.

34. Ms Flanagan-Hughes explained that she had lived next door to the pub for 12 years. Following significant work, suffering, stress and disappointment for many years, Ms Flanagan-Hughes was able to accept a variation with W H Brakspear and Sons Ltd (Brakspears), in liaison with the Council.

35. Ms Flanagan-Hughes outlined that she has no issue with the current tenants however the problems previously experienced had been due to Brakspears.

36. Ms Flanagan-Hughes stated that the reason that no monitoring sheets had been submitted regarding complaints was because her husband had been seriously ill and passed away in 2018 and therefore Ms Flanagan-Hughes had to prioritise her mental health and was unable to submit any complaints. Ms Flanagan-Hughes added that since her husband's death, she and her daughter had been unable to spend their evenings in her house and had been there from 10.00 - 16.00 due to personal circumstances.

37. Ms Flanagan-Hughes also stated that the reason no complaints had been made was because the residents were content with the agreed conditions for the garden to close at 22.00, allowing the residents to spend a peaceful evening after 22.00.
38. Ms Flanagan-Hughes stated that to change the licensing conditions to extend hours of use of the garden would reverse the significantly hard and strenuous work which had previously been carried out by residents to prohibit the garden use after 22.00.
39. Ms Flanagan-Hughes highlighted that the intended 3 monthly meetings with the applicant had not been occurring. The last meeting had taken place in January 2019 however residents had not been treated well and were unable to reach an agreement with the tenants and applicant.
40. Ms Flanagan-Hughes explained that she had been a good neighbour and she understands that she chose to buy a house next to a pub however the problems experienced are serious and numerous. Such issues include bins and bottle banks leaning and squashing against her fence, no communication with the applicant apart from being offered to replace windows if she didn't complain, mooring boats outside of her house, people sitting and getting drunk at the back of her house, water from the dishwasher being emptied into the river, swearing and fights and bottles, drugs and laughing gas canisters being thrown into her garden. Ms Flanagan confirmed that the problems experienced were caused by Brakspears, not the current tenants.
41. Ms Griffiths confirmed that the residents had been good neighbours however she is concerned that extending the hours of the garden use will not help in dispersing the crowd. Ms Griffiths highlighted that the main concern is the amount of people permitted in the garden which used to be 6 people and has now increased to 150. Patrons will walk along the alleyway on the side of the pub and Ms Griffiths hears banging however she is unable to inspect the source of the noise due to her disability. Ms Griffiths stated that she is lucky to have a wall between her garden and the pub and therefore experiences less problems compared with other residents. Ms Griffiths agreed that the noise from the pub garden in the afternoon is loud and she is concerned by the smells which will be caused by proposed barbecues in the summer.
42. Ms Spary stated that she had witnessed the stress caused to residents by different tenants of the pub whilst growing up. Ms Spary agreed that it was reasonable to experience noise when living next to a pub however the problems caused by The Phoenix for the past 7 years was out of control. As the current tenants had only been managing the pub for the past 6 months, it is difficult to perceive whether the problems would decline.

43. Ms Spary confirmed that she understood that the Council can only act if they receive complaints in writing that can be substantiated with evidence of instances that occur.
44. In response to a question from the Sub-Committee regarding rubbish, the residents confirmed there had been improvements. Residents confirmed that the current tenants were better than previous tenants and asked the Sub-Committee to note that the current tenants had agreed to the tenancy in full awareness of the existing licensing restrictions.
45. In closing representations, residents unanimously confirmed that no complaints had been made due to current restrictions in place which took significant time and work to implement. The residents agreed that the current restrictions had reduced any previous problems experienced and varying the current conditions would be detrimental to their health.

Findings

46. The Sub-Committee has considered the representations made by the applicant, Responsible Authority and the interested parties both in writing and at the hearing and finds as follows:
47. The representations made by the interested parties centred around concern that extended opening hours of the outside bar and garden would result in an increase in anti-social behaviour, a building-up of refuse left by patrons of The Phoenix and noise disturbance from people both in the garden and leaving the premises essentially reverting to the conduct and nuisance that they had previously experienced.
48. The Sub-Committee noted National Guidance which states the authority's determination should be evidence based, justified as being appropriate for promotion of the licensing objectives and proportionate to what it is intended to achieve. In this regard, the Sub-Committee noted that no complaints had been received during the tenure of Flavio and Alice nor following four temporary events at the premises. The sole Responsible Authority representation confirmed there had been one complaint received in connection with noise in August 2018 and Joint Enforcement and Community Safety Teams had no records of any litter problems relating to The Phoenix and its immediate surrounding area. There had been no other Responsible Authority representation.
49. The Sub-Committee is persuaded that the applicant is taking residents' concerns seriously and are persuaded by the reputation of Flavio and Alice Martignago as endorsed by the Responsible Authority, Environmental Health, representation.
50. The Sub-committee is persuaded that the current tenants are taking steps to remediate the problems caused.

51. The Sub-Committee understands that the extension to the hours will only take place 3 times a week and such extension will only have an effect on the residents during the summer months in the year.

52. Although the applicant has an obligation to meet with local residents every three months to discuss any issues arising from the operation of the premises, the applicant is encouraged to be proactive in their approach to handling complaints.

Decision

53. For the reasons stated above, the Sub-Committee confirms that the application for variation of the premises licence is approved as set out in the applicant's letter dated 24 January 2020 subject to the amendment to condition 8 as set out by the Responsible Authority stating as follows:

“Signs will be displayed prominently in the garden informing customers that they must be mindful of the presence of local residents. Last orders for the garden bar is 21:00 hours on Sunday to Wednesday but 22:00 hours on Thursday, Friday, Saturday and Bank Holiday Sunday. The garden will close at 22:00 hours on Sunday to Wednesday but 23:00 hours on Thursday, Friday and Saturday, and 22:30 hours on Bank Holiday Sunday”

Conclusion

54. That is the decision of the Sub-Committee. A copy of this decision has been provided to all parties concerned within 5 working days of the Sub-Committee hearing.

55. You have the right to appeal against this decision to the Magistrates' Court within 21 days of receipt of this decision notice.

56. If you decide to appeal, you will need to submit your appeal to Guildford Magistrates Court. You should allow sufficient time for your payment of the relevant appeal fee to be processed. For queries, Guildford Magistrates Court can be contacted on 01483 405 300.

Cllr R.W. Sider BEM - Chairman
Cllr S.A. Dunn
Cllr M. Gibson

Date of Decision: 13 February 2020

Date of Issue: 19 February 2020