

LICENSING & PUBLIC SPACE PROTECTION ORDER (PSPO) SUB COMMITTEE

THURSDAY, 7 JANUARY 2021

PRESENT: Councillors David Cannon, Karen Davies and David Hilton

Also in attendance: Mr Anil Kumar (Applicant), Mr Phillip Bicknell (Business Advisor for Applicant), Ms Susan Tunnacliffe (In support), Mr Jernail Gill, Ms Emma Brooks, Ms Julie Cracknell and Mr Andrew Toll (Objectors)

Officers: David Cook, Craig Hawkings, Rachel Lucas, Shilpa Manek and Michael McNaughton

APPOINTMENT OF CHAIRMAN

RESOLVED UNANIMOUSLY: That the Chairman for the Panel was proposed and seconded to be Councillor David Cannon. This was proposed by Councillor Hilton and seconded by Councillor Davies.

APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Bowden and Councillor Hilton was substituting.

DECLARATIONS OF INTEREST

Councillors Cannon and Hilton declared a personal interest as they both knew Mr Phillip Bicknell as he was previously a borough councillor.

MINUTES

RESOLVED UNANIMOUSLY: That the minutes of the last LPSPSC held on 15 October 2020 to be noted to be a true record.

PROCEDURES FOR SUB COMMITTEE

The Clerk went through the procedures for the Sub Committee.

CONSIDERATION OF AN APPLICATION OF A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003

The reporting officer, Craig Hawkings, Licensing Enforcement Officer, introduced and went through the report.

This meeting of a Licensing Sub-Committee was convened to hear an application for a new premise located within the Royal Borough of Windsor & Maidenhead. In line with Licensing Act 2003 S18 (3)(a) when relevant representations are made against an application, a hearing must be held to consider them. A relevant representation made against an application for a new premises licence must relate to at least one of the four licensing objectives set out in the Licensing Act 2003. These are 'The Prevention of Crime and Disorder', 'Public Safety', 'The Prevention of Public Nuisance', and 'The Protection of Children from Harm'.

The purpose of this hearing was for the Sub-Committee to hear the application, receive written and oral representations from other parties and then to make a decision in respect of the application.

The Applicant was Mr Anil Kumar of The Lounge, 13a High Street, Windsor, SL4 1LD. Mr Kumar had applied, under the Licensing Act 2003, for a New Premises licence to be granted.

The application was to:

1. To Licence the first floor of 13 High street, Windsor for the purposes of operating as a Restaurant for the sale of alcohol for (Consumption On and OFF (Both) the premises).

A summary of the application is as follows: -

- The standard opening hours of the premises would be 10:30 Until Midnight Monday to Sunday
- To permit the sale by retail of alcohol for consumption On and OFF (both) the premises from 10:30am until Midnight Monday to Sunday
- To permit the provision of late-night refreshment from 23:00 until Midnight Monday to Sunday.
- To Permit Live Music (Indoors) from 10:30am until Midnight Monday to Sunday.
- To permit Recorded Music (Indoors) from 10:30am until Midnight Monday to Sunday.
- To Permit Performances of Dance (Indoors) from 10:30am until Midnight Monday to Sunday.
- To Permit anything similar description to falling within (e) (f) or (g)(Indoors) from 10:30am until Midnight Monday to Sunday.

The Designated Premises Supervisor (DPS) would be Mr Anil Kumar.

This application had received no representations from the responsible authorities which include Royal Borough Fire and Rescue Service, Planning, Local Safeguarding Children's Board, Public Health, Trading Standards, Thames Valley Police and RBWM Licensing. There were representations from Environmental Health. Extra conditions had been proposed by Thames Valley Police and Trading Standards in addition to the proposed conditions received within the application. The applicant had agreed to all the conditions proposed by both responsible authorities. There had been 16 individual representations from residents that were relevant as they related to one or more of the four licensing objectives.

The Licensing Panel Sub Committee was obliged to determine the application with a view to promoting the four licensing objectives which are:

- The prevention of crime and disorder;

- Public safety;
- The prevention of public nuisance
- The protection of children from harm.

In making its decision, the Sub-Committee was also obliged to have regard to national guidance and the Council's own Licensing Policy. The Sub-Committee must have regard to all of the representations made and the evidence that it heard.

The Sub-Committee must, having regard to the application and to the relevant representations, take such step or steps as it considered appropriate for the promotion of the licensing objectives.

The steps that were available to the Sub-Committee were:

- (a) Reject the application;
- (b) Refuse to specify a person in the licence as the premise's supervisor;
(*Note – not all of these will be relevant to this particular application)
- (c) Grant the application but modify the activities and/or the hours and/or the conditions of the licence;
- (d) Grant the application.

Where conditions were attached to a licence then reasons for those conditions must be given.

The Sub-Committee were reminded that any party to the hearing may appeal against the decision of the Sub-Committee to the Magistrates' Court within 21 days of the notification of the determination.

Questions to the Reporting Officer

Councillor Davies was very pleased to hear that the application hours had been amended in line with what's been recommended to midnight. Councillor Davies asked if that was in line with other restaurants along the same stretch of the High Street. The Reporting Officer confirmed that this was, and that the applicant was very willing to take on the recommendations made by trading standards and TVP and the time they felt was reasonable.

Councillor Cannon asked a couple of questions, just for clarification, was the premises above another restaurant and what were the hours of opening for that restaurant? The Reporting Officer confirmed that there was another restaurant downstairs and its hours were similar. Councillor Cannon asked if the application was for a new premise, the Reporting Officer explained that the application is for a new premise. There is currently a previous license in force held by a previous tenant to the property which was formally known as Suede Bar. This was a completely new, separate application with no connections to the previous licence holder. The previous licence was for a bar/restaurant. The Reporting Officer pointed out that there had been issues between the owner and environmental health, TVP and planning, hence this was a separate application from that licence. The license could have been transferred but this way was the more sensible option.

Councillor Hilton talked about the 2015 planning application that was for the entire premises, ground level and first floor to change to a b1 classification. The fact that the premises was now split into two now, Councillor Hilton asked if this was relevant to the new premises licence application. The Reporting Officer explained that when an application was made, the applicant needed to include a plan showing the area that was ring-fenced and covered in the application and this had been provided and was only for the first floor.

Applicants Case

Mr Anil Kumar informed the Panel that he was a local resident and was surprised that the application had come to Panel. However, Mr Kumar now understood why the letters of objection had been submitted and was shocked at what residents and the council had had to put up with for years from the previous operators. Mr Kumar explained that the original licence application had replicated the previous one as he was unaware of all the issues and that was the reason hen and stag parties had been included but they would now concentrate private bookings for lunch and dinner for various groups across the community such as the rotary club and women's institute. Mr Kumar stressed that he would not tolerate any diners arriving intoxicated in any state or form. Mr Kumar informed the Panel that he was a family man with three young children and had collectively decided to take on a business venture with considerable financial investment and personal reputation at risk. Mr Kumar explained that had he had knowledge of the previous issues; he would have had earlier dialogue with the residents about the vision of the restaurant. Mr Kumar explained that he had already held a license in a neighbouring authority for ten years and was fully convert with the license of law surrounding the hospitality industry. The location of the restaurant on the High Street and opposite the church could provide a unique ambience for diners and he was very confident that the restaurant would attract a number of different customers. Once back to normal after Covid, the business would employ up to ten people in various roles, paying the minimum wage to make sure the best service was offered. Mr Kumar informed all that he was happy to be contacted by local residents directly if they had any issues or concerns. Mr Kumar informed the committee that he had read all the objections. Mr Kumar commented that he would have opened a bar/restaurant under the arches in Windsor if that's what he was wanted and not what in the location he had opted for.

Questions to the Applicant by Members

Councillor Davies asked Mr Kumar for more information about the nature of the business, the type of restaurant it would be and the target audience. Mr Kumar informed the Committee that there was a niche market for cheese from around the world so the restaurant would be specialist cheese restaurant. This would be the current focus and if that was not to work then he would look into other options of restaurants and food types.

Councillor Hilton asked what was different from what was at the premises before. Mr Kumar responded saying that he had not been aware of what was there before. This was a small venue with fifty covers at the other end of town which was quite unique and there was no one else selling just cheese in Windsor. Also since the premises was close to the Long Walk, it would be great to offer picnic baskets in the summer.

Councillor Cannon confirmed that it would be a restaurant and not a bar/restaurant and Mr Kumar agreed that this was correct. Mr Kumar clarified that there was a bar on

the premises but that would be used to dispense hot and cold drinks for the restaurant. There was no dance floor in the restaurant.

Councillor Hilton asked about the licence and that it was applying for the ability to play both recorded and live music. Councillor Hilton asked how this would be played in the restaurant and Mr Kumar informed the Committee that this was mainly for private parties. However, since taking ownership of the premises a soundproof wall had been put into place on the right hand side of the venue so that this would reduce sound being filtered across two neighbouring properties and outside. An amplifier had also been installed so that if the noise hit 82 dBS, it would automatically shut off.

Councillor Hilton asked how significant private parties were to the restaurant and the business model and if in a private party and people started to dance how would that be managed. Mr Kumar responded that if there was a private party then the doors would be closed to other people. Councillor Hilton commented that that a private party would create more noise and the party may want to dance. Mr Kumar responded that anyone booking a private party would be informed of the noise policy. If a private party was in the restaurant no other customers would be given a table.

Questions to the Applicant by the Reporting Officer

None.

Questions to the Applicant by Legal

None.

Questions to the Applicant by Objectors

Mr Gill asked if it was a cheese restaurant and was there a kitchen. Mr Kumar responded that there was a kitchen on the premises. Mr Gill asked why was there a need for live amplified music and Mr Kumar responded that this was for private functions or parties for children. Mr Kumar said he would like to offer a variety for people to have a nice dining experience.

Emma Brooks asked if Mr Chelsea Singh would have anything to do with this restaurant and was he involved with this new restaurant, as he was involved with this venue before. Mr Kumar confirmed that Mr Chelsea Singh had nothing to do with this restaurant. Emma Brooks asked if there would be DJ's at the restaurant playing loud music and Mr Kumar responded that there would not be. Mr Kumar was envisaging a man with a guitar playing in the background whilst people enjoyed their dinner. The venue had the same sound system as before but a new limiter had been installed.

Julie Cracknell asked for reassurance that the music would be soft and would not be banging music. Mr Kumar reassured everyone that it would not be banging music.

Andrew Toll asked what a cheese restaurant was and if there would be tables and chairs. Mr Kumar responded that there would be tables and chairs. Mr Kumar informed Mr Toll that he could be contacted directly if there were any issues or concerns. Mr Kumar was happy to have a regular forum with the residents and the council to discuss any issues and tackle them together and work on solutions. Mr Toll was concerned that the patrons of the restaurant would use the bus shelter as a smoking hut and there would once again be noise pollution.

Arrouse Simmons asked Mr Kumar if he had built an additional kitchen or if you would be using the kitchen that belonged to the restaurant downstairs. Mr Kumar responded that he would be using the kitchen downstairs. Miss Simmons commented that the kitchen downstairs was very small. Miss Simmons asked how the patrons would enter the new restaurant and Mr Kumar responded that this would be through the front door. Miss Simmons asked where the staff would take breaks and Mr Kumar informed the Committee that this would be in a staff room on the first floor. Mr Kumar was not aware where smokers would go on their break but assured everyone that his staff would not use the backyard to smoke.

Dr Shinski asked if Mr Kumar had put in a different soundproof wall to the one that was there before. Mr Kumar responded that there had been no soundproof wall at the premises when he had taken over the premises. Dr Shinski asked if there was a dance floor in the premises. Mr Kumar responded that the restaurant had now been arranged to have tables and chairs there and was happy for Dr Shinsky to visit and see the new arrangements. There was no dance floor. The floor was wood all the way through the premises, the carpet had been removed.

Objectors Cases

Mr Gill put forward his case to the Committee explaining that when the previous application was applied for, it gave the same promises, however the reality was very different for two and a half years when it has been nothing but hell. There had been no regulations and the music had been played very loudly. The premises had a noise limiter but that could be easily bypassed. There had been huge levels of noise pollution and disruption for local residents and that had not been regulated. Mr Gill was concerned that Mr Kumar was going to be using the downstairs kitchen. Mr Gill was concerned that the restaurant would be playing amplified music and since the walls had been insulated, the same music system was in place and the noise limiter which was already there was still going to be used, nothing was going to change.

Councillor Hilton asked where the noise came from that affected Mr Gill, was it through the walls or from the front of the building? Mr Gill responded that mainly through the walls followed closely by the front. Since the building was a Grade II listed building with a large window to the front, the noise came straight out the front affecting the neighbouring properties. The noise also came from the bus shelter and smokers talking loudly.

No questions from Councillor Davies.

Councillor Cannon asked how long they had lived at the property and what was at the premises when they moved there. Mr Gill responded that they had been there since 2012 when the neighbouring property had been a nursery.

Michael McNaughton, Environmental Services, RBWM, made the following objections to the Committee. The noise pollution in the past had been from various aspects, not only amplified and ambient music but also from raised voices both inside and outside the premises. A noise report had been submitted by the previous licence holder showing the noise levels. The building was glass and noise also travelled. A notice had been served on the premises and was partly for a report to be submitted showing that a noise limiter was installed on the premises and was functioning. Michael McNaughton asked Mr Kumar if the wall had been reinsulated and the new limiter had

been installed as a result of the previous report or a new report. Mr Kumar informed the Committee that the premises was not currently open but both had been installed as the front of the building was glass and since noise travelled. There had also been an enforcement notice about their colour of the front of the building so that had to be done straight away. Mr Kumar was also aware that there were residents on both sides of the premises.

The Legal representative interjected and advised the Committee that both a Arousse Simmonds and Dr Shinsky had not registered to speak. The responses from Ms Simmonds had been submitted after the valid consultation period and Dr Shinsky had not registered. The regulations for this were absolute in relation to this and this was a question of fairness as other residents had tried to register to speak after the notice period and had been refused. The Chairman commented that if we did not comply with the rules it would give either party the reason to appeal so on that decided that if someone had not registered they would not be allowed to put their case forward on the grounds of fairness and because of the regulations that were in place. So the two unregistered speakers would not be able to speak but their representations had been considered by the Committee. The other Panel members agreed with the Chairman's decision.

Councillor Hilton asked Michael McNaughton if he was aware of any new acoustic measurements and if the application was granted, did the Officer think that the conditions should remain in place on the basis of an appropriate noise assessment. Councillor Hilton asked if the officer had any thoughts on what could be done about the noise from the front window. Michael McNaughton responded that unfortunately the noise expert was on leave so he could not comment on what could be done about the noise from the front. Michael McNaughton commented that there were no mitigation measures for the voices outside the premises other than an actual person standing there telling people to keep to keep the noise down.

Councillor Davies asked where the noise complaints came from and Michael McNaughton commented that the original complaint was from the ambient and amplified music and also from raised voices from inside the premises.

Councillor Cannon asked that everything that had been reported by the Officer was about or from the premises when the premises was under a different licence and a different person and Michael McNaughton commented that this was correct. Councillor Cannon asked if the restaurant below the premises had similar issues as people must have gone out to smoke from there too. Michael McNaughton commented that he was not aware of any complaints. The main issue was on the first floor level as there were residents on either side of the premises and these were affected by the ambient and amplified music.

Emma Brooks informed the Committee that her concerns were that this new restaurant would be open from 10:30 a.m. until midnight serving alcohol and playing music and this would attract a younger crowd so there would be noise from coming from this premises. People would be leaving the premises and sometimes needing to urinate so did so in the alley near the restaurant which lead to a courtyard where they lived. So not only, were they dealing with noise but also antisocial behaviour, fighting, vomiting, smoking and drug remains and broken bottles and cans. The restaurant did not need the sound system as that would be an issue again. The one kitchen and the narrow staircase were also concerning.

The Committee members had no questions.
The Reporting Officer had no questions.
The Applicant had no questions.

Julie Cracknell commented that all of her points had already been made.

The Committee members had no questions.
The Reporting Officer had no questions.
The Applicant had no questions.

Andrew Toll lived directly next door to the premises. The entire of his apartment was directly connected to the premises. The noise was very loud. Mr Toll was concerned about his general health and wellbeing with all the anti-social behaviour and noise pollution.

Councillor Cannon asked what the premises had been when Mr Toll had moved into his apartment and Mr Toll commented that it had been Suede Bar.

Mr Toll asked if the balcony doors would be open to customers and Mr Kumar commented that they would not.

There were no further questions from members, officers and the applicant.

Mr Philip Bicknell, advisor for the applicant, commented that he was astounded that the previous licence holder had been able to create such misery for the residents and nothing had been done. Mr Kumar was a family man and wanted to open a restaurant and not a nightclub or a bar. Mr Kumar would be available if there were any issues.

Susan Tunnicliff had known the applicant for more than 10-years. They were a family who were very friendly and would not be looking to upset the local residents. A cheese restaurant was very innovative for Windsor. This restaurant would offer local employment. They should not be judged on the previous occurrences or applicants. Susan Tunnicliff commented that Mr Kumar was brave to be opening in the current times.

All parties summed up their comments. The comments included the following points and concerns from the local residents. These included noise pollution, amplified and ambient music, no kitchen for the restaurant, the sound system and anti-social behaviour.

Mr Kumar summed up saying that he had measures in place and was happy to have regular meetings with residents and distribute a direct number for him and had no specific target audience as it was a restaurant.

Craig Hawkings summed up and commented that there was always a process of review in place if the licence was granted and if a nuisance being caused. Anyone could apply for the licence to be reviewed. This process would be similar to the application process with a 28 day consultation period that would take place as well as the correct advertising.

Decision

After careful consideration of all the evidence, the Sub-Committee decided to allow the application with the following conditions:

- A new noise assessment is carried out in accordance with BS4142 2014 or a report submitted confirming that any noise limiter already installed in the premises is working in accordance with levels agreed and set out in section 6 of KP Acoustics Ltd report ref 185333 NIA01 – To reduce the risk of public nuisance through excessive noise being transmitted into neighbouring properties and the vicinity.
- Opening hours to be from 10.30am until 12am midnight with no extension - To prevent public nuisance.
- DPS or nominated person to be trained on how to work the CCTV system to the standard where the nominated person is able to download any potential evidence required by Thames Valley Police employees and Authorised Persons as defined by Sections 13 & 69 Licensing Act 2003 – to satisfy the licensing objective Prevention of Crime and Disorder.
- DPS or nominated person is responsible in supplying the necessary media (discs, data stick) containing any downloaded content - to satisfy the licensing objective Prevention of Crime and Disorder.
- To develop a management plan, in place in conjunction with Environmental Health to prevent public nuisance.
- To develop a management plan, in place in conjunction with Environmental Health to prevent public nuisance.

The Sub-Committee considered the written submissions provided by the applicant, Officers of the Council and Objectors. The Panel also heard oral evidence provided from the following:

- Craig Hawkings (Reporting Officer, RBWM)
- Yourself (Applicant)
- Mr Phillip Bicknell (Applicant business advisor)
- Mr Michael McNaughton (Environmental Health, RBWM)
- Mr Jernail Gill (Objector)
- Ms Emma Brooks (Objector)
- Ms Julie Cracknell (Objector)
- Mr Andrew Toll (Objector)
- Ms Susan Tunnacliffe (Supporter)

In making their decision, the Sub-Committee also had regard to national guidance and the Council's own Licensing Policy and to its duty to promote the four licensing objectives.

The meeting, which began at 2.00 pm, finished at 5.00 pm

CHAIRMAN.....

DATE.....