

LICENSING & PUBLIC SPACE PROTECTION ORDER (PSPO) SUB COMMITTEE

MONDAY, 28 MARCH 2022

PRESENT: Councillors Gurpreet Bhangra, Mandy Brar and David Cannon

Also in attendance: Councillor John Bowden, Councillor Donna Stimson, Councillor Rayner, David Dadds, Debbie Pearmain, Inspector Mike Darrah, Sergeant McLulich and James Searle

Officers: Jane Cryer, Craig Hawkings, Desmond Michael, Greg Nelson, Oran Norris-Browne and Rebecca Oates

APPOINTMENT OF CHAIRMAN

Councillor Bhangra proposed that Councillor Cannon be Chairman. This was seconded by Councillor Brar.

RESOLVED UNANIMOUSLY: That Councillor Cannon be Chairman for the remainder of the hearing.

APOLOGIES FOR ABSENCE

Apologies were received from Councillor Hilton, Councillor Bhangra substituted for him on the Panel.

DECLARATIONS OF INTEREST

No declarations of interest were made.

PROCEDURES FOR SUB COMMITTEE

Members noted the procedures for the sub-committee.

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

Firstly, David Dadds, the Applicant's representative asked that the CCTV footage that Thames Valley Police wished to play be excluded from the hearing. He said that this was due to it not having been provided to the Applicant in advance of the hearing and therefore if shown would cause prejudice against the Applicant. Upon retiring, Jane Cryer, Legal Advisor to the Panel agreed with this and therefore the Chairman announced that this CCTV footage would not be shown and therefore was excluded from the rest of the hearing both orally and visually.

The Chairman then asked both Mr Dadds and Inspector Mike Darrah, Thames Valley Police if they had any comment on this matter. Neither had comment.

Craig Hawkings, Reporting Officer for the Royal Borough of Windsor & Maidenhead introduced the report and outlined the information that the Sub-Committee had to consider. A summary of the application was as follows.

Late Night Refreshment to be served:

Monday - Tuesday 23:00 – 01:40
Wednesday - Thursday 23:00 – 03:40
Friday - Saturday 23:00 – 04:30
Sunday 23:00 – 03:40

Hours that premises open to the public:

Monday - Tuesday 11:00 – 01:40
Wednesday - Thursday 11:00 – 03:40
Friday - Saturday 11:00 – 04:30
Sunday 11:00 – 03:40

On the Sunday before each Bank Holiday, Christmas Eve and New Year's Eve, the terminal hour for late shall be extended to 04:30.

2 existing premises licenses existed. These were PL000329, issued 25 December 2005 and PL107021, issued 9 February 2016.

Craig Hawkings went on to state that where, as here, relevant representations had been made, the Licensing Authority must hold a hearing to consider them, unless agreed by the parties. The Licensing and Public Space Protection Order Sub-Committee could take steps as are appropriate for the promotion of the Licensing Objectives as relevant. To be "relevant", the representation had to relate to the likely effect of the grant of the licence on the promotion of at least one of the four licensing objectives which were set out in the Licensing Act 2003.

He stated that the four licensing objectives were:

- The prevention of crime and disorder.
- Public safety.
- The prevention of public nuisance.
- The protection of children from harm.

In terms of responsible authorities, Craig Hawkings stated that representations had been made by both Thames Valley Police and the Royal Borough of Windsor & Maidenhead Licensing Team. Other representations were also received from Councillor Rayner, Ward Councillor for Eton & Castle, CC Stim UK Tradeco 3 Limited (ATIK Nightclub) and P. Banham.

Craig Hawkings then outlined the framework hours that had been set by the Borough with regards to late night refreshment businesses such as Takeaways. He noted that the license that was being applied for, fell outside of these framework hours.

The Chairman asked what the 2 current licenses that the premises had covered in terms of timings and activities. Craig Hawkings informed the Panel that these could be found in Appendix 1 of the main report, which outlined the premises' current licenses and the relevant conditions that were attached.

Councillor Brar asked if multiple licenses were allowed to be held on a premises. Craig Hawkings confirmed that this was allowed.

Councillor Bhangra asked how long the premises had held a license. Craig Hawkings confirmed that records dated back to 2005.

David Dadds asked Craig Hawkings for clarity with regards to the hours that were being applied for within the new application. Craig Hawkings confirmed that the license was a new standalone license, however in terms of operating hours, the only changes were Wednesday's hours being extended from 01.40 hours to 03.40 hours.

David Dadds then asked if the interested parties that were attending could be identified. This then occurred.

The Chairman asked for further clarification on the 2 current license's operating hours on a Friday and Saturday. Craig Hawkings confirmed these times were the same as what appeared within the new licensing application.

David Dadds was then invited by the Chairman to make his representation on behalf of the Applicant. David Dadds began by stating in essence that this new license was to merely extend the opening hours of the premises by 2 hours on a Wednesday. This was due to a change in opening hours from the nearby nightclub ATIK, where the premises received a lot of business from. The premises' current license allowed for them to open until 03.40 hours on a Thursday night, which was to capitalise on the ATIK trade. However, ATIK had since changed their operating night to a Wednesday and therefore the Applicant wished to follow suit.

David Dadds added that trade had occurred on the Thursday nights for up to 17 years and that some conditions that had been added to the licenses in the past, had been suggested by the Applicant rather than the Licensing Authority. Door supervision was added as a condition, and David Dadds believed that the premises were the first in the Borough to do this. He added that the data would suggest that there was little or no crime and disorder historically at the premises. Over 17 years there had been no cautions given to the premises, which would give cause for concern to the Panel.

David Dadds then addressed resident issues with the premises, where he discussed a survey that had been carried out on 100 residents, where only 3 replied by stating that they had issues with the premises. He then said that data of crime and disorder on a Thursday night had not been provided by Thames Valley Police, which would show the premises to undermine any of the licensing objectives set by the borough. This included no witness statements, incident reports or crime statistics.

David Dadds then expressed concern over Thames Valley Police's representations that had been published. David Dadds said that Inspector Mike Darrah had written, that during a meeting between the pair, regarding the premises, David Dadds was accused to have said the following. Whilst discussing the premises response to an incident, David Dadds allegedly described it as "*just* a domestic incident". David Dadds stated that this was false and demanded that this statement be withdrawn by the Police. He stated that the Police were personally attacking him as the Applicant's Advocate, which was wrong as the focus should have been on the Applicant, and the license itself.

David Dadds then stated as seen within the report, that the Police believed the Applicant to be very co-operative, however they felt that David Dadds was not. He believed this to be wrong and also noted that there was a lack of information relating to the specifics of these meetings such as dates. He added that no minutes were provided of these meetings and no gradual step by step action plan had been provided either.

David Dadds said that with regards to the Applicant's 2 brothers, neither worked or resided at the premises anymore and that the Police were made aware of this. The matter referred to by the Police within their representations, although serious, was purely a domestic one between the Applicant's 2 brothers and it was also subject to an ongoing investigation. Therefore, it would not have been correct to discuss it. David Dadds stated that the 2 brothers had been told by the Applicant that they were not allowed on the premises until the incident had been resolved.

David Dadds then stated that in addition to his points already made on comments from both Debbie Pearmain, Thames Valley Police and Inspector Mike Darrah, there were also further issues identified that came from Sergeant Alasdair McLulich, Thames Valley Police. He said that it was clear that the Police were ganging up on the Applicant. He referred to a statement by Sergeant Alasdair McLulich within the report that stated that during an assault there had been no support from the premises.

David Dadds emphasised again that this was unacceptable and stated that the door staff used at the premises were the same used by ATIK, yet no concerns were ever raised with ATIK regarding incidents such as the ones referred to by the Police.

David Dadds also referred to an incident that was discussed by the Sergeant over an incident that had occurred 4 years ago. He questioned if this was ever followed up and whether the premises was ever spoken too.

David Dadds concluded his case by asking the Sub-Committee to grant the license in accordance with the Licensing Act 2003 and emphasised again that no material evidence had been presented to the Panel by the objectors that showed the premises to be in breach of any of the 4 licensing objectives.

The Chairman asked for clarity over the applications operating hours. David Dadds confirmed that this was effectively looking at replicating the current license's times for Thursday and making this the same on Wednesdays. He added that he was also happy to swap the 2 days if required and only operate on the Wednesday out of the 2 nights, but the application was indeed for both.

Inspector Mike Darrah stated that the application that had been put before the Sub-Committee to consider would have a negative impact on residents and that crime and disorder would increase on the night of Wednesday. He added that with this being a weekday, the majority of residents would be sleeping in preparation for work the following morning, and by granting the license this would ensure that residents would be negatively impacted further. He also said that the Police believed that the premises was not being run as effectively as it should have been, in relation to the licensing objectives.

Inspector Mike Darrah then went on to outline the roles that the 3 other Thames Valley Police Officers held and what they would be presenting during the course of the hearing. He clarified that the Police were not ganging up and were merely objecting to the application through the best means.

David Dadds wanted to ensure that any evidence that was provided orally by the Police, was only duplications of the written representations that had been presented within the reports. Inspector Mike Darrah confirmed that this was the case, and that no new evidence was going to be presented.

Inspector Mike Darrah stated that post-pandemic, managing the night time economy had become increasingly difficult. He noted that the average age of users of the night time economy had been seen to decrease heavily from an average age of 21 and 22 years old down to 18 and 19 years old. He identified 2 locations as being so-called pinch points in the night time economy. These were identified as being Goswell Hill and William Street/Victoria Street.

Inspector Mike Darrah identified the location of the premises in question as being a hotspot for crime and disorder, with many incidents having occurred inside and outside the premises and also on Victoria Street itself as a whole. He said that incidents were being seen to be increasing and that although the data was not available, there was no reason to believe that the same issues would not occur on a Wednesday if the license was granted. This data was not available as of course the premises was not currently open on the day in question.

Inspector Mike Darrah said that the Police believed that the premises were not as proactive in dealing with crime and disorder as much as other premises were such as ATIK nightclub. He added that during a meeting between himself, Debbie Pearmain and David Dadds, Mr Dadds had indeed referred to an incident as "*just* a domestic incident". David Dadds refuted this and was informed by the Chairman that he would have his opportunity to respond upon the conclusion of the Inspector's statement.

Inspector Mike Darrah said that the premises were meant to have 2 door staff present, with 1 being stationed outside and one inside the premises. Police Officers had fed back that this was not always the case and that the door staff were also often reluctant to aid the Police when incidents occurred.

The Chairman checked with David Dadds to ensure that he had access to the Police's evidence that had been circulated within the report. David Dadds asked for clarity as to what was being referred to. Inspector Mike Darrah provided this clarity with page numbers, report titles and brief summaries of the first reports. The clerk then offered clarity to the Sub-Committee on the issues that were arising to do with the Police reports and implored members to refer to incidents themselves rather than page numbers to avoid confusion.

David Dadds expressed concern over incidents that Inspector Mike Darrah was referring to and stated that these had not been submitted as written representations, which caused him and his client prejudice. The Legal Officer stated that the Police must not orally produce any evidence that had not been included within the reports that had been circulated prior to the hearing.

Debbie Pearmain summarised to the Sub-Committee the Licensed Premises Incident Reports that had been provided within the reports. There were 10 of these reports that all participants in the Sub-Committee had access to. Inspector Mike Darrah then summarised the occurrence enquiry log reports to the Sub-Committee that were present within the reports.

Debbie Pearmain stated that she had met with the applicant many times over the years and found him to be very co-operative. She added that she felt David Dadds was dismissive of some things that the Police brought up, in relation to the premises and its license. Debbie Pearmain then outlined the approach that the Police had when it came to licensed premises, which included placing them into tiers 1, 2 or 3, which were outlined within the report. Since 2018, at least 8 meetings had occurred between Debbie Pearmain and the applicant with regards to issues around the license.

Sergeant McLulich said that there were only 9 night time economy officers spread between 3 towns. He said that large crowds gathered on Victoria Street and that incidents that occurred between individuals then continue outside the premises in question. The crowds that gathered outside of the premises obstructed the road into just one lane, which was dangerous and Heavy Goods Vehicles also frequented this location, causing further danger.

Sergeant McLulich referred to his statement in 2020, which was provided within the reports that stated that when he was assaulted as a Police Officer, there was no support from the staff of the premises at all and that he had to make an emergency request for assistance for other officers. He also outlined the amount of mess and litter that was spread around the surrounding area of the premises, that was caused by customers at the premises. He added that there were no dedicated officers to police the area if the license was granted for a Wednesday.

Police Community Support Officer (PCSO) James Searle discussed a project that had been set up to identify hotspots for crime and disorder. Over 100 properties had been visited and doors were knocked on, where residents were asked what it was like living in Windsor with regards to crime and disorder and what their ideals were. He stated that from his experience as a PCSO, he believed that if the license was to be granted then this would increase the amount of crime and disorder and negatively impact residents further, who already had concerns.

PCSO James Searle was to then read out a statement from a resident, however David Dadds asked for clarity before this happened as to when this statement was taken and if it had been provided within the written representations. PCSO James Searle confirmed that the statement had been taken on 8 February 2022.

At this stage, the Chairman paused the hearing at 13:25pm, with it resuming again at 13:35pm.

David Dadds expressed his concern over the statement, however he said that it did not need to be excluded and instead he wanted to ensure that fair weight was applied. The Legal Officer confirmed this to be the correct procedure. The Chairman then invited PCSO James Searle to proceed. PCSO James Searle then read out a statement from John Pryor, Regional Manager of Snap Fitness. The Sub-Committee noted this.

Councillor Bhangra asked Inspector Mike Darrah what the Police classed Thursday as if Wednesday was classed as being mid-week and if there was any evidence of incidents occurring on these days. Inspector Mike Darrah replied by saying that both days were classed by the Police as being mid-week and that there was currently no evidence to hand of any incidents happening on those days.

Councillor Brar asked how many customers exited ATIK and visited the premises in question. Inspector Mike Darrah said that he couldn't provide an exact figure, but he confirmed that a large number of ATIK customers visited the premises afterwards.

Councillor Bhangra asked if there were any other late-night refreshments open at the same time as the premises nearby during the early hours of the morning. Debbie Pearmain confirmed that Subway was the only one, but this closed at 01:00 hours.

The Chairman asked for some clarity on the number of Police Officers that would be present on the nights that the license was in effect. Inspector Mike Darrah said that every night of the year would be graded as Red, Amber, and Green. Red would see more officers present on a night than Amber or Green. He added that a drain on resources would almost definitely occur if the license was granted.

Councillor Brar asked if there was a minimum number of officers present on weekend nights. It was confirmed that the minimum was 1 Sergeant and 9 officers, but this could go up to 1 Sergeant and 16 officers on a red day for example.

David Dadds asked if the premises had left tier 1 at all during the course of the current license or if any warnings or action plans had been given. Debbie Pearmain confirmed that they had not left tier 1 and that only advice had been given.

David Dadds asked PCSO James Searle on how many residents he had heard from by knocking on doors and when this was undertaken. PCSO James Searle confirmed that 100 doors were knocked on, but not all of course answered. He confirmed the project commenced in September 2021. Only 1 resident was said to have had an issue with the generality of the area, such as noise within the area. David Dadds asked if the officer had contacted the premises with regards to this 1 resident's concerns. PCSO James Searle confirmed that he had not and that his superior Inspector Mike Darrah had asked him to make the statement during the hearing.

On behalf of the applicant, David Dadds categorically denied Sergeant McLulich's claim that an incident involving a hammer spilled out from the premises into the street and asked how he could be sure that this came from the premises specifically. He added that CCTV showed that the hammer did not come from the premises and asked for the statement to be withdrawn. Sergeant McLulich said that he was not the officer in charge of the investigation, so could not comment further.

David Dadds asked if the hackney carriage rank on Victoria Street attracted people to convene outside of the premises. Sergeant McLulich answered by saying that historically this was the case, however in recent times many customers used private hire vehicles through apps such as Uber. David Dadds then said that Sergeant McLulich had said that there had been many incidents involving the premises, and he asked for evidence of these. Sergeant

McLulich said that he had not read or seen the reports as they were submitted for review by officers.

David Dadds asked Inspector Mike Darrah once again to withdraw his statement on an incident being described by David Dadds as “*just a domestic incident*”. Inspector Mike Darrah refuted this and claimed that both he and Debbie Pearmain had heard David Dadds say this. David Dadds said that he would be submitting a formal complaint after the hearing to the Police regarding this matter.

David Dadds said that there was no evidence relating specifically to crime and disorder inside the premises itself. Inspector Mike Darrah confirmed this, other than 1 ongoing incident that could not be discussed. Victoria Street & William Street themselves were agreed by Inspector Mike Darrah to have ATIK, a Subway shop and a taxi rank. Inspector Mike Darrah also agreed that there should be a gradual approach to enforcement and if there was ever any resident issues or any matters of crime and disorder, then enforcement would be carried out in relation to tier 1. Debbie Pearmain would make contact with the owner of the premises if action needed to be taken.

Councillor Rayner, Ward Councillor for Eton & Castle introduced herself and explained why she was speaking against the application of the premises’ new license. David Dadds asked the Sub-Committee for clarity on what they possessed in terms of Councillor Rayner’s submitted written representation. The Chairman confirmed that they possessed the same information as David Dadds did. Councillor Rayner took on board the comments made as to only present information that had been submitted as a written representation.

Councillor Rayner said that she supported her residents and also the premises itself. She said however that the area was a very busy residential one and that the operating hours of the premises had caused issues for residents. David Dadds asked for legal advice on Councillor Rayner’s oral submission. The Legal Officer confirmed that Councillor Rayner may not add any additional evidence orally. Councillor Rayner acknowledged this and brought her submission to a close.

David Dadds asked Councillor Rayner within the last year, how many times had she written to the Licensing Authority about the premises. Councillor Rayner confirmed that she didn’t have an exact figure, however confirmed that she had written to both the Licensing Authority and the Police. She confirmed that she had not written to the premises directly as this was not the normal process. The correspondence that she had sent, was all done through email.

Desmond Michael, RBWM Licensing Officer said that within one of the current existing licenses for the premises, it stated that at least 2 SIA officers should be present at all times after 00:00 hours. Upon an inspection by the Licensing Authority on 11 September 2021, officers found at 00:16 hours, only 1 SIA officer was on duty. When staff were questioned, officers were told that a further SIA officer was on their way to attend. Upon revisiting at 01:22 hours, 2 SIA officers were indeed on duty. This was a repeat offence and a breach of the license. The other date was 26 April 2019, where 1 hour after 00:00 hours, Police discovered just 1 SIA officer on duty.

Desmond Michael said that after the repeat offence had occurred, the applicant was invited to attend a meeting with the Licensing Authority in September 2021, in which he did attend. David Dadds asked for clarity as to whether the local authority were to be prosecuting the applicant over this matter. If they were, then the discussion could not go any further. Desmond Michael confirmed that the findings were subject to an ongoing investigation. David Dadds said that due to this situation being subject to judiciary, the discussions should not have been heard and written submissions should not have contained the information.

The Legal Officer confirmed that if there was an ongoing investigation, then this should take precedent and should not have been discussed or disclosed at all. The Chairman advised Desmond Michael to not discuss this further and stated that the Sub-Committee would disregard the evidence that he had provided about this matter so far.

Desmond Michael agreed and summarised by stating that the premises had breached the previous license and showed that this undermined 3 of the licensing objectives set out by the Licensing Authority.

David Dadds asked Desmond Michael if any further inspections had occurred since September 2021 of door staff numbers and if any formal warnings or cautions had been issued over the 17 years of the license being held. Desmond Michael confirmed that there had not been.

The Panel then noted the written submissions that had been submitted to the Sub-Committee. These would be considered within the deliberations.

The Chairman then invited Craig Hawkings to outline the options that were available to the Sub-Committee. These were as follows:

- Reject the application.
- Refuse to specify a person in the licence as the premise's supervisor.
- Grant the application but modify the activities and/or the hours and/or the conditions of the licence.
- Grant the application.

Craig Hawkings stated that if conditions were attached then reasons must be given as to why this was the case. He stated that those reasons should:

- Refer to every relevant representation.
- Start with the policy.
- State the extent to which it had taken account of guidance and policy.
- When deciding in accordance with policy, explain why it had not considered a departure justified.
- When deciding contrary to policy, explain the basis and reason for the departure.
- When refusing in whole or in part, or attaching further conditions state, both that it considered it appropriate to do so in order to promote one or more specified licencing objectives and why this was so.
- The committee may use a legal adviser in helping it to draught its reasons, but the reasons must be the committee's.

Craig Hawkings then stated that any party to the hearing were able to appeal the decision to the Magistrate's Court within 21 days of the determination.

David Dadds was invited by the Chairman to make his closing statement to the Sub-Committee. He summarised his client's position and once again stated that the premises was simply looking to change its operation days from a Thursday to a Wednesday, in line with ATIK's opening hours. He said that before 2016, a condition existed on the license whereby a doorman was required on a Thursday. However, this was removed which strengthened the position that there was no crime and disorder on this day.

David Dadds said that he would challenge the representations that had been made during the hearing and said that there was only 1 incident inside the premises evidenced within the report, and that outside the premises there were many. He stated that it was not proper to associate the premises with these incidents as they were not directly related. The applicant was said by the Police to have been co-operative over the years and that he had received no warnings or cautions over the 17 years of holding a license. He also stated that with regards to complaints about noise and urination, nothing was specific to the premises and no communications had been received from responsible authorities about this. David Dadds then implored the Sub-Committee to grant the application as applied for.

The Chairman asked David Dadds if he was happy to confirm that he had been given every opportunity to participate within the hearing and advise his client appropriately due to him having to attend virtually via zoom, through the use of a hybrid setting.

David Dadds confirmed that he was happy with this.

The Chairman thanked everybody for their time and attendance and informed the Sub-Committee that a letter would be sent out within 5 working days of the hearing informing participants of the decision.

During the deliberations the Sub-Committee gave full consideration to the concerns raised in the objections. However, the committee observed that material which directly impacted on the extended hours of the premises were unclear.

It was noted that the decision itself was extremely finely balanced. The decision was made to grant the application in its entirety, with a reminder that the Licensing Authority may review the operations if further evidence was brought to the Authority's attention.

The Sub-Committee considered the written submissions provided. The Panel also heard oral evidence at the hearing from Officers of Thames Valley Police, Councillor Samantha Rayner, Ward Councillor for Eton and Castle, Desmond Michael, Licensing Officer at the Royal Borough of Windsor & Maidenhead, David Dadds, Applicant's representative and from Craig Hawkings, Reporting Officer at the Royal Borough of Windsor & Maidenhead.

In making their decision, the Sub-Committee had regard to its duty to promote the four licensing objectives.

The meeting, which began at 11.30 am, finished at 3.10 pm

CHAIRMAN.....

DATE.....