

NORTHAMPTON BOROUGH COUNCIL

LICENSING SUB-COMMITTEE

Wednesday, 9 January 2013

COUNCILLORS PRESENT: Councillors Hill (Chair), Duncan and Sargeant.

OFFICERS: Mohammed Rahman (NBC Solicitor)
Phil Bayliss (NBC Senior Licensing Officer)

FOR THE APPLICANT: Paul Hepworth

FOR THE REPRESENTORS: Gordon Noble (DGS Developments)

1. **OLDE ENGLAND - 199 KETTERING ROAD, NORTHAMPTON NN1 4BP**

The Chair introduced the Members of the Sub Committee and welcomed everyone to the hearing.

The Senior Licensing Officer outlined the purpose of the hearing, which was to vary the licensing hours from 10.00am to 11.00pm Monday to Saturday to 10.00am to 12 midnight Monday to Saturday, to amend the licence to include off sales and to extend the licensable activities to include the basement part of the premises. The application for the variation had been received on 22 November 2012.

The Sub-Committee were informed that an objection to the requested variation had been received from Mr Gordon Noble on behalf of DGS Developments on 23 November 2012. The objection was on the grounds of the prevention of public nuisance.

No objections had been received from either the Police, Fire Authority or Environmental Health with regard to the application. No complaints had been received by the Licensing Department with regard to conduct inside or outside the premises since the licence was issued in November 2011.

Application for Variation to a Premises License

The applicant, Mr Hepworth, explained that the premises were used to provide mediaeval food, which was cooked fresh, and for the sale of real ale. Lager and alcopops were not sold at the premises as he wished to attract a different type of clientele. The majority of the clientele were people over the age of fifty. There had not been any incidents on the premises and no complaints had been received by him regarding activities in the premises. An objector to the original licensing application was now supporting the application to vary the licence. Creating the public house had transformed an unsightly building.

The premises were often used as a meeting place for members of the local community.

Mr Hepworth stated that the basement had been derelict for fifty years but had now been turned into an area which could seat 24 customers and provided more flexibility if a large party was dining on the ground floor of the premises.

A smoking deposit box had been provided outside the premises. Approximately 5% of the clientele smoked and they were managed and the smoking area and the outside of the premises was regularly swept.

The applicant had applied for an extra hour for licensable activities as people now tended to start their evening activities later than they had in the past.

Questions to the Applicant

In response to questions asked by the representor and the Sub-Committee Mr Hepworth stated that:

- The basement did not currently have planning consent. A planning application had been due to be considered by the Planning Committee in December 2012 but had been postponed until mid January 2013 as the landlord of some of the neighbouring properties had not been notified of the application by the Planning Authority.
- The numbers of customers allowed on each floor of the premises was 24 (first floor), 22 (ground floor) and 24 (basement). The Fire Officer was satisfied with the fire safety arrangements and had not made any representations.
- He stated that reference by the representor to a particular person objecting to the variation application was incorrect and that the person occasionally used the premises and was happy with the variation application.
- He stated that the objector to the original licensing application (referred to above) was one of the signatories on a petition in the premises supporting the variation application.

Representations by the Objector

Mr Noble, on behalf of DGS Developments, stated that the company was the landlord of 195 and 197 Kettering Road and 102 Hood Street, which either adjoined or were very close to the premises. The lower ground floor flat at 197 Kettering Road (199B) shared a party wall with the basement of the premises.

Mr Noble sought to introduce marked copies of the plans contained in the agenda, indicating the residential properties surrounding the premises and the relationship between the premises and 199 and 199B Kettering Road. The Solicitor informed him that no new evidence could be introduced at this stage. However, the Sub-Committee and the applicant, having been shown the plans indicated that they had no objection to them being accepted as part of the representor's presentation.

Mr Noble stated that:

- Car parking on the residential roads around the premises was very difficult and extending the licensing hours of the premises would exacerbate the situation, especially in the evenings and at weekends. Mr Noble was advised that this was a planning issue rather than a licensing one.
- He referred to the original license application referring to the premises being a restaurant and stated that planning officers had confirmed to him on two occasions that the sale of alcohol at the premises would be an ancillary activity. Mr Noble was advised that planning issues were not within the remit of the hearing.
- An extension of the licensing hours of the premises would have a negative impact on residents, with clientele leaving the premises in the early hours of the morning. The sale of alcohol for consumption off the premises could lead to people drinking on the Racecourse and causing disturbance to residents.
- The variation application did not state that CCTV would be installed on the premises, which had been stated on the licensing application and the variation would therefore not meet the licensing objectives.
- 199B Kettering Road shared a party wall with the basement of the premises. Mr

Noble stated that although the Police and Environmental Health had not made representations to the variation application he understood that they would be objecting to the planning application in respect of the premises' basement.

- There was no outside space at the front of the premises for smokers, who were smoking in the doorways of 195 and 197 Kettering Road in adverse weather and the extension of the licensing hours would exacerbate this situation.
- The website for the premises indicated that food would only be supplied at specific times (12.00-8.00pm Monday and Tuesday and 12.30pm-9.00pm Wednesday-Saturday) and not all the hours the premises were open.
- Building Control officers had informed Mr Noble that no works had been signed off for the premises and they had not been informed that the basement was in use. He also stated that Environmental Health Officers had not signed off the restaurant at ground floor level as there were outstanding issues and that he had been informed the basement had been opened without an alcohol licence.
- Mr Noble stated that he was receiving negative comments from present and prospective tenants with regard to the premises.

Questions to the Objector

In response to the representor's comments, Mr Hepworth read out an email received from two local residents stating that they had not been consulted regarding the variation application and that they were in support of the premises. A copy of the email was given to members of the Sub-Committee. Mr Noble was offered a copy of the email but declined it. Mr Hepworth stated that other local residents also supported the variation application.

Mr Hepworth stated that the smoking deposit box outside the premises was used by the tenants at properties surrounding the premises who were not allowed to smoke outside those properties.

Mr Hepworth stated that there had been no incidents at the premises. People met there and did not come to the premises to get drunk. Mr Noble stated that he understood real ale, as sold at the premises, was of a higher alcoholic content than lager. Mr Hepworth stated that ale would be sold in one or two pint containers to take home and would be the only off sales.

CCTV had been purchased and would be installed within the next month. Building Control could not sign the premises off until all works were completed. The toilets in the basement were not currently in use and Building Control could not sign off the works until they were in use.

The Senior Licensing Officer clarified that the provision of CCTV had been one of the licensing conditions on the original licensing application and it was unnecessary to repeat it on the variation application. He also clarified that the consumption of alcohol was not a licensable activity and that alcohol could be consumed in the premises' basement if it had been purchased in the licensed area on the ground floor.

Mr Hepworth stated that the sound insulation and a noise limiter had been provided at the premises. The residents at 199B Kettering Road had been asked if they had experienced any noise nuisance and stated that they had not. None of the residents referred to by Mr Noble had been into the premises to complain at any time.

Mr Noble referred to a board outside the premises stating that the basement was in use. Mr Hepworth stated that the board had only been outside the premises on six occasions when the basement had been used after being granted temporary event notices. The board was displayed at other times to indicate that real ale was on sale in the premises.

Summing up by the Representor

Mr Noble summarised the case he had made.

Summing up by the Applicant

Mr Hepworth summarised the case he had made.

There being no further questions, the Sub Committee adjourned at 2.40pm to make a decision. The Solicitor was called for advice.

The Determination

The Sub-Committee has considered the application to vary a Premises Licence for The Olde England, 199 Kettering Road, Northampton made by Mr Hepworth.

In addition to reading all the objections submitted in writing, the Sub-Committee listened to all representations made by Mr Gordon Noble on behalf of DGS Developments Ltd, in relation to the Licensing Objectives, specifically the Prevention of Public Nuisance.

It was noted that there were no objections raised by any of the relevant authorities, such as the Police, Fire Authority or Environmental Health, therefore, the Sub-Committee have to accept that there were no concerns from these authorities.

The Sub-Committee whilst considering Mr Noble's representations took note that none of those tenants he mentioned made any independent representations.

A lot of Planning Issues were raised during the hearing. The Sub-Committee made it absolutely clear that they do not have the jurisdiction to make a decision based on Planning considerations.

After considering all evidence the Sub-Committee decided to grant the application as requested.

The Sub Committee felt that there has been no actual evidence to suggest that Mr Hepworth was not promoting the Licensing Objectives.

However, it was of some concern that although there is already a requirement on the Premises Licence that CCTV will be in operation, Mr Hepworth confirmed that this is not yet the case. It was required that CCTV is fully operational on the premises within 4 weeks of the date of the hearing, and that this is to be monitored and confirmed by the Licensing Enforcement Officers.

The Sub-Committee reminded everyone that if there are concerns that the Licencing Objectives are not being adhered to and have evidence of this, then they could apply for a Review of the Premises Licence.

All parties have the right to appeal the Sub-Committees decision to the Magistrates Court within 21 days of the date of decision.

The meeting concluded at 3:07 pm