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GATESHEAD METROPOLITAN BOROUGH COUNCIL

LICENSING SUB COMMITTEE MEETING

Monday, 2 August 2021

PRESENT: Councillor K Dodds (Chair)

Councillor(s): H Kelly and M Ord

LSC2 APPLICATION FOR THE VARIATION OF A PREMISES LICENCE

RESOLVED – that the decision of the committee as per the attached summary of decision be agreed.

Chair.....

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**GATESHEAD COUNCIL
LICENSING AUTHORITY****SUMMARY OF DECISION OF LICENSING SUB-COMMITTEE**

Name of Premises : The Half Moon Inn
Address : Ryton Village, Tyne & Wear, NE40 3QF
Licensee : Ms Diane Phillips
Date of Hearing : 2 August 2021
Type of Hearing : Application to vary existing premises licence

The Sub Committee has decided as follows:

1. To grant the application to extend the licensable area for the sale by retail of alcohol for consumption on the premises to cover the area set out in the plan attached to the application; such area to be licensed between the hours of midday and 9.30pm each day
2. To impose the following conditions on the licence at Annex 3 -
 - a. The outside area must be closed to the public not later than 10pm each day and shall not reopen until the start of the licensed hours on the next following day; and
 - b. A noise management plan shall be implemented and adhered to, to include all noise sources associated with the premises, noise reduction/mitigation, noise monitoring by competent staff, complaints procedure, staff training and review. The noise management plan shall be submitted to the Local Authority for prior consideration and agreement
3. To remove the following condition from Annex 3 - "No live or recorded music will be relayed to the Beer Garden/outside drinking area"

Reasons

The application to vary the existing premises licence was brought Ms Phillips. Relevant representations were made by –

- Erin McClymont
- Lesley and Mark Errington
- Anonymous 1
- Ann and Lyndsay Marshall
- Steven Colbeck
- Gary Napier
- Gavin Finlayson
- Anonymous 2
- Kate Teal
- Karen Forster
- Daymon Britton
- Donna Britton
- Anonymous 3
- Anonymous 4
- Councillor Chris Buckley
- Cathy Roberts
- Mike and Angela Quigley
- Liz Twist MP
- Mr and Mrs Hardy
- Louise Duncan and Nigel Wild
- Thelma Brown
- Shelia Eddleston and James Fall
- L Middlemiss
- Leila Heidi Ranson
- Annabel Hayward and Michael Rossington
- Susan Carter
- Richard and Audrey Palmer
- Ben Skill
- David P. Crawford-Emery

The Sub Committee had regard to the Licensing Officer's report, the supplementary documentation provided by the parties in advance of the hearing, the video and audio recordings that had been submitted by the parties, and the verbal representations made at the hearing.

At the outset of the hearing it was noted that some of the people who had made relevant representations are also shareholders in a community-run public house called the Ye Olde Cross which is also in the vicinity of the Half Moon. The Sub-Committee received legal advice that under section 35 of the Licensing Act 2003, relevant representations can be made by anyone and will only be disregarded where they are withdrawn, or (in the case of

representations from persons other than responsible authorities) frivolous or vexatious. The Sub-Committee were advised that it was therefore a matter for their determination as to what if any weight to attach to each of the representations before them.

In considering the application, the Sub-Committee heard from Messrs Outen and Bownes on behalf of Ms Phillips as follows –

- Ms Phillips is not looking to extend the area of the beer garden.
- Customers have consumed alcohol in the beer garden for many years. The application is to enable alcohol to be sold from the beer garden to avoid the need for patrons and staff having to go into the building for sales.
- The number of bars at the premises will not increase, as the bar proposed to be located in the outside area will be taken from the restaurant area.
- Outside toilets have also been provided.
- There have been no police incidents during the time Ms Phillips has been licensee.
- The premises have been visited by the Council and the Fire & Rescue Service and no issues have been identified.
- The intention is to provide background music at a level where it would not be heard in the street.
- If any neighbours have any issues with noise or anti-social behaviour from patrons of the premises they are encouraged to speak to Ms Phillips / Mr Outen so that this can be addressed.
- Ms Phillips disputes that some of the anti-social behaviour referred to in the representations is properly linked to the premises; for instance reports of broken glass would not relate to the premises as drinks are served in plastic glasses.
- No representations have been made by any of the Responsible Authorities.
- The photographs and videos submitted to the Committee were taken in exceptional circumstances during the football European Championships at a time when national covid-19 restrictions were being lifted, and are not representative of the normal situation.

The Sub-Committee heard from Richard Palmer as follows -

- That he believes he is the most recent person to have moved to Old Ryton Village.
- That he had no prior relationship with the pub or its owners.
- That he was keen to move into that part of Ryton.
- That he spoke to residents to see whether there was any noise from the pub; and was informed that they could hear chatter from the beer garden but nothing more.
- That he has not seen any broken glass or vomit in the vicinity of the premises.
- That he spoke to one person who he saw urinating in street and advised him that he should use the toilets at the premises instead. Mr Palmer said that he understands that person was later barred from the pub.
- That he believes there to have been some clashes of personality between the owners of the premises and some of the objectors.
- That everyone has different tolerance levels, and what may be a problem to one person may not be to someone else.
- That he was not at home on the night of the European Championship final.
- That it is important for pubs such as this to provide a place for musicians to play in front of an audience.
- Mr Palmer also questioned the morality of persons objecting to the application who also hold shares in the nearby Ye Olde Cross pub.

The Sub-Committee heard from Mr Skill that –

- He has not seen any problems with anti-social behaviour in the vicinity of the premises.
- That he is aware the premises provide plastic glasses to their patrons.
- That in his opinion, increased use of the outside area is sensible to manage the potential spread of covid-19.

The Sub-Committee heard from Mr Emery that –

- His estate shares a boundary with the outside area of the premises.
- He fully supports the application.
- He has lived next to premises for nearly 25 years without issues.
- That he occasionally hears chatter from the outside area but this does not concern him.
- That all of the residents in the vicinity knew there was a pub there when they chose to live there.
- That three pubs in Ryton have closed recently.
- That although the Ye Olde Cross is a community owned pub, it is now being rented to a private tenant.
- That the only pub in the village that has consistently remained open when pubs have been permitted to be open is the Half Moon; and that in his opinion this is because the premises are well-run.
- That in his opinion, those who recognised the merit in having a pub in the area have a conflict of interest when they then seek to oppose this application in respect of the Half Moon.
- That he was approached by neighbours seeking his support to object to the application; and that when he asked for evidence that the owners of the premises were at fault for the issues that were being complained of, nothing substantial was provided to him.
- That in his opinion some of the representation to the Sub-Committee are vexatious.
- That young people drink alcohol in the woods outside the village, and that they sometimes cause issues with littering and anti-social behaviour which the Half Moon should not be held responsible for.

Ms Phillips was asked whether television coverage of the European Championships had

been shown in the outside area, and Mr Outen confirmed that it was; and that alcohol had been sold in the outside area under the provision of temporary event notices.

The Sub-Committee then heard from Councillor Buckley, who stated –

- Ms Phillips had agreed following discussion with the Council’s Environmental Health Officer to implement a noise management plan.
- That having spoken to a number of residents, they wish to see the pub thrive but are concerned about noise.
- That a nearby pub called the Runhead has a condition on its licence that there shall be no acoustic or amplified music in its outside area.

Cllr Buckley asked Ms Phillips whether she would agree to such a condition being imposed on her licence; and Mr Outen reiterated that a noise management plan would be in place and that it is intended to have live music in the outdoor area.

Cllr Buckley asked what kind of person it was hoped would be attracted to the premises, and Mr Outen said that the average age of customers is around 28; with no one under 19 years old being permitted and that they were hoping to attract a cross-section of people other than young children as it is not intended to be a family-oriented establishment.

Cllr Buckley asked if an incident log is kept and it was confirmed that this is the case.

Ms Ranson then asked who Ms Phillips believes is responsible for the anti-social behaviour problems in the vicinity of the premises if not her customers. Mr Outen said that people go from the nearby golf club to the Runhead past the Half Moon and that these people are not necessarily Half Moon customers. Mr Outen said that there are signs on display at the premises asking customers to be considerate of neighbours. Mr Outen said that there have been no fights inside or outside the pub during the time Ms Phillips has been the licensee. Mr Outen also said that there have been no breaches of the Health Protection (Coronavirus) Regulations at the premises, contrary to what is said in one of the representations. Mr Outen said that there have been three public toilets in Ryton closed by the Council. Mr Outen said that people who congregate at the bus stop near the premises sometimes urinate in public but that this is not the fault of the licensee.

Ms Rudman confirmed that there have been no notices or penalties served on respect of the premises under the Health Protection (Coronavirus) Regulations by the Council or the police.

The Sub-Committee then heard from Ms Errington that –

- In her opinion, Ms Phillips should have consulted with neighbours before submitting the application to the Licensing Authority.
- That she and her family do not want the premises to be closed; but do not want to experience disturbance and anti-social behaviour arising from the provision of music in the outdoor area.
- That some of her neighbours share her concerns but did not wish to attend the hearing through fear.
- That she and her family have witnessed fights, excessive noise and people urinating on walls who when spoken to have said that they did not wish to wait in a queue to use a toilet at the premises.
- That the noise disturbance can be so bad it prevents the peaceful use of the garden and can present Ms Errington's daughter from sleeping.
- That Ms Errington is not a shareholder in the Ye Olde Cross.
- That Ms Errington's only concern is about the provision of outside music.

The Sub-Committee then heard from Mr Robson who stated –

- He has lived opposite the premises for 47 years.
- That he has no financial link to either of the pubs in the village.
- That the Half Moon is located in a conservation area.
- That there is very little commercial activity in the area, with it being largely residential.
- That in his opinion the variations sought by the application are bound to lead to increased noise nuisance.

Mr Robson drew the Sub-Committee's attention to the Council's Statement of Licensing Policy, in particular –

- o Cllr McElroy's introduction
- o Paragraph 2.1
- o Paragraph 5.5
- o Paragraph 7.8
- o Paragraph 7.9
- o Paragraph 7.10
- o Paragraph 8.24; and
- o Condition 6 set out in the model pool of conditions

Mr Robson noted that the consumption of alcohol is not a licensable activity; and that the application seeks to authorise the sale of alcohol in the outside area.

Mr Robson noted that some neighbours may not experience issues with noise and anti-social behaviour as much as others.

Mr Robson noted that he believes Ryton's village environment should be preserved for everyone to enjoy.

The Sub-Committee then heard from Ms Ranson that –

- She has recently moved to the area.
- She has no connection to the Ye Olde Cross.
- That her quality of life has been marred by anti-social behaviour she believes to be from clientele of the Half Moon.
- That elderly people have said to her that they feel threatened.
- That the problems are not exclusively related to the European Championships, and that they were occurring before the Championships began.
- That the door staff at the premises are, in her opinion, a token gesture.
- That she has witnessed naked men running through the street, men urinating on wall outside house, cars being jumped on, and excessively violent behaviour.

Ms Ranson noted however she is not against the pub.

The Sub-Committee then heard from Ms Robson, who stated –

- She has no link to either pub.
- On a number of occasions throughout the European Championships she witnessed people she believes to have been customers from the Half Moon engaged in anti-social behaviour such as throwing drain covers and traffic cones down the street, climbing on garden walls, and large semi-naked groups. Ms Robson said that on each occasion she contacted the police.
- That in her opinion the provision of music in the beer garden would make the situation worse.

The Sub-Committee then watched a number of video recordings and heard a number of audio recordings that had been submitted in support of the relevant representations.

Mr Outen noted that some of the people opposing the variation application have formerly frequented the premises themselves; and that he was surprised that they would not come and speak to himself / Ms Phillips if they were experiencing problems.

Mr Outen also noted that the premises are normally closed by 10-10.30pm each evening.

Mr Skill noted that it was unclear from the audio recordings when they were made but that the singing that could be heard was traditionally sung at football matches which would suggest it was recorded during the European Championships.

In summing up –

- Cllr Buckley stated that he owns £600 shares in the Ye Olde Cross; and that he does not consider that this places him in a position of conflict but rather that he wants to support well run pubs in the village. Cllr Buckley said that he appreciates that the application and hearing process has been difficult for everyone involved; and that he believes that the concerns raised are genuine. Cllr Buckley said that the Half Moon has a reputational issue, and that he hopes Ms Phillips and Mr Outen take this on board. Cllr Buckley said that he is happy to discuss concerns with all parties outside of the formal licensing setting; and noted that some residents clearly do have concerns about approaching the owners direct and have wanted to remain anonymous in the proceedings. Cllr Buckley noted that the European Championships were an exceptional time, but that the promotion of the licensing objectives was still relevant. Cllr Buckley noted that the anti-social behaviour is a serious concern and that there is a weight of evidence from the number of objections. Cllr Buckley noted that the premises are located in a residential area, not a city centre.

- Mr Emery said that the objections are selective; and that whilst Cllr Buckley says he represents local residents, he has not spoken to Mr Emery and he does not speak for him. Mr Emery said that there are a number of other commercial premises in the vicinity of the Half Moon including a golf club, a café and a takeaway (which is currently closed). Mr Emery noted that he often works from home during the hours that the premises are open and that he has not been disturbed. Mr Emery noted that the video footage shows anti-social behaviour away from the premises with no apparent connection to the premises. Mr Emery said that by being open when legislation has allowed, the Half Moon has provided an amenity to the village.
- Mr Palmer said that he spoke to Cllr Buckley last week and that they had a frank conversation. Mr Palmer referred to the articles published last week in the Evening Chronicle, and that in his opinion the matter had been blown out of proportion. Mr Palmer said that most nights the premises are quiet by 10pm. Mr Palmer noted that if the application is not granted, people will still be able to drink outside but will have to go inside the pub to get to the bar.
- Mr Bownes said that some of the objections can be shown to be untrue, such as the premises having been closed due to covid breaches. Mr Bownes said that Cllr Buckley had not tried to speak to Ms Phillips or Mr Outen about any of the concerns reported to him by residents. Mr Bownes said that Ms Phillips takes her role seriously, and that there has been no history of issues with the police, Council or Environmental Health. Mr Bownes said that the incidents that occurred during the European Championships were exceptional; and that Ms Errington had said that things have recently been better.

Mr Outen said that Ms Phillips has agreed to a noise management plan and that it will be fully implemented; but that if neighbours experience any problems from the premises they will be addressed.

The Sub-Committee received legal advice in open session so that all parties were aware of the advice given.

The Sub-Committee were advised that in choosing which course of action to take, they should have regard to the Act, the Home Office Guidance, the Licensing Authority's own Statement of Licensing Policy and the individual facts.

The Sub-Committee were reminded of their duty under the Act is to carry out the Licensing Authority's functions with a view to promoting the Licensing Objectives; and that the Home

Office Guidance states that they should do so with regard to the overall interests of the local community.

The Sub-Committee noted that paragraph 6.2 of Gateshead Council's Statement of Licensing Policy states that –

“The Licensing Authority considers:

- the effective and responsible management of premises
- instruction, training and supervision of staff; and
- the adoption of best practice

to be amongst the most important control measures for the achievement of all the licensing objectives”.

The Sub-Committee were reminded of the Judgment in the case of R (on the application of Hope & Glory Public House Ltd) v (1) City of Westminster Magistrates' Court & Ors [2011] EWCA Civ 31 in which Lord Toulson stated, “Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on... They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location.”

The Sub-Committee were reminded of the Judgment in the case of R (on application of Daniel Thwaites plc) v Wirral Magistrates' Court and Others (2008) EWHC 838 (Admin), in which the Honourable Mrs Justice Black said:

“[D]rawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act's approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence presented will require them to adjust their own impression. This is particularly likely to be so where it is given by a Responsible Authority such as the police.”

The Sub-Committee were reminded of the Judgment of Mr Justice Jay in the case of East Lindsey District Council v Hanif (t/a Zara's) (2016) EWHC 1265 (Admin) with regard to the approach to be taken to determining the appropriate and proportionate action in light of the salient Licensing Objectives; and in particular their approach should involve –

- consideration of the antecedent facts; and
- a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.

The Sub-Committee were reminded that any conditions or restrictions they sought to place on the licence must be appropriate for the promotion of the Licensing Objectives; and that they should consider –

- the harm they were seeking to prevent
- what weight to attach to the concerns they had, and
- what would be a proportionate measure to prevent that harm.

The Sub-Committee were advised that if they considered that the variation could be granted if certain conditions were imposed, they should ensure that such conditions are sufficiently clear that they can be understood and enforced; and that because of the size of the premises and the times at which licensable activities are proposed, section 177A(2) of the Act deems that conditions on the provision of live or recorded music on the outside area would not have any effect unless and until a review takes place.

The Sub-Committee noted that there is clearly a lot of community tension caused by the anti-social behaviour that is being experienced.

The Sub-Committee noted that the effect of section 177A of the Licensing Act is to give them a stark choice, in that authorising the sale of alcohol for consumption from the outside area automatically enables the provision of live and recorded music during the times that the applicant has sought.

The Sub-Committee accepted there have been serious issues with anti-social behaviour in the vicinity of the premises, particularly during the exceptional period of the European Championships. The Sub-Committee noted that Ms Phillips and Mr Outen are aware of concerns and have said that they would welcome dialogue with neighbours so that issues can be addressed.

The Sub-Committee noted that by only authorising the sale of alcohol from the outside area until 9.30pm, music should cease at that time; and that this can be reinforced through the noise management plan which has been volunteered. The Sub-Committee noted that requiring the outside area to be vacated by customers by 10pm each evening will also help limit the impact of noise.

The Sub-Committee noted that its powers were to some extent limited by the fact that they could only deal with the variation application, but that it remained open to the parties to initiate a review process at any time.

The Sub-Committee also found that the existence of condition 4 in Annex 3 of the licence

may be misleading to residents who may not be cognisant of the effect that section 177A of the Licensing Act has on such conditions; and so its removal from the licence may help all parties to have a better understanding of the obligations on the licensee.

In those circumstances, the Sub-Committee determined to grant the variation so as to authorise the sale by retail of alcohol for consumption on the premises for the outside area as identified in the application, from midday to 9.30pm each day; with conditions being imposed on the licence such that the outside area is to be closed by 10pm each evening and that a noise management plan is to be implemented as proposed following discussion with the Environmental Health Officer. The Sub-Committee also determined to remove condition 4 from Annex 3 of the licence so as to provide greater clarity on the enforceable terms of the licence.

Rights of appeal

Each of the parties to the hearing have a right to appeal the Sub-Committee's decision pursuant to section 181 and Schedule 5 of the Licensing Act 2003, such appeal to be made to the Gateshead Magistrates' Court and within 21 days of the date of service of this notice of decision.

In reaching these decisions the Sub Committee has been persuaded by the individual circumstances of this Application and does not intend to create a general exception to its Policy or to create a precedent.

Dated : 2 August 2021

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