

GATESHEAD COUNCIL
LICENSING AUTHORITY

SUMMARY OF DECISION OF LICENSING SUB-COMMITTEE

Name of Premises : Formerly Porkey's Bar / O'Malleys

Address : 168 Kells Lane, Low Fell, Gateshead, NE9 5HY

Licensee : Lincoln-Leon Ltd (Co. Reg. No.13203720)

Date of Hearing : 20 March 2023

Type of Hearing : Application to vary existing premises licence

The Sub Committee has decided as follows:

To approve the variation as sought

REASONS

The application to vary the existing licence was made by the previously licence holder, KL Management Solutions Ltd.

The application was scheduled for a hearing to take place on 31 January 2023 when the applicant was not in attendance but instead Mr Hytham Atchison attended, being the Designated Premises Supervisor.

The hearing was adjourned to facilitate the interested parties' concerns to be responded to by the licensee.

Subsequently, the licence was transferred from KL Management Solutions Ltd to Lincoln-Leon Ltd which is a company wholly owned by Mr Atchison who is also the sole director.

Relevant representations were made by -

- Northumbria Police (subsequently withdrawn)
- Graeme Stephenson
- Councillor Dawn Welsh
- Geraldine Kinley
- Jacqueline Fenton
- Lawrence Fenwick

- Richard Croft and Claire Bowen-Croft; and
- Steven Wade

Messrs Stephenson & Wade and Mrs Fenton were in attendance.

The Sub Committee had regard to the Licensing Officer's report including the written representations, the amended operating schedule and the verbal representations made at the hearing.

In considering the application, the Sub-Committee heard from Messrs Stephenson & Wade and Mrs Fenton as follows -

- The premises was previously run as a restaurant, and did not cause disturbance
- The premises was subsequently run as a pub under the name 'Porky's', and residents suffered disturbance with noise emanating from the outside area (both music and patrons), foul language, broken glass in the street, and it was suggested that it contributed to young people congregating nearby and acting unsociably
- The residents accepted that the premises would be run to a different operating model to that which had caused the licensing objectives to be undermined; but sought further assurances principally in respect of noise
- It was also asked whether a condition could be added to the licence preventing under 18s from entering the premises; however the Sub-Committee was advised that no relevant representations had been made which could lead to such condition being an appropriate or proportionate measure to address a relevant concern.

The Sub-Committee heard from Mr Atchison as follows -

- He was not involved with the running of the premises under previous management
- He has listened to the concerns that have been raised and amended the operating schedule to take account of the issues
- He will be present at the premises more often than not; and also has a general manager with more than 20 years' experience
- He welcomes dialogue with residents to ensure that the business is being sensitive to its location
- When he has recruited staff, he will train them to inform the management team if music from inside the premises is audible outside; and an incident log will be kept

The Sub-Committee received legal advice in open session so that all parties present 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 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.

The Sub-Committee accepted the licensee had entered into mediation and had amended the operating schedule to address the concerns raised by the interested parties; and that the operating schedule if complied with should ensure the promotion of the licensing objectives.

The Sub-Committee noted that its remit at the hearing was limited dealing with the variation application, but that it remained open to the parties to initiate a review process at any time.

In those circumstances, the Sub-Committee determined to grant the variation as sought.

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 this decision 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 : 20 March 2023