

Decision of Licensing Sub Committee. Hearing 5 August 2022

Application for a premises licence at 29 High Street, Lewes, BN7 2LU from Apiary by Bell Ltd.

The hearing concerned an application for a new premises licence at 29 High Street, Lewes, BN7 2LU from Apiary by Bell Ltd (“the Applicant”).

The application was for the sale by retail of alcohol on and off the premises on Monday to Sunday between 8:00hrs and 23:30hrs; late night refreshments on and off the premises on Monday to Sunday between 23:00hrs and 23:30hrs; and for recorded music indoors only on Monday to Sunday between 8:00hrs and 23:30hrs.

In discharging its functions, the Sub Committee considered the promotion of the relevant licensing objectives, the Council’s own Licensing Policy, the Home Office Guidance, and the rules of natural justice.

It also considered the information contained within the Specialist Advisor’s report, presented at the hearing by Jade Marshall.

The Sub Committee considered the application and the oral representations made at the hearing by Alistair Bell and Naomi Bell on behalf of the Applicant.

They informed the Sub Committee that they had both been involved in the hospitality trade for many years.

The Sub Committee was informed that they had contacted those who had made representations, before the hearing, in an attempt to allay their concerns about the premises. They had met with Sandra Banks (a Representator), but no compromise had been achieved. The Members were told that the occupiers of the flats above the premises had also been approached before the hearing.

The Sub Committee was informed that it was intended that the premises would add value to the community. It was stated that the Applicant understood the importance for the business in keeping the neighbours “on board” and that they were open to listening to any concerns neighbours may have in the future.

It was stated that the Applicant did not consider that the premises would contribute to any existing social disorder in the vicinity of the premises. This was because “it was not going to be that kind of premises”, rather it would be “somewhere of repute”. It was stated that a responsible approach would be taken to the sale of alcohol.

The Sub Committee was reminded that food would be available, with table service and that there would be no vertical drinking. It was stated that the premises kitchen was small and that, at this time, it was considered unlikely that an extractor fan would be required. In answer to a question, it was stated that it was expected that generally coffee and sandwiches would be served during the day and small plates with wine would be served in the evening, although there may be some hot food available.

In relation to concerns about privacy for the neighbours, by customers in the rear garden, it was stated that those concerns were appreciated and that steps, for example, the erection of parasols would address some of those concerns.

The Sub Committee was reminded that the Applicant had offered a condition concerning signage asking customers to leave quietly.

The Applicant considered that the main concern arising from the representations was the use of the rear garden of the premises. It was pointed out that the outdoor space was quite small with possibly 8 - 10 covers and that they had offered a condition that the outdoor space would close at 22.30hrs, which complied with the Council's Licensing Policy.

Further, the Applicant was content to offer that no smoking would be allowed in the rear garden at any time. In answer to a question concerning smoking at the front of the premises it was stated that suitable bins would be provided and that the area would be kept clean.

In answer to a question about the licensable hours for the retail sale of alcohol being 8.00hrs, the Applicant stated that they did not expect to sell alcohol to customers face to face on the premises at that time but that time was asked for primarily in relation to the online sales of alcohol and to keep their options open.

In answer to a question, the Applicant stated that it was expected that the rear garden would generally be open to customers from 10.00hrs and that they would consider all options to mitigate the privacy issues.

In closing remarks, it was stated that the Applicant was not inflexible or unreasonable as they wanted to get on with the neighbours. It was understood that there was an issue with the use of the rear garden and so the Applicant would be willing to compromise in relation to the closing time of the rear garden.

Due regard by the Licensing Sub Committee was also given to the relevant written representations of local residents. Those representations were that granting the licence would result in an undue level of noise which would be detrimental to nearby residential occupiers and would increase anti-social behaviour which already exists in the area. Concerns were raised in particular about the noise and lack of privacy caused by the use of the rear garden.

Sandra Banks, a Representator, stated that her concerns lay primarily with the possible future changes that may be made at the premises and she remained sceptical about the assertions made by the Applicant that they were open to compromise and communication with neighbours about their concerns. A further focus of her concerns was the use of the rear garden and stated that its use would be an unacceptable intrusion on the neighbours' privacy and that it would be noisy. It was stated that the proposed times of its use suggested a lack of respect for the neighbours. She suggested to the Licensing Sub Committee a compromise would be that the rear garden was closed from 20.30hrs, as it was overlooked by bedrooms.

Clare Hunt, a Representator, stated that whilst she was supportive of new businesses in the area and was appreciative that the Applicant had attempted to contact her, she still had concerns in particular about the use of the rear garden.

A Representator, who was not present, provided a written statement which was seen by the Licensing Sub Committee and all parties. The Democratic Services Officer read out

the statement at the hearing. That written representation was in support of the representation at page 51 of the Report. The statement asserted that noise was already a huge problem in the area especially after 21.00hrs at weekends and that the addition of the premises would add to those noise levels particularly in light of the use of the rear garden. It was stated that the noise would travel to nearby properties so that there would be no escape from the noise which they considered would adversely impact their mental health. In addition, it was stated that there was already anti-social behaviour in the area and that the Police had attended on a number of occasions. Introducing another venue for drinkers would add to those problems. Concerns were also expressed about cooking fumes and the assumed use of an extraction flue.

In its deliberations the Sub Committee considered which decision would be appropriate and proportionate from the options outlined in para. 8.1 of the Report.

Decision

The Sub Committee resolved to grant the premises licence with the conditions as agreed with Sussex Police to be added to the licence (as per Appendix 3 of the Report).

Further additional licence conditions shall be:

- The rear garden shall be closed from 22:00hrs Monday to Sunday (inclusive).
- There shall be no smoking at any time in the rear garden.
- No drinks shall be taken out of front entrance by smokers or any other customers
- Notices shall be prominently displayed asking customers to leave quietly. Staff shall monitor the dispersal of customers
- Notices shall be prominently displayed in the rear garden asking customers to respect neighbours by keeping noise to a minimum.

The Sub Committee noted a condition the Applicant had offered to “Ensure waste, particularly glass, is disposed of correctly and hygienically”.

It also noted that the Applicant had offered to join the local Neighbourhood Watch and integrate with local businesses to ensure a positive contribution to the community. This offer was welcomed but will not be a condition on the premises licence.

Reasons for decision

The Sub Committee was content, on balance, that the premises would not undermine the relevant licensing objectives. It took into account the relevant parts of the representations received which related to the licensable activities applied for and it did not take account of irrelevant concerns raised e.g., planning issues.

The Sub Committee in making its decision took into account the concerns of the Representators in relation to the impact of the use of the rear garden particularly in relation to noise and privacy. It decided it would be appropriate, reasonable and proportionate to modify the time, offered by the Applicant, that the rear garden close and reduce that time to 22.00hrs, and in addition add the conditions referred to above.

In making its decision it took into account the Applicant's assertions that it was willing to compromise with the neighbours if they had any concerns in future. It noted that the Applicant had made some efforts to reach a compromise with the Representators before the hearing and considered that the Applicant had demonstrated at the hearing a willingness to listen to concerns, for example, at the hearing the Applicant had offered that there would be no smoking at any time in the rear garden.

The Sub Committee in making its decision also took into account the nature of the premises including that it was a small premises with no vertical drinking.

The Sub Committee noted that no representations had been received from a Responsible Authority.

The Licensing Act 2003 (as amended) provides a right of appeal to the Magistrates' Court in respect of an application for a premises licence. An appeal must be commenced by notice of appeal being given by the appellant to the Magistrates' Court within a period of 21 days beginning on the date the appellant is notified in writing of the decision of the Licensing Sub Committee.

The decision will be provided in writing to all parties within five working days of the decision being made.