

DURHAM COUNTY COUNCIL

Statutory Licensing Sub-Committee

At a **Special meeting** of the **Statutory Licensing Sub-Committee** held in the **Council Chamber, County Hall, Durham** on **Thursday 2 May 2024** at **9.30am**

Present:

Councillor C Hampson in the Chair

Members of the Sub-Committee:

Councillors R Adcock-Forster, L Brown and M Wilson

Also Present:

S Grigor, Council's Solicitor

Y Raine, Principal Licensing Officer

G Domleo, Flint Bishop Solicitors – Solicitor for the Applicant

L Green for Star Pubs and Bars Ltd – Applicant / Premises Licence Holder

C Wright – Tenant of the Big Jug

Sgt C Dickenson – Durham Constabulary

K Gilmore-Craze - Senior Environmental Health Officer

Cllr S Walker – City of Durham Parish Council

R Wormald – Senior Environmental Health Officer

1 Apologies

There were no apologies for absence.

2 Substitute Members

No substitute members were present.

3 Declarations of Interest

Councillor L Brown declared an interest as a member of Durham City Parish Council.

Councillor Brown confirmed she had no involvement with the representations put forward by the Parish Council's Licensing Committee. The Solicitor for the Applicant, stated no objection.

4 Application to Vary a Premises Licence - The Big Jug, 83 Claypath, Durham, DH1 1RG

Prior to the presentation of the report, the Chair confirmed the three members who would make the determination were herself, Councillor Adcock-Forster and Councillor Wilson.

The Principal Licensing Officer presented the report of the Corporate Director of Neighbourhoods and Climate Change which requested the consideration and determination of an application for the variation of a premises licence for the Big Jug, 83 Claypath, Durham, DH1 1RG which was submitted by the premises licence holder, Star Pubs and Bars Limited on 7 March 2024 (for copy of report, see file of minutes).

The Principal Licensing Officer outlined the variations requested and amended references at pages 3 and 5 which should have stated 'To extend the terminal hour for late night refreshment until 01:00hrs on Fridays and Saturdays only'. It was reported that four representations in objection to the application were received during the consultation period, which related to the four licensing objectives. Local residents, Dr and Mrs Bremner, had submitted an objection but were unable to attend the meeting, therefore, they requested that their submission be considered in their absence. The Principal Licensing Officer explained that discussions were held between the Applicant, Durham Constabulary, Environmental Health and the Parish Council, however, no formal agreement was reached. Concluding her presentation, the Principal Licensing Officer outlined the options available to the Sub-Committee. No questions were raised in relation to the Licensing Officer's report.

The Chair invited Sgt Dickenson to address the Sub-Committee on behalf of Durham Constabulary, in objection to the application. Sgt Dickenson highlighted that Durham Constabulary had worked with the Applicant throughout the consultation period, with a view to reaching an agreement on the licence conditions, to ensure the licensing objectives would be upheld. Durham Constabulary's opinion was that a condition for the requirement of door staff was necessary, to ensure the safety of staff and customers, particularly when operating until early morning hours. The condition proposed by Durham Constabulary was for the provision of a minimum of two members of door staff deployed at the premises from 19:00hrs until 30 minutes after the premises closed, on Friday, Saturday and bank holiday Sundays. It was noted that there was no condition on the licence for door staff at the present time.

Sgt Dickenson informed the Sub-Committee that the Applicant had not accepted the proposed condition, stating they were not aware of any incidents of crime and disorder when the premises had previously traded. The Applicant did not consider the condition for door staff was appropriate at this stage and that a condition that the premises shall risk assess the need for door staff was appropriate. No information had been provided as to how a risk assessment would be undertaken.

Sgt Dickenson stated the proposal to risk assess the requirement for door staff was not acceptable to Durham Constabulary and whilst Durham Constabulary acknowledged the current licence did not have a requirement for door staff and there had been no issues of crime and disorder, this was prior to the refurbishment of the premises, at a time when the pub did not attract a large customer base. The recent refurbishment had transformed the pub into a premium pub. The Star Pubs and Bars website publicised that the refurbishment 'will encourage greater sales and transform an unloved traditional pub into a stylish new venue . . .' and that the bar will be 'the bar of choice for students, tourists and locals ...'. Durham Constabulary noted that all the Big Jug's local competitors had conditions on their licences for door staff on weekends and bank holiday Sundays and the venue which was nearest to the Big Jug and also offered live music, was required to have more door staff than the request being made for the Big Jug.

Mr Wormald, Senior Environmental Health Officer, was invited to outline the submission on behalf of the responsible authority.

Mr Wormald summarised Environmental Health's objection related to the prevention of public nuisance. He explained the concern regarding the impact on nearby residential dwellings from live or recorded music until midnight, the extension of the terminal hour for late night refreshment and the extension of the opening hours on a Friday and Saturday night. Environmental Health was aware that the seating area to the rear would include a beer garden however the location of the premises was in a mixed residential area with dwellings in close proximity to the premises. Whilst accepting that the licence conditions included the control of noise to the outside areas, the view of Environmental Health was that it would be difficult to comply with. Environmental Health therefore suggested a condition to require the closure of the beer yard / outside seating area at 22:00hrs.

The Senior Environmental Health Officer then referred to the Applicant's noise management plan which proposed that boundary checks would be undertaken and any required action would be documented. However, Environmental Health's view was that a noise management plan should provide detail as to how the plan would be implemented. Environmental Health proposed the condition that live music should end at 23:00hrs, in line with other licensed premises.

The Senior Environmental Health Officer concluded that the responsible authority was not confident that the conditions proposed by the Applicant would mitigate against nuisance and they were not in line with Durham County Council's Statement of Licensing Policy paragraphs 5.7 and 7.3.

Therefore, Environmental Health requested that their representation and concerns be considered by the Sub-Committee.

Representing Durham City Parish Council, Councillor S Walker welcomed the investment made by the Applicant, however acting on behalf of residents and visitors, the Parish Council maintained that aspects of the application required addressing, in the interests of promotion of the licensing objectives. Councillor Walker commented that there was no evidence to conclude that residents would not be harmed by the potential additional noise and disturbance and she pointed out that no noise impact assessment had been provided by the Applicant to satisfy their assertion that extending the hours would not have an adverse impact. She noted the premises was located only metres from a residential care home for the elderly and a number of other residences, all of whom would be sensitive receptors to the premises. The Parish Council therefore requested the hours of operation be restricted to align with the County Council's framework hours.

The Parish Council was pleased by the Applicant's previous commitment to reduce the terminal hour for the sale of alcohol and late night refreshment on Friday and Saturday to 00:30hrs and to close at 01:00hrs, to align with the framework hours and the Parish Council requested that be attached to the licence.

Having taken into account the evidence available and the representations from local residents Dr and Mrs Bremner, the Parish Council expressed support for the conditions proposed by Environmental Health. Councillor Walker added that the Parish Council was also concerned at the possibility of early morning alcohol sales and whilst assurance had been received from the Applicant's solicitor that this would be for the provision of champagne breakfasts only, the Parish Council requested that a condition be added that all sales of alcohol prior to 11:00hrs be permitted, only if accompanied by the sale of food.

The Parish Council also supported Durham Constabulary's suggested amendment that two members of door staff be deployed and the Parish Council also requested that this condition be attached to the licence. It was the view of the Parish Council that the Applicant's alternative proposal to risk assess their own need for door staff was not acceptable.

Councillor Walker concluded by commenting that the prevention of crime and disorder was a basic requirement that no responsible authority could ignore and it was the Parish Council's firm belief that anything less than the proposed conditions should lead to the refusal of the application.

The Chair invited questions from the Applicant.

The Applicant's Solicitor referred to correspondence with the Clerk to the Parish Council in which the question was raised that, if the Applicant was minded to reduce the terminal hour for licensable activities on Fridays and Saturdays until 00:30hrs and to close at 01:00hrs and to seek an extension to the start time for the sale of alcohol to 10:00hrs as opposed to 08:00hrs, whether that would resolve the representation. The Applicant's solicitor had not received a response from the Parish Council's Clerk. Councillor Walker responded that she was not aware that dialogue had taken place, however, she reiterated the Parish Council's request would be that sales of alcohol prior to 11:00hrs should accompany food and that the premises should align with the framework hours.

The Applicant's Solicitor then asked the Principal Licensing Officer for clarification that the framework hours were for licensable activities as opposed to opening hours. The Principal Licensing Officer clarified the framework hours referred to the sale of alcohol and the provision of late night refreshment and Appendix 2 of the policy was guidance.

The Applicant's Solicitor asked Councillor Walker that if the terminal hour were to be amended to 00:30hrs, to close at 01:00hrs, whether that would provide a partial resolution to the representation and Councillor Walker confirmed she believed that would resolve that particular issue.

Councillor Brown requested information on crime statistics for Claypath and the vicinity of the Big Jug, for the previous six months and she also requested that consideration be given to the addition of a condition that no bottles should be placed in the bottle bins after 22:30hrs.

The Council's Solicitor suggested that a short adjournment may be useful for mediation to take place and for the additional information requested to be sought. At approximately 10.20am the Sub-Committee resolved to adjourn for approximately 30 minutes.

The Sub-Committee reconvened at approximately 10.45am and the Chair invited the Applicant's Solicitor to address the Sub-Committee. The Solicitor for the Applicant thanked the Sub-Committee for the time for further discussion which had resulted in agreement to some amendments to the application as follows:

- the terminal hour for late night refreshment for the sale of alcohol on Friday and Saturday until 00:30hrs;
- to close on Friday and Saturday at 01:00hrs;
- the provision of films on Friday and Saturday until 00:30hrs;
- the start time for the sale of alcohol daily from 10:00hrs;
- the terminal hour for live music to 23:00hrs.

The following proposed conditions were agreed with Environmental Health:

- the condition at page 32 of the pack, stating that the premises shall implement a noise management plan, shall be amended to state the premises shall implement a noise management plan as agreed with Environmental Health;
- a Noise Impact Assessment to be undertaken by a professional person / body within 3 months from the grant of variation date.

In addition, the parties agreed that a further condition should be added to the licence that:

- (on Friday and Saturday) customers shall not be permitted to use the rear yard after 23:00hrs except for customers using the rear yard for smoking and no drinks shall be taken outside after 23:00hrs.

The objection from Durham Constabulary remained outstanding.

The Chair invited questions from the Sub-Committee.

Councillor Brown asked whether an agreement had been reached on the disposal of bottles and also whether the crime records were available for the vicinity of the Big Jug. The Applicant's Solicitor confirmed that agreement had been reached on the disposal of bottles in the bottle bins.

The Principal Licensing Officer confirmed that 49 crime incidents had been logged over the past 12 months in the vicinity of the Big Jug, including the Gala area.

The Chair invited the Applicant's Solicitor to address the Sub-Committee.

The Solicitor explained that the Area Manager for Star Pubs and Bars Ltd managed approximately 35 pubs in and around the Durham area.

Star Pubs and Bars Ltd was part of Heineken UK which had approximately 2,500 licensed premises across the UK. £400,000 had been invested into the Big Jug, with 10 jobs being created. The tenants were experienced and successful operators, having detailed knowledge of the Durham market, running additional bars in Durham and Crook. They had personally invested £50,000 to transform the pub.

The Applicant's Solicitor drew the Sub-Committee's attention to paragraph 8.57 of the s.182 guidance which stated 'representations must be confined to the subject matter of the variation'. In addition, the Thwaites case established that 'real evidence' must be presented to support the reason for imposing the licence conditions. The Solicitor clarified that the application sought an additional trading time of only 30 minutes on a Friday and Saturday.

The Solicitor highlighted that there was currently no condition on the licence for door staff and the Applicant's proposal was for the condition for the requirement for door staff to be risk assessed. Whilst Durham Constabulary proposed a minimum of two door staff should be deployed from 19:00hrs until 30 minutes after the premises closed on a Friday, Saturday and Bank Holiday Sundays, there had been no incidents of crime and disorder. The Solicitor gave the view that there was no 'real evidence' to support Durham Constabulary's request for door staff. He added that the fact that all other premises in the vicinity had a requirement for door staff was irrelevant. Therefore, the proposal for door staff to be risk assessed was proportionate and appropriate, particularly when only 30 additional trading minutes were requested.

The Solicitor spoke of the premises next to the Big Jug which also offered live music and he noted the condition for door staff at that premises was imposed following a Summary Review hearing. Prior to that, their door staff condition was on a risk assessed basis. For these reasons, the Applicant requested that the Sub-Committee consider the proposal for a risk assessed door staff condition. With reference to the representation from Dr and Mrs Bremner, the view of the Applicant was that the variation was sensible and considered, with the extension being in line with the framework hours and the application sought slight flexibility to allow the Big Jug to compete with other premises in the area. The Solicitor highlighted the experience of the premises operators, the substantial investment by Heineken and the opportunity for the local area. He added that the Applicant, tenant and the Applicant's Solicitor would all be happy to supply contact details to Dr and Mrs Bremner, should they wish to discuss matters further.

The Applicant's Solicitor concluded that the Applicant wished to create an enjoyable and safe environment with the correct measures in place, and with the endorsement of Heineken and the expertise of the tenant, he assured the Sub-Committee that the licensing objectives would continue to be upheld.

He stressed that it was not in the Applicant's interest for issues to be caused to local residents as that would cause reputational damage. He also referred to the number of pubs which were being forced to close due to the cost of living crisis and the opportunity for the Big Jug to improve the local area through creating a great British pub. The Solicitor pointed out that no 'real evidence' had been provided to support the imposition of the condition requested by Durham Constabulary. He respectfully requested that the application be granted, with the inclusion of the risk assessed door staff condition.

In response to a question from Sgt Dickenson as to when the Licence was first granted for the Big Jug, the Principal Licensing Officer confirmed the licence was granted on 24 November 2005. Sgt Dickenson questioned why the Applicant wished to run the premises on a relatively old licence, particularly following the recent refurbishment of the premises.

The Solicitor reiterated that at present there was no condition for door staff and as the Applicant now sought only an extra 30 minutes' trading time, the Applicant considered the condition for door staff to be risk assessed was appropriate.

In the final summing up, Sgt Dickenson on behalf of Durham Constabulary highlighted that the Licensing Act 2003 was clear that the police should be the main source of advice in relation to the prevention of crime and disorder. She added that having worked for Durham Constabulary for 18 years and within the Licensing Team for 10 years, she had dealt with serious assaults and injuries which could have been prevented. She added that the neighbouring premises, the Drunken Duck, was recently subject to a Summary Review and the premises did not have door staff when the incident took place. Sgt Dickenson commented that she was surprised that having invested £400,000, the Applicant refused to include a condition for door staff on Friday, Saturday and Bank Holiday Sundays, to promote the prevention of crime and disorder.

In response, the Applicant's Solicitor pointed out that evidence of crime and disorder and assaults did not relate to the venue under consideration. At present, the premises was permitted to trade until midnight without door staff and the Applicant now sought only an additional 30 minutes' trading time. He maintained that the condition for a minimum of two door staff was not proportionate and a condition that door staff be risk assessed was appropriate. He concluded by saying the operator was experienced to trade to the proposed timings, with the risk assessed condition. The Applicant's Solicitor concluded by clarifying that the proposed condition that customers shall not be permitted to use the rear yard would apply to Friday and Saturday.

At approximately 11.15am the Sub-Committee **Resolved** to retire to deliberate the application in private and Councillor Brown left the meeting.

At approximately 11.50am the meeting reconvened and the Chair delivered the decision of the Sub-Committee (Councillors Hampson, Adcock-Forster and Wilson). In reaching their decision the Sub-Committee took into account the report of the Principal Licensing Officer, the oral and written representations of the Applicant and Objectors. The Sub-Committee also considered the Council's Statement of Licensing Policy and s.182 guidance issued by the Secretary of State.

RESOLVED

The Sub-Committee agreed:

- a) to accept the mediated amended conditions;
- b) to accept Durham Constabulary's proposed condition that a minimum of 2 members of door staff be deployed from 19:00hrs until 30 minutes after the premises closes on Friday, Saturday and Bank Holiday Sunday.