

**LICENSING PANEL
12 JUNE 2017
2.00 - 3.25 PM**



Present:

Councillors Allen (Chairman), Ms Gaw and Finnie

1. Declarations of Interest

There were no declarations of interest.

2. The Procedure for Hearings at Licensing Panels

The panel noted the procedure for hearings at Licensing Panels.

3. Application to Vary a Premises Licence for The Boot, Park Road, Bracknell

The Panel carefully considered all the information presented, both written and oral representations, from:

- the Licensing Officer who outlined the issues;
- the Applicant,
- the Interested Parties;

together with reference to the appropriate Licensing objectives, the Council's own Licensing Policy and the Secretary of State's guidance. At the conclusion of the proceedings all participants present confirmed that they had been given the opportunity to say all they wished to say.

The Panel noted that there had been no representations made by the Police, or any of the other Responsible Authorities. The Panel bore in mind the promotion of the four licensing objectives, the relevant objectives in this case being potential for noise nuisance, protection of children from harm and crime and disorder. The focus of the hearing and the issue which separated the parties was around the potential and actual noise nuisance at both ends of the day as the application is to open at 7.30am for breakfast trade and open later on specific days particularly New Years Eve and Public and Bank Holidays

The Panel decided that granting the licence would not have an adverse impact on the promotion of the four licensing objectives, and agreed to grant the Licence with an additional condition **to require the Designated Premises Supervisor to ensure monitoring of outside areas including the smoking areas is undertaken at least every 30 minutes from 22:00 until at least an hour following the premises' closing time, with a written log kept.** This is to ensure that noise outside the premises is kept to a minimum after sociable hours. This condition substitutes that of existing condition 25.

The Panel recognised the improvements proposed to the premises and the significant investment, and agreed that the new proposals for a food focussed pub were to be welcomed. The Panel hoped that through a gastropub offer, good management and

changes to the staffing patterns, disturbances could be prevented or at least kept to a minimum. It was hoped that the behaviour of patrons would improve following the renovation and focus on dining in a seated service layout. They also noted that the new establishment would attract a more upmarket clientele, by provision of more expensive craft beers rather than common tap beers.

The Panel were informed that regulated entertainment may include acoustic live performances, but would be reasonable within a dining establishment and would not include regular live sport, karaoke or similar.

The Panel raised concerns about migration from other pubs which closed earlier than this premises, and were reminded that speculation without evidence could not be the basis of a refusal. The presumption is to grant the licence and deal with potential rather than actual breaches via a review.

The Panel heard from objectors who cited concerns over noise disturbance, particularly around the extended hours on bank holidays and New Years Eve. The Panel formed the clear view on the balance of probabilities that the evidence of actual noise in the past was cogent and compelling in respect of noise at the end of the evening. The representations of the local residents in respect of the noise experienced in the evening and at night were very balanced, particularised, credible and accepted by the panel.

The Panel noted that whilst the Boot will be run by different people when it reopens in the Autumn, throughout and going forward it has been owned by Greene King and the panel believe that the experience of noise in the past and the close proximity of the Public House to local housing means that without the DPS or a personal Licence holder actively monitoring the outside area noise nuisance will continue to be a nuisance to the local residents.

The Panel balanced the impact of noise nuisance on the residents with the right of the Applicant to be granted a licence and believe that the right and balanced response to this application is to grant the application but replace Condition 25 in Annex 2 of the Licence to require more intensive external monitoring after 22.00 hours so as to try and ameliorate the impact of noise nuisance on the local residents as it is clear, due to the proximity of the Public house to the local residents that without it noise will continue to impact adversely upon local residents who are entitled to be able to have their doors and windows open in the summer without experiencing noise emanating from the Boot patrons and to be able to sleep at nights without being disrupted or disturbed by noise from the patrons.

Whilst the Panel believe the representations showed a good management policy for managing the internal running of the premises in accordance with the licensing objectives, the Panel are of the view based on the evidence that specific management requirements are necessary to control the activities of patrons using the outside facilities and exiting and entering the premises in the late evening. The panel believe on the evidence the replacement condition 25 meets the licensing objectives and if the licence holders really are as concerned for the residents as they made out at the hearing this condition should be welcomed by them.

On the question of the potential for noise nuisance and general disturbance/public nuisance connected to the 7.30am opening for breakfast, the Panel were not persuaded that the premises will become what was referred to as a 'builders café' and the panel are of the view that the activities should be able to be carried out without causing any nuisance to the residents. Given that there is no history of breakfast activities, the presumption is in favour of granting the licence and if the

panel are wrong on this point, then the matter can be addressed by the local residents requesting a review. The Panel would hope that prior to a review being sought the residents would particularise their concerns to the DPS and Greene King and give them an opportunity to resolve matters first.

The Panel were keen to protect the rights of residents under the Licensing Act. Residents were asked to be vigilant, and to inform the Licensing Officer if the conditions were not adhered to.

The fact that the Environmental Health Officers had not raised an objection did not in this particular case on these particular facts detract from the compelling evidence of late night noise nuisance occurring and impacting on the residents' quiet enjoyment of their homes, and their right and the right of their children to get a good nights sleep undisturbed by the trading activities of the Boot and their patrons.

The panel - having seen the objectors and heard the evidence of the objectors - were of the view that they were people who were reluctant to complain, had tolerated considerable noise nuisance in the past and because they want to get on with their neighbours had put up with late evening and night time noise disturbance without making a fuss. That said, their evidence was compelling and the replacement Condition 25 is necessary in the view of the panel as the very minimum to try and prevent noise disturbance going forward.

At the hearing the panel said they would be imposing a new condition, what they are actually doing is replacing Condition 25 with a more particularised requirement for outside supervision after 22:00 and until an hour after The Boot closes. The Panel having taken legal advice believe they can do that without reconvening the hearing as it amounts to the same thing. It is clear that the existing Condition is not strong enough otherwise we would not have received objections. At the panel hearing, they also said that if there is any difference between what was said on the day and contained in this decision letter, this decision letter takes precedence.

The Panel hope that the Licence holder and Greene King really will address their minds and focus their management team on how they can manage the noise nuisance in the evenings given that they operate so close to the residents.

Objectors were asked to remember the mechanism for review should future issues arise with the premises, and to keep a log of noise disturbances if necessary.

In summary, the Panel accepted unreservedly on the balance of probabilities the past and future noise concerns of the residents based on their experience to date in respect of late evening and night time noise disturbance which required the new Condition 25 to attempt to reduce the nuisance going forward. This approach accords with the published case law on balancing actual with possible or speculative nuisance. This is a case of actual rather than speculative, in respect of evening noise nuisance. In respect of the potential for early morning nuisance, the panel rejected the argument and the evidence and believe the right approach is to use a review if early morning nuisance actually occurs.

CHAIRMAN

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