

**LICENSING SUB – COMMITTEE**

Monday 10th June 2019 10:00 at Guildhall Winchester

Report of the Service Lead for Public Protection

Contact Officer: Briony Appletree. Tel No: 01962 848188

Application: Application for Variation of Premises Licence

Premises: Old House Hotel, The Square, Wickham, Fareham, Hampshire,  
PO17 5JG

**Part A. Report**

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**Part A.****1. Application**

**Applicant:** G A Gourmet Ltd

**Premises:** Old House Hotel  
The Square  
Wickham  
Fareham  
Hampshire  
PO17 5JG

- 1.1 This application is for a variation to the Premises Licence under Section 34 of the Licensing Act 2003 for Old House Hotel, The Square, Wickham, Fareham, Hampshire, PO17 5JG.
- 1.2 The premises is a hotel and restaurant with a communal garden, located within a historic building in Wickham Square.
- 1.3 The application is to add Live Music (indoors and outdoors) and Recorded Music (outdoors) to the Premises Licence as licensable activities.
- 1.4 The proposed hours on the application for Live Music are 1100 to 2300 Monday to Sunday. The proposed hours for Recorded Music are 0700 to 0000 Monday to Saturday, and 0700 to 2300 on Sunday. Full details of the application can be seen in sections E and F of the Operating Schedule in Appendix 1.
- 1.5 The premises is already licensed for Recorded Music indoors between 0700 and 0000 Monday to Saturday, and 0700 to 2300 on Sunday. The premises licence also permits the supply of alcohol. Full details of the current permitted licensable activities and hours can be seen in Appendix 3.
- 1.6 Environmental Health made a representation against this application with regards to the prevention of public nuisance licensing objective. During the consultation period a number of conditions and amendments to licensable hours were agreed between Environmental Health and the applicant, the representation was subsequently withdrawn. These conditions are reflected in Section 5 of this report.
- 1.7 No representations were received by any of the other Responsible Authorities.
- 1.8 Representations have been received from 11 'Other Persons', all of which are against the application. These representations are set out in Appendix 2 and primarily relate to the prevention of public nuisance licensing objective.

- 1.9 Notice of the application was displayed outside of the premises for a period of 28 days until 22 May 2019, and advertised in the Hampshire Chronicle on 2 May 2019.
- 1.10 Notices of the hearing were sent to all Parties on 23 May 2019.

**Designated Premises Supervisor**

Laura Clare Small

**Steps to promote the Licensing Objectives**

Please see Section M Appendix 1.

## **Relevant Representations**

### **2. Responsible Authorities**

All of the Responsible Authorities have been served with a copy of the application. The representations received are as follows:

#### **Environmental Health**

Representation made and subsequently withdrawn following agreements made with the applicant to add conditions and amend licensable hours, in the interest of preventing public nuisance. These conditions and amendments are reflected in Section 5 of this report.

#### **Hampshire Constabulary**

No representations received.

#### **Hampshire Fire and Rescue Service**

No representations received.

#### **Child Protection Team**

No representations received.

#### **Building Control**

No representations received.

#### **Head of Trading Standards**

No representations received.

#### **Public Health Manager**

No representations received.

#### **Home Office**

No representations received.

#### **Licensing Authority**

No representations received.

#### **Planning**

No representations received.

### **3. Representations from Other Persons**

Representations have been received from 11 interested parties, all of which are against the application. The main concerns are with regard to the prevention of public nuisance.

Representations can be seen in Appendix 2. A map of representations in context of the premises location can be seen in Appendix 5.

### **4. Observations**

The Sub-Committee is obliged to determine this application with a view to promoting the Licensing Objectives:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

In making its decision, the Sub-Committee is also obliged to have regard to the National Guidance and the Council's Licensing Policy.

The Sub-Committee must have regard to all of the representations.

The Sub-Committee must take such of the following steps it considers appropriate to promote the Licensing Objectives:

1. Grant the licence subject to conditions in accordance with the operating schedule (modified to such extent as the authority considers appropriate for the promotion of the licensing objectives) and the mandatory conditions;
2. reject the application.

#### **Terminal hours**

The Sub-Committee should take account of the National Guidance and the Council's Licensing Policy with regard to terminal hours and take such steps as it considers appropriate to promote the Licensing Objectives.

(Licensing Policy Part 4, A8)

## **Licensing Objectives**

### Crime and Disorder

The Sub-Committee should consider any appropriate conditions to prevent crime and public disorder relating to the premises having regard to the operating schedule and the representations.

(Licensing Policy 1.9, 2.11, 2.17 and Part 4 Section A)

### Public Safety

The Sub-Committee should consider any appropriate conditions relating to public safety having regard to the relating to the premises having regard to the operating schedule and the representations.

(Licensing Policy Part 4, B2, B3)

### Public Nuisance

The Sub-Committee should consider any appropriate conditions to prevent public nuisance caused by noise pollution from the premises relating to the premises having regard to the operating schedule and the representations.

(Licensing Policy Part 4, Section C)

### Protection of Children

The Sub-Committee should consider any necessary conditions for the Protection of Children relating to the premises having regard to the operating schedule and the representations.

(Licensing Policy Part 4, D6, D7)

## **Human Rights**

It is considered that Articles 6 (right to a fair trial) 8 (right to respect for private and family life) and Article 1 of the First Protocol (right to peaceable enjoyment of possessions) may be relevant. As there is a right of appeal to the Magistrates' Court, it is considered that there would be no infringement of Article 6. Article 8 is relevant, insofar as the nearby residents could claim that this right would be infringed by disturbance from customers. This should be balanced against the applicants' right to use of their premises under Article 1 of the First Protocol. Interference with these rights is permitted, where this interference is lawful, appropriate in a democratic society, and proportionate. Likewise, the residents may argue that their rights under Article 1 of the First Protocol would be infringed. If conditions are imposed, there should be no interference with any convention rights. To the extent that any interference may occur, it would be justifiable in a democratic society, and proportionate.

## 5. Conditions

The following mandatory conditions are already in effect on the Premises Licence and are imposed on a Premises Licence in any case.

### Mandatory Conditions

#### **The Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014**

**– effective from 1 October 2014**

1. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.  
 (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
  - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—
    - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
    - (ii) drink as much alcohol as possible (whether within a times limit or otherwise);
  - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
  - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carried a significant risk of undermining a licensing objective;
  - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
  - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
2. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
3. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.  
 (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
- (a) a holographic mark, or
  - (b) an ultraviolet feature.
4. The responsible person must ensure that—
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other an alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
    - (i) beer or cider: ½ pint;
    - (ii) gin, rum, vodka or whisky: 25ml or 35ml; and
    - (iii) still wine in a glass: 125ml;
  - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
  - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

**Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014**  
**– effective from 28 May 2014**

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
2. For the purposes of the condition set out in paragraph 1-
  - (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
  - (b) “permitted price” is the price found by applying the formula-  $P = D + (D \times V)$  where-
    - (i) **P** is the permitted price,
    - (ii) **D** is the rate of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
    - (iii) **V** is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
  - (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence-
    - (i) the holder of the premises licence,
    - (ii) the designated premises supervisor (if any) in respect of such a licence, or
    - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
  - (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of

- the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- (e) “valued added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.
3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
  4. (1) Sub-paragraph 2 applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.
    - (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

### **Possible Conditions**

If the application is granted, the Sub-Committee may wish to consider the following conditions to reflect the Operating Schedule.

Those conditions in italics are those which have been suggested by Environmental Health and subsequently agreed with the applicant.

### **Operating Hours**

1. The hours the premises may be used for regulated entertainment shall be:

#### **Live Music** (Indoors and Outdoors)

- (i) Monday to Sunday 1100 to 2300

#### **Recorded Music** (Indoors and Outdoors)

- (i) Monday to Saturday 0700 to 0000
- (ii) Sunday 0700 to 2300

## **Public Nuisance**

- PN1. Live and/or recorded music shall only be played outdoors once a month between the hours of 1100-2200.*
- PN2. Whilst music is being played outdoors, staff shall carry out noise monitoring periodically from the boundary of the nearest residential property to ensure that the volume remains at an acceptable level.*
- PN3. The Premises Licence Holder shall ensure that nearby residents are aware of events and provide them with a telephone 'hotline' number in case they wish to make a complaint. Such resident communication shall be agreed with the Licensing Authority prior to playing amplified music outdoors.*
- PN4. Whilst amplified music is being played indoors, all windows and doors shall be kept shut, save for access.*

## **6. Other Considerations**

### **Council Strategy Outcome (Relevance To:)**

This report relates to the fourth Strategic Outcome; 'Improving the quality of the District's environment' by working with partners and using powers available to us to make Winchester a safe and pleasant place to live, work and visit.

### **Resource Implications**

A statutory licence fee of £315.00 has been received. It is anticipated that an appropriate level of officer attendance will be provided within the existing budget.

### **Appendices**

1. Application
2. Representations from Other Persons
3. Premises Licence
4. Map of premises location
5. Map of representations