

Smith & Western Boxhill Road, Tadworth, KT20 7LB

Decision Notice: Application for a Variation to a Premises Licence

Background

1. Mr Troy Cox and Mr Jamie Cox (**Applicants**) being the premises licence holders of the Smith & Western, submitted an application for a variation of a premises licence (**Application**).
2. As relevant representations in respect of the Application were submitted, a hearing was arranged to take place on 23rd March 2015 at 10.00am in the Council's Chamber to enable the Council's Licensing Sub-Committee, consisting of Councillor Margaret Cooksey, Councillor Paula Hancock and Councillor David Mir to determine the Application. The hearing was chaired by Councillor Margaret Cooksey.

Attendance and Participation

3. The hearing was attended by:

On behalf of the Applicant	Mr Troy Cox Mr Stephen Thomas Ms Catherine Elkin	Applicant Solicitor Restaurant Supervisor
On behalf of Other Persons	Ms Rosie Jordan Councillor David Preedy	Resident of Boxhill Road District Councillor for Boxhill and Headley who was speaking on behalf of the Other Persons

4. No written representations were received by any Responsible Authority.
5. The Licensing Sub-Committee heard from each of those attending.
6. The Licensing Sub-Committee is satisfied that notice of the hearing was served on all relevant parties, and that all those entitled to speak at the hearing had an opportunity to do so.

Summary of Discussion

Applicant

7. The Applicant's solicitor explained that the purpose of the application was to tidy up and improve the premises licence. It was explained that embedded restrictions which were applicable under the previous licencing legislation regime still remained on the licence and were inappropriate since the introduction of the Licensing Act 2003.

8. The Applicant stated that they wish to withdraw their request for the provision of recorded music from 10.00 – 23.000 hours daily. It was explained that recorded music is only incidental to the operation of the restaurant and is therefore not a regulated activity.
9. The Applicant produced a copy of its menu and explained that this was a food driven establishment with food being offered throughout its trading hours. It was confirmed that there is no intention of the restaurant becoming a pub.
10. The Applicant explained that the application to vary the premises licence has been made because the establishment has to adapt to the changing social climate and, in the Applicant's experience, people are coming out and eating later. Under the current licence the Applicant is prevented from serving alcohol or hot food past 11pm to customers who may already be sitting having a meal or waiting for a taxi.
11. The Applicant confirmed that they are a responsible establishment and therefore are seeking a variation so they can trade as they wish in compliance with the law.
12. With regard to the representations made by the Other Persons, the Applicant noted that the representations were expressing general fears in respect of the Application rather than anything evidence based. The Applicant stated that they could not be held responsible for any problems attributable to the National Trust site down the road. The Applicant confirmed that they have 18 staff working to ensure that customers do not leave with glasses or litter.
13. The Applicant explained that under the previous licencing regime they had no complaints when they had a Supper Hours Certificate which enabled them to operate until 12.30am. The Applicant also pointed out that under the terms of the current licence the opening hours of the premises are unrestricted and therefore under this Application there is more certainty as they wish to restrict the trading hours to 9.00am – 00.30am daily with the exception of New Years Eve.
14. The Applicant's solicitor confirmed that Troy Cox, the premises licence holder, lives next door to the restaurant and has children. The Applicant would not be making this Application if he thought the variation of the licence would be disruptive to his family.
15. It was highlighted that the Applicant has a quick positive response to complaints. An example was given where neighbours complained about the smells from the restaurant kitchen. In response to the complaint the Applicant redirected the air vents.
16. The Applicant confirmed that they did not expect any increase in trade from the variation of the licence. However, it is important for the revenue and competition that any customers that do arrive later on for a meal can stay and be served alcohol until the restaurant closes.
17. The Applicant confirmed that they already have processes in place to minimise any potential for complaints. In particular it was explained that they do not admit new customers past 10pm unless they are having a meal. They also marshal the car park to ensure that any guests arriving after 9pm are directed to park in the rear car park to avoid any noise disturbing the neighbours when they leave. The Applicant confirmed that there is also a decking area outside which they are willing to close to members of the public at 11pm for licensable activities.
18. The Sub-Committee asked the Applicant whether there were signs in the restaurant asking customers to leave quietly. The Applicant explained that there are 6 or 7 signs in the car park and 1 sign inside the premises asking guests to leave quietly. The Applicant indicated that they would be prepared to put more signs inside.

19. The Sub-Committee then questioned the Applicant as to whether the decking area outside was a smoking area. The Applicant confirmed that they are prepared to close off the decking area to licensable activities after 11pm but noted that as smoking is not a licensable activity. The Applicant explained that they have had no complaints regarding smokers being noised on the front of the decking area but if this did become an issue they would be prepared to reassign the smoking area to the back of the decking.
20. The Other Persons questioned the Applicant on the opening hours of the restaurant. The website says the restaurant closes at 11pm but the current premises licence states the opening hours are unrestricted. The Applicant confirmed that the restaurants in Crawley and Chichester have had variations of their licences approved to stay open until 12.30am. The Applicant confirmed that they do not want customers coming in at 11.30pm and reaffirmed that they would only allow customers in after 10pm if they were having a meal.
21. In summing up the position the Applicant's solicitor said that representations received regarding the Application are based on historical concerns which were dealt with years ago. He confirmed that the Applicant has no outstanding complaints. The purpose of the Application is to increase the hours for the sale of alcohol and to provide late night refreshment so customers can eat at their convenience and the licence has flexibility to meet the needs of the operation.

Other Persons

22. Councillor Preedy spoke on behalf of the local residents and those who had made representations. He explained that the residents are satisfied with the current arrangement. He explained that he went to the restaurant to specifically look for signs asking customers to leave quietly and he couldn't find any signs. He also said the restaurant only has a single door so there is potential for noise to escape as people are entering and exiting.
23. The main concern of the people he has spoken to is that by extending the hours in which alcohol can be served will change the clientele and it will be harder to manage. Currently the theme of the restaurant is family orientated so it is understandable that the restaurant closes at 11pm.
24. Councillor Preedy explained that the restaurant is located in a rural area next to a park home estate where the residents are retired. It was also explained that the homes are not as substantially constructed and may not be as sound proof as other conventional properties.
25. There are concerns that the variation of the licence will cause more traffic and the younger residents walking back to the village will cause noise late at night.
26. The Sub-Committee then asked Rosie Jordan if her concerns regarding the change in clientele were that she thought more groups of youths would use the establishment if the variation was granted.
27. Rosie Jordan confirmed that there are issues with young people walking by making noise at night and she has seen beer and wine glasses on the floor which she presumes are from Smith and Western, although she cannot prove it. Ms Jordan explained that if it was written into the premises licence that the Applicant could not admit customers after 10pm unless they are eating a meal this would provide some comfort. The Applicant's solicitor added that generally the local young people do not come to the restaurant because it is too expensive.

28. Following written representations received from the other persons, the Sub-Committee questioned whether beer was only sold in 2 pint pitchers. The Applicant confirmed that they do serve beer in half pint glasses and Catherine Elkin said that the cost of a 2 pint jug is £9 or upwards.

Decision

29. The Licensing Sub-Committee considered the Council's own Licensing Policy and the written and oral representations made by the Other Persons and the Applicant.
30. The Licensing Sub-Committee was mindful that in accordance with the Secretary of State's guidance issued under Section 182 of the Licensing Act 2003 they are under a duty to uphold the fundamental licensing objective of the prevention of public nuisance.
31. Having regard to the above, the Licensing Sub-Committee decided to grant variations 1, 2, 4 and 5 applied for by the Applicant as set out in the Application at LC5 of the report. The Applicant voluntarily withdrew its application for the provisions of recorded music from 10.00 – 23.00 daily.
32. Following advice from the Licensing Sub-Committee's legal adviser, the Licensing Sub-Committee's decision to grant the Application is subject to the following additional condition:
 - a. That additional signage will be displayed internally within the premises, in prominent positions, asking customers to have respect for the neighbours by leaving quietly.
33. The Licensing Sub-Committee explained that the condition is imposed in order to promote the licensing objective of preventing public nuisance as it was clear from the representations made by the Other Persons that possible late night noise was a major concern for the local residents.
34. The Applicant volunteered to close off the outside decking area at 11pm to licensable activities.
35. The Licensing Sub-Committee, in making its decision, placed weight on the fact that the Applicant actively manages the establishment in a responsible manner by not admitting customers after 10pm unless they are having a meal and by marshalling the car park to ensure that any customers that arrive after 9pm park in the rear car park to avoid any noise disturbing the neighbours when they leave.

Rights of Appeal

36. The Applicant, Other Persons and/or Responsible Authorities have a right to appeal to the Magistrates' Court within 21 days of receiving this written decision notice.