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Marshall, Mark

From: John O'Donne
Sent: 31 July 2018 13:00
To: Marshall, Mark
Cc: Mike Doupe; stephen.crookes@; Cllr.DHowarth; Cllr.RNoblet
Subject: LIME BAR
Attachments: Licensing vary object.docx

I have now prepared the amended objections. This should replace the earlier one as it will assist you to prepare your report and will assist the committee and the applicant to understand the argument. You will see that I have incorporated my skeleton argument on the legal point about which we differ.

What i have not been able to do is prepare a schedule of incidents because I did not yet have the material held by mike Goblet. At this stage it is unclear whether it is technically possible for me to produced the recordings as you demand rather than his department arranging payback but we will see. it may be that I do not need a schedule at all as it is evidence and can probably best be summarised. I can decide once I hear from Mike Gowlett.

I must once again urge your legal department to consider what parts of your discussion with the applicant and her solicitors can be disclosed. It is difficult to see how all of it can be free from the duty to be open and doing so would ensure that there are no suspicions from any impartial observer that the council's position has been compromised in a way which might affect the fairness of the application hearing. I leave it with you.

JOD

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LIME BAR LICENSE VARIATION JULY 2018

We object to the application which we set out to correspond with the paragraphs in the application.

- I. The hours should remain as now. There is no evidence of demand for refreshment during the night and cooking smells already constitute a nuisance. No reason is given for seeking the extension so it is difficult to assess the commercial case. A meeting took place between officers, the business and their solicitors. The council refuse to disclose, even in general terms, what was discussed so it is impossible to address the need or the basis for the extension. We have information to suggest that a comparator has been made with other premises including Bon Bons. If so, this is misconceived. Bon Bons has a different operation and caters for very different customers.
- The applicant has shown a cavalier attitude to planning law and has demonstrated an inability to train and supervise in a way which would prevent nuisance. See later.

J. As above.

L. As above. For the reasons set out later we object to the removal of the following conditions;

- a) the area outside where drinking and smoking etc is permitted, particularly the garden area together with conditions relating to heaters and flood lighting.
- b) keeping windows and doors closed,
- c) the fitting of self-closers
- d) fitting ventilation so as to prevent the need for doors and windows to be opened.
- e) delivery and waste collection times

M. We say as follows in the same designation as the application;

b) there shall be a secure gate with a locking mechanism which cannot be reached from outside in place of the current rear gate, to be approved by SRBC.

d) no drinks should be taken on external areas by customers after 2200 Monday to Saturday. The current time of 2130 on Sunday should remain. The condition must prohibit the supply or consumption of any drinks on the external areas after the stated times. We agree that not only must customers not use the garden but there is to be no use of the garden for any purpose other than required for essential maintenance or safety.

We agree that the windows and doors must be closed, save for access or egress, but the condition must apply at all times save that the front door can be open until 1800 Monday to Thursday but until 1600 on Friday. The doors and windows must expressly encompass all openings to the building or any extension to prevent misunderstanding.

We agree to the times for deliveries and waste collection provided they do

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not take place to or from the rear adjacent to 2 Queensway and the side facing Queensway except that staff may remove rubbish from the rear to a receptacle of a type, size and location agreed by officers between the hours of 0800 to 1700 Monday to Friday and between 0900 and 1700 Saturday. For the avoidance of doubt, rubbish does not include any item used for holding alcohol.

There shall be no beer kegs or equipment stored in the area between the rear door and the rear gate or the side facing Queensway.

No person shall use the rear door or gate other than for reasons of safety or maintenance or as permitted for removing rubbish.

e) see remarks in d) above about use of the garden. The perimeter of the garden is open save for a low wall. Children are at risk if allowed onto the garden. See later.

COMMENTARY AND EVIDENCE.

Our house directly adjoins the premises and, since we retired (in John's case January 2017 and Jenny's case Dec 2017) we have been in a unique position to experience the activities of the bar from early morning until late at night ie the entire period of operations. A number of features relevant to the licensing objectives have become apparent.

1. prevention of crime;

- i) there was an armed robbery of the premises and an unsuccessful attempt at burglary. Our house is directly adjacent to the premises. We share a fence with the bar extending along the side of our house and our back garden. Our living room is within 12 feet of the rear of the premises. The rear of the premises is fitted with a flimsy domestic gate which offers poor security. It is fitted with a single barrel bolt which can be reached by leaning over the top as we saw a workman do. Once inside, any intruder would be hidden from view and free to climb over the fence into our property. This would be made easier if items, particularly beer kegs on which an intruder could stand, are stored in the area. There is a low roof along most of the side from which access to our property is easy for anyone getting through the gate. The CCTV which is fitted offers no security. It is not monitored. It failed to prevent the 2 attacks mentioned above. It failed to provide evidence to materially assist the investigation. No one has been arrested let alone charged. The detection rate for domestic burglary is shockingly low; available figures put it at less than 5%.
- ii) There is already a regular breach of the condition limiting use of the patio to the area immediately in front of the building in that people use the area between the building line up to the garden. This is a criminal offence as well as increasing the noise nuisance – see 3 below.
- iii) Cllrs Howarth and Turner witnessed an altercation outside the Lime Bar 25 July requiring the attendance of 2 police vehicles.

2. Public safety; the safety of pedestrians including the many children passing

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the junction to and from the several local schools is compromised by lorries parking on the yellow lines and on the pavement close up to the junction with Liverpool Rd. I have seen them delivering to the Lime Bar and one driver said he was doing so. Given that lines were installed for safety reasons and the busy nature of the junction, the breach of the objective is obvious. The applicant can take simple steps to prevent the risk of harm from people having to step out of the blind side of a lorry into a busy junction by confirming parking arrangements at the time of ordering and speaking to drivers on arrival to direct them to safe parking.

3. Public nuisance; there have been constant examples of nuisance. These have been communicated by email to various departments of SRBC including Janice Crook, Michael Gowlett, Christopher Ward and Mark Marshall. They should have a record of these complaints or access to them from their email system. In addition Mr Gowlett has the monitoring form we completed over a 2 week period and the 2 periods of sound monitoring on calibrated equipment which demonstrate some of the problems. The main points are these;

i) The most prominent issue at the back has been the regular sound of ice being collected. The bar sells a lot of slush / iced cocktails and drinks. This is made by a machine at the back. It is shoveled into a bowl or bucket. (Try it and see what sound it makes). There is no warning. We are suddenly jolted by the shovel gathering up ice which then crashes into the receptacle. Each occasion involves 4 or 5 shovels and happen many times from 0930 until after 11pm. This has happened every single day since the premises opened 12 months ago. The Lime Bar have been deaf to our complaints. It is very jarring on one's nerves. None of our emails to the Lime Bar have ever been acknowledged let alone answered. There have also been sounds from the kitchen as well as staff smoking and talking loudly, sometimes engaging in mobile phone conversations of a private nature which forces us to move away from what we are doing to avoid embarrassment. (Bear in mind that we do not know these people nor have any way of assessing their background so this is also relevant to our concerns in 1 above).

We frequently suffered cooking smells.

Eventually an application was submitted for the construction of a lean-to at the back and to authorize the smaller shed erected without consent to house equipment and as a store. The extension was to cover 3 freezer units and ice machine which had been installed without regulatory approval in the open air. After the work was done the sound of ice shoveling has continued apace because they are propping the door open. We have sent an embarrassing number of emails to the Lime Bar (embarrassing in the sense that we do not want to be seen as complainers yet feeling impotent because they simply ignore us). We asked them to take the simple step of closing the door while engaged in this activity but they are not prepared to take this simple step. It shows a disregard for the neighbours and an inability to run the business in a way which does not breach the objective. They take action only when absolutely compelled

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to do so hence the need for conditions which are clear, contain no loopholes and can be subject to speedy, cheap criminal action.

- iv) The patio is a regular source of noise nuisance. It is illogical that there are strict conditions to contain noise in the premises but nothing at all in respect of the activities in the open air. People get loud as the drink takes effect resulting in cackling and shouting. The level of disturbance depends of course on the type of persons involved but most weekends while the sun has been shining have resulted in us being disturbed by noise. The same occurs in the evening. The only way we can tolerate this is the knowledge that it will go quiet at 10pm and 2130 Sunday before the working week starts. There are times when people linger on the patio. Unfortunately they tend to be those who have drunk most and are least inclined to leave the area. If it is the case that the Lime Bar are using Bon Bons as a comparator, an examination of the Bon Bons outside area is revealing. It is tiny. There is no drinking while standing. They do not offer alcohol promotions. It is confined to the front facing Liverpool Rd. The side facing Queensway is shielded by dense decorative shrubs. The situation at the Lime Bar is a recipe for noise nuisance and has proved to be so.

The council officers are in no position to observe excessive noise as they undertake ad hoc infrequent visits fitted into busy schedules. We understand that the police have logged a number of complaints relating to the Lime Bar. Taken together it seems that supervision and training of staff is less than optimum. Postings in online reviews complain of poor service at times and querying supervision and training. Our observations would support that opinion thus raising the question as to whether the bar can effectively meet this particular objective.

- v) We have been plagued by music leaking from the bar since it opened. Over New Year it was atrocious. This was captured by calibrated equipment fitted by SRBC. It has of late moderated but there is no escaping the fact that we continue to feel the effects of deep base notes which resonate through the structure to add to what can be heard. This occurs on Fridays and Saturdays and seems to depend on how loud the patrons are; staff tend to increase the volume between 1020 and 1040. Our emails to the Lime Bar are never acknowledged let alone answered. It might help us if there was some engagement but the operators have never sought to discuss these issues with us.
- vi) If live and recorded music is to be removed as a licensable activity because of the operation of law but for no other reason, and if conditions cannot be imposed for the same reason then we nonetheless advance it to show that the operator's attitude demonstrates that she lacks the ability to prevent nuisance which is relevant generally. The examples of current nuisance from recorded music shows that a nuisance already exists (albeit one which the law cannot regulate unless a review takes place) and this is relevant to the

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need for conditions to meet other nuisances not relating specifically to music. See observations on law below.

- vii) The later customers leave, the later into the night we suffer the noise of people shouting 'goodnight', bleeping as car doors unlock, shutting car doors, starting engines, letting them idle while they wait for stragglers including taxis waiting for customers. We know they are from the wine bar as we can see where they come from our house as well as the conversations they have across the garden with people waiting on the patio. We spoke to one person parked across our drive around 1030pm who confirmed they were waiting to pick people up from the Lime Bar.
- viii) flood lighting and heating will encourage larger numbers over greater types of weather thus increasing the nuisance.
- ix) allowing use of the whole patio beyond the area immediately in front of the building ie beyond to the building line and up to the garden, will increase the volume of noise reaching us. The current condition provides a measure of protection by keeping customers behind the protective line of the building. This condition is breached regularly with patrons including noisy groups of men standing drinking beyond the building line and close to the garden.
- x) The garden is open to Queensway and our property. There was one occasion when revelers decided to move on to the garden grass. They noisily continued to shout and laugh there undisturbed for more than 15 minutes until we alerted the Lime Bar by email and staff then emerged to persuade them, with some dissent, to move. The objective cannot be met by removing the condition preventing it's use. It is a tempting shortcut and invites access (as regrettably demonstrated by the robbers).
- xi) Delivery vehicles park right on the yellow lines in Queensway, on the pavement and right up to the junction with Liverpool Rd. This is a nuisance to people trying to get past especially for those with sight impairment or difficulty walking.
- xii) There are fairy lights fitted along the side facing Queensway. These constitute a nuisance because they add to the already bright light emitted from the large bar window situated closed to our house and the large "Lime Bar" sign, they wrap round the side adjacent to our family room and they are on 24/7.

4. Protection of children; the open access of the garden which facilitated the crimes mentioned above also puts children at risk from unwanted attention from anyone on the pavement on Queensway. The property is bordered by Liverpool Rd and Queensway. Both are busy roads used by busses and heavy vehicles. Vehicles, including lorries delivering to the premises stand on yellow lines in Queensway leading to poor sight lines and a risk of harm to any child who climbs the low wall and goes into the road. We have seen several occasions when children have been left to play on the garden.

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LEGAL ISSUES

Para 2.16 of the Guidance states;

"Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health."

This is capable of applying to the noise of beer deliveries, ice collecting at the rear, to the fairy lights and lorry parking.

Para 2.17 states;

"Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate."

To meet this objective conditions were imposed requiring the windows and doors to be closed and;
the prohibition on heaters and lighting outside and;
the prohibition on use of the garden and;
the restriction on hours relating to the outside,

Para 2.17 goes on to deal with the provision of music;

"However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16)." But;

Para 16.37 states;

"Whether a license condition relates to live or recorded music will be a matter of fact in each case. In some instances, it will be obvious that a condition relates to music and will be suspended, for example "during performances of live music all doors and windows must remain closed". In other instances, it might not be so obvious: for example, a condition stating "during performances of regulated entertainment all doors and windows must remain closed" would be suspended

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insofar as it relates to music between 08.00 and 23.00 on the same day to an audience of up to 500, but the condition would continue to apply if there was regulated entertainment after 23.00."

Para 16.38 states;

"More general licence conditions (e.g. those relating to overall management of potential noise nuisance) that are not specifically related to the provision of entertainment (e.g. signage asking patrons to leave quietly) **will continue to have effect.**" (emphasis mine)

The conditions relating to doors and windows were not imposed to address the provision of music. It was the sound produced by people which led to the condition being imposed. It follows that the condition must remain unless the applicant can show what has changed.

Conclusion.

We oppose the application as the bar have shown that their staffing, training and supervision is inadequate to the task of delivering the objectives. Our objections are proportionate and reasonable.

John and Jenny O'Donnell 23/7/18