

LICENSING SUB-COMMITTEE

Minutes of the meeting held at 2.00 pm on 18 July 2024

Present:

Councillor Kira Gabbert (Chairman)
Councillors Simon Jeal and Alexa Michael

Cllr Tony Owen: (Objector)
John Stephenson: (Council's Planning Authority Officer)
Council's Public Health Nuisance Team Officer: (Maggie Richardson)
Council's Solicitor: (Paul Courtine)
Council's Licensing Officer (Lee Slaney)

1 APPOINTMENT OF CHAIRMAN FOR THE MEETING

Members appointed Councillor Kira Gabbert as Chairman.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 HEARING FOR A VARIATION TO A PREMISES LICENCE: VYBES BY ALPHA (FORMERLY SCALA) 132 - 134 HIGH STREET ORPINGTON, BR6 0JS

Applicant's case:

Mr Elford announced that the application was amended so that the hours for sale of alcohol, recorded music, live music, late night refreshment and performance of dance were as follows:

Mondays to Wednesdays – 11:00 to 23:00

Thursdays – 11:00 to 00:00

Fridays and Saturdays – 11:00 to 01:00

Sundays – 11:00 to 00:00 (but the Sunday before a bank holiday – 11:00 to 01:00)

The hours of opening were from 11:00 to 30 minutes after the end of the licensable activities on the relevant day.

Mr Elford commented on the objections from Cllr Owen and residents of Broomhill Road by saying parking was not relevant and there was a lack of substantive evidence of any problems. It was not clear where all of the objectors lived. The applicant was prepared to have door staff and a dispersal policy, which demonstrated a commitment to the licensing objectives.

In relation to the objection from the Public Health Nuisance Team, this should be ignored as it was not specific and frivolous. It was acknowledged that the planning permission was not consistent. There was no intention of breaching planning control and the situation would be remedied.

Questions to the applicant:

Cllr Gabbert asked about the use and the applicant stated it would be a restaurant serving Mediterranean style food. Condition 10 would therefore no longer be appropriate, as it specified Italian food. Habits were changing and restaurants were becoming busier on Thursdays and Fridays and also later.

Cllr Michael queried the need for such late opening hours for a restaurant. The applicant replied condition 11 ensured the premises were used as a restaurant. Customer demand was changing towards eating and staying out later. In relation to paragraph 29 of the planning appeal decision, the applicant pointed out it had been made 20 years ago and reiterated the change in patterns. He added planning was a different regime, which went beyond the licensing objectives. The nearest residents to the patio were above one of the shops down the street.

In response to Cllr Jeal, the applicant confirmed the layout of the premises on page 35 was correct. The patio was an external smoking area and drinks weren't allowed. The operation would be an upmarket restaurant with entertainment during busier times, such as a belly dancer, pianist and recorded music. It would not be so loud that people couldn't hear each other. There shouldn't be a problem with people moving on to these premises after closing time elsewhere, as the last entry time would be 1 hour before the end of the licensable activities. The applicant had owned the premises since 2021 and was not aware of any noise complaints in that period. Cllr Jeal queried having door supervisors. The applicant stated this had been offered to address concerns over nuisance. It was acknowledged their presence could give the premises an appearance of more of a nightclub than a restaurant.

Mrs Richardson asked what steps would be taken to prevent a public nuisance. The applicant stated windows and doors would be closed after 21:00, there would be a dispersal policy, door staff would be on duty on Fridays and Saturdays and there was a last entry time.

Cllr Owen expressed concerns over the seeming emphasis on music, saying he didn't want the premises to become a nightclub by the back door. The applicant explained the proposed operation and in particular how there was no dancefloor. Condition 11 prevented a nightclub.
Objectors' case:

Mr Stephenson stated the proposal would be contrary to planning conditions, which were intended to protect residential amenity and prevent public nuisance. No application to vary the permission had been received. There was no current breach of planning control.

Mrs Richardson announced that in light of the steps the applicant was now proposing, she no longer objected.

Cllr Owen pointed to the Council's statement of licensing policy, which said a premises licence should not be granted if the relevant planning permission was not in place. The area had changed in the 20 years since the appeal decision with many new houses in the area. After midnight the High Street was a quiet residential area. There was inadequate information to make a decision.

In reply to questions, Cllr Owen wasn't able to specify any past instances of anti-social behaviour that were relevant to this application, nor was he aware of any complaints from residents of Vincent Close.
Final comments from applicant:

Mr Elford added that the people next door had not objected, nor had anyone on Vincent Close. An application to vary the planning conditions would be made and a contact number condition could be added.

Summary of decision:

Following an adjournment, Members returned and the Chairman announced the licence would be varied as follows:

Hours for sale of alcohol, recorded music, live music, late night refreshment and performance of dance:

Mondays to Wednesdays – 11:00 to 23:00

Thursdays – 11:00 to 00:00

Fridays and Saturdays – 11:00 to 01:00

Sundays – 11:00 to 23:00 (but the Sunday before a bank holiday – 11:00 to 01:00)

Hours of opening from 11:00 to 30 minutes after the end of the licensable activities on the relevant day.

Conditions added:

- Those agreed with the police on page 54 of the hearing bundle
- All doors and windows to be closed after 21:00
- Contact number for use during opening hours for residents to raise complaints
- Dispersal policy

Existing conditions replaced:

For condition 14 – No alcohol shall be consumed on the patio

For condition 16 – No new customers shall be admitted to the premises after 1 hour before the end of the licensable activities on the relevant day

Existing condition deleted:

Condition 10

Reasons:

The following are the reasons for the decision.

The Licensing Sub-Committee carefully considered the application to vary the premises licence at Vybes by Alpha (formerly Scala) 132 - 134 High Street Orpington BR6 0JS. In doing so, they had regard in particular to:

- The four licensing objectives
- The Council's current Statement of Licensing Policy
- The Secretary of State's guidance issued under section 182 of the Licensing Act 2003 (December 2022)
- The application and all representations

Members noted the absence of any objection relating to the prevention of crime and disorder, protection of children from harm and public safety. In light of the existing conditions and those new ones agreed with the police, Members were reassured in relation to all of these objectives.

When it came to public nuisance, Members took the concerns raised by the neighbouring ward councillor and residents seriously. They noted the apparent absence of premises operating so late and how the character of the area could change. However, they reminded themselves that the latter could not be taken into account, nor could general residential amenity. While acknowledging what the planning inspector had said, Members considered there was insufficient justification to refuse to vary the licence. In particular, there were no existing noise complaints, nor was there strong local opposition. The applicant had been very clear over the restaurant use and the type of establishment that would be operated. This provided reassurance as did the conditions. Members did consider it necessary though to reduce the proposed hours on Sundays. Members were then satisfied that the objective of preventing public nuisance would be met.

The applicant had offered to have door staff on duty at weekends. Members gave consideration to imposing a condition requiring this, but on balance concluded always requiring their presence could send out the wrong message and was not necessary. Their presence only when required following a risk assessment was sufficient.

Although the Council's Statement of Licensing Policy says a new premises licence should not be granted unless the relevant planning permission is in place, Members noted this application was for a variation of an existing licence. That provision therefore did not apply.

The Licensing Sub-Committee therefore decided to vary the premises licence at Vybes by Alpha (formerly Scala) 132 - 134 High Street Orpington BR6 0JS as set out above.

This struck a proportionate and reasonable balance between the needs of the applicant's business and protecting residents from public nuisance while having regard to the licensing objectives and objections made.

Chairman