

AGENDA OF THE LICENSING SUB-COMMITTEE OF FELWOOD BOROUGH COUNCIL

6 APRIL 2017 AT 10 AM

FELWOOD COUNCIL OFFICES

- 1 Application for variation of premises licence at The Rose Pub and Restaurant, Kellaway Avenue, Elstead.**

Report and supporting papers below

Please note that this hearing will be recorded

[THE AGENDA WOULD NORMALLY INCLUDE THE APPLICATION FORM INCLUDING A RED LINE PLAN OF THE PREMISES, THE PREMISES LICENCE, AND EXEMPTS FROM THE COUNCIL'S POLICY. RELEVANT PARTS OF THE APPLICATION, LICENCE, AND POLICY ARE REFERRED TO IN THE OFFICER'S REPORT BELOW]

REPORT TO LICENSING SUB-COMMITTEE

Application for variation of premises licence for The Rose Pub and Restaurant, Kellaway Avenue, Elstead.

- 1 This report is produced to assist Members of the Council's Licensing Sub-Committee in their consideration of an application by a Mr. Fitzsimmon for a variation of the premises licence for The Rose Public House within the Town of Elstead.

Background to the application

- 2 As Members will know, Elstead is a small town within the Felwood area. The premises are situated a short distance from the high street in an area with a mix of residential and commercial premises. Specifically, the high street has residential flats above shop premises. The Rose is at the end of a road of residential premises but is detached from them and surrounded by a car park.
- 3 The premises were a traditional public house for a number of years until taken over by the applicant 2 years ago. The business model was changed to provide a food led offer and the premises sought to operate as a gastro pub.
- 4 The application now seeks amplified recorded and live music and dancing on Fridays and Saturdays until 0100hrs. An extension for alcohol sales of 2 hours is sought on those days with the premises closing at 0130hrs. There is no application for Late Night Refreshment and so hot food will not be served after 2300hrs.
- 5 Within the application form the further details state as follows:
'Ability to provide low key events for local bands and dance nights where people can stay on after food to enjoy the evening.'
- 6 The premises have a capacity of 115 people including all staff.
- 7 In summary, the application seeks:

Alcohol	An extension on Fridays and Saturdays from 2300 – 0100hrs
Live Music	Fridays and Saturdays from 2300 – 0100hrs
Recorded Music	Fridays and Saturdays from 2300 – 0100hrs
Opening hours	Fridays and Saturdays will be 0130hrs.

(Members will be aware that under the terms of the Live Music Act 2012 and the Legislative Reform (Entertainment Licensing) Order 2014 no authorisation is required for the playing of live and recorded music between 0800 – 2300 hrs at these premises since they had a capacity of 115).
- 8 There are no seasonal variations sought within the application (e.g. New Year's Day / Bank Holidays).

- 9 Officers have reviewed the Operating Schedule which includes the following relevant conditions:

Crime and Disorder

- (1) Reference is made to the existing CCTV at the premises.
- (2) Reference is made to the incident book kept at the premises.

Public nuisance

- (1) All doors and windows to be closed from 2100hrs each night save for access and egress.
 - (2) All live and recorded music played after 2300hrs on Fridays and Saturdays shall be played through a noise limiter which shall be installed by a qualified noise expert in agreement with the Council's Environmental Health Department.
 - (3) The smoking area to the rear of the premises shall not be used after 2300hrs. On Fridays and Saturdays when the premises are open, smokers will be requested to use the area outside the front of the premises.
- 10 Members will be aware from the current licence that it contains the Council's standard condition on CCTV and requires a complaints / incident log to be kept at the premises recording the date and time of any incident / complaint. The log must be available for inspection on request by any responsible authority.

Requirement for a hearing

- 11 The application was advertised in the normal way and officers have confirmed that the advertisement requirements were complied with. There were 2 representations from responsible authorities (Police and Environmental Health) and 3 further representations from other persons, namely local residents. These are enclosed with this report.

Legal and policy framework

- 12 Under the Licensing Act 2003, the Sub-Committee must promote the licensing objectives:
- The prevention of crime and disorder
 - The prevention of public nuisance
 - Public safety
 - The protection of children from harm
- 13 In promoting the licensing objectives, the Sub-Committee must also have regard to the national guidance issued under s.182 of the Act, and the Council's licensing policy.
- 14 Members' attention is drawn to the following policies of the Council's Licensing Policy:
- Policy 3 When dealing with new and variation applications the Licensing Authority will give more favourable consideration to applications with the following closing times:

Public Houses and Bars: 11pm Sunday to Thursday
Midnight on Fridays and Saturdays

Nightclubs: 1am Sunday to Thursday
2am on Fridays and Saturdays

Policy 4 The Council expects the highest standards of management at its licensed premises. When assessing the applicant's or licensee's ability to demonstrate a commitment to high standards of management the Licensing Authority will take into account whether the applicant or Licensee:

- Has sought advice from responsible authorities
- Has implemented any advice that has been given by the responsible authorities
- Is able to understand verbal and written advice and legal requirements
- Can demonstrate knowledge of the licensing objectives, relevant parts of the Licensing Policy and their responsibilities under the Licensing Act 2003
- Is able to run their businesses lawfully and in accordance with good business practices
- Is able to demonstrate a track record of compliance with legal requirements

Policy 20 Where smoking, eating and drinking takes place outside the Licensing Authority expects applicants to provide comprehensive details in their operating schedule on:

- The location of outside areas to be available for use
- How the outside areas will be managed to prevent
 - Noise
 - Smell

15 Where, as here, relevant representations have been made, the licensing authority must hold a hearing to consider them (unless agreed by the parties). The Licensing Sub-Committee can take such steps as are appropriate for the promotion of the licensing objectives (as relevant):

- (1) To grant the application subject to such conditions as appropriate for the promotion of the licensing objectives; and any mandatory conditions.
- (2) To exclude from the scope of the licence any of the licensable activities to which the application relates.
- (3) To reject the application.

16 The Applicant, Police, and Environmental Health have all indicated that they will be making submissions to the Sub-Committee at the hearing. The other parties have all been informed of the hearing and are expected to attend.

17 The Council's procedure for Licensing Hearings is enclosed.

Officer EB

Licensing Hearings Procedure at Felwood Borough Council

(Please note that this procedure is subject to change on a case by case basis. Any changes will be notified to the parties)

Applications for variations

- 1 Declarations of interest.
- 2 The Chair will introduce member and officers and ask those present who intend to address the Sub-Committee to introduce themselves.
- 3 Report from the Licensing Officer.
- 4 The Applicant is invited to speak in support of the application. No more than 10 mins.
- 5 Members may ask questions of the Applicant. Those making representations may ask questions through the chair but only with the permission of the Chair.
- 6 Those making representations will be invited to address the Sub-Committee with responsible authorities going first and then other parties.
- 7 Members may ask questions of those making representations. The applicant may ask questions through the chair but only with the permission of the Chair.
- 8 Discussion of any relevant issues not covered by the above process.
- 9 Summing up by those making representations.
- 10 Summing up by the applicant.
- 11 The applicant and those making representations will leave the room whilst the Sub-Committee deliberates in private session with their legal adviser.
- 12 The parties are called back into the room when the decision will be given.

Police representation made by Licensing Sergeant Blowes

On behalf of the Borough Commander of Elwood, the police would like to formally object to the grant of this variation.

Before Mr. Fitzsimmon took over the premises, there was a history of crime and disorder associated with the premises. The premises operated as a traditional local pub but had more than its fair share of fights and other anti-social behaviour.

There were some reports of drug dealing at the premises (mainly in the car park) and relatively frequent altercations some of which started in the premises and spilled out into the car park. The police were called out to the premises to deal with these issues on a number of occasions. The issues would occur well into the night which suggested that the premises were operating beyond their hours.

Before the premises were taken over by Mr. Fitzsimmon the police were contemplating a review of the premises licence since attempts to deal with the previous manager were not leading to improvements. It is believed that the premises were sold to Mr. Fitzsimmon in order to avoid a review application and the possibility of revocation of the licence.

Since Mr. Fitzsimmon has been running the premises, there has been an improvement. Certainly, there has been no intelligence relating to drug use at the premises and in the car park. The police have conducted unannounced searches on 2 occasions and no evidence of drug use has been found.

However, there remains a level of ASB and crime associated with the premises. The police would disagree that the premises have been run as a gastropub. Food is available but the premises remains alcohol led. Police files for the last 6 months have identified the following incidents:

3 reported thefts from the premises (one handbag, and 2 mobile phones). On the first two of the occasions, the premises were unable to provide the CCTV for the location in which the theft was alleged to have occurred. The police sent a warning letter which led to a review of the CCTV system which then seemed to be working.

At about 10 pm on Friday 20 January 2017, 2 males got into a fight inside the premises after some drinks were spilled. Staff at the premises directed it outside where the two men were observed to be left to fight it out. The police were not called by the premises but by one of the bystanders who was concerned for the safety of the individuals concerned. Neither wanted to press charges so the case was taken no further.

At about 9 pm on Friday 17 February 2017 a couple having dinner got into a loud argument which appeared to be turning violent. The staff did not intervene and the issue was resolved by other customers separating the couple. A member of the public called the police because of concern for the safety of the female.

At 11.30pm on Friday 3 March 2017 there were reports of a fight in the car park. It appeared that an argument had started inside the premises and been calmed down by the bar manager. However, the incident kicked off again on leaving the premises leading to the fight in the car park. Police were called by the bar manager but only after 3 other members of the public had called and reported the incident.

Mr. Fitzsimmon was not present at the premises for each of the incidents and it is understood that he no longer takes an active role in the running of the premises, though he remains as DPS. The Police are concerned that the new bar manager, Mr. Baker, who has been in place for 6 months is not able to exert enough control over the premises.

The application will effectively turn the premises into a late night bar / nightclub. Given the history of the premises including the recent history of incidents, the Police request that this application be refused.

Environmental Health representation made by Jill Davies

The Environmental Health Department at Felwood BC object to the granting of this variation.

Whilst the premises are not far from the high street with a mixture of commercial and residential premises, The Rose is located at the end of a residential road known as Kellaway Avenue. The nearest residential premises is no. 4 Kellaway Avenue which is approximately 30m from the rear of the premises.

The Council records indicate that when the premises used to operate as a traditional pub, the Council would on occasion receive complaints primarily about noise from the smoking area and noise from the car park around closing time. There was also the occasional complaint about music emanating from the premises when the front doors were propped open in the summer time and the juke box was playing. In total there were 15 complaints between 2013 – 2014.

Environmental Health Officers were able to verify the complaints on 3 occasions:

7 July 2013

At 10.30pm. Complaint from No. 6 of loud music from juke box. Officers attended No. 6 just before 11pm and could clearly hear music and singing from the pub in the complainant's living room and bedroom. The door was noted to be propped open. The music stopped at 11pm. A warning letter about noise nuisance was sent to the premises.

31 August 2014

At 9.30pm. Complaint from No. 3 about noise from a large group of people who had just left the premises. Officers attended and could hear noise from 2 groups of people congregating around cars and continuing to party. It appeared that there had been some event at the premises and people were loitering before moving on elsewhere. The noise could be heard within the complainant's living room.

14 December 2014

At 10 pm. Complaint from No. 4 about noise from people in the smoking area at the rear of the premises. On attending the premises, officers noted approximately 6 – 8 people in the smoking area who were drinking and talking. It looked like a Xmas party was taking place at the premises. The heaters in the smoking area were on and people could be seen under the lights. The noise was audible in the living room and bedroom of the residential premises.

Since the premises have been run by Mr. Fitzsimmon there have been fewer complaints.

However, in the last 3 months officers have become aware of a series of complaints from No. 4 and No. 6 Kellaway Avenue concerning noise from the smoking area and noise from the car park on the following days:

Fri 20 Jan – noise from car park at 10pm. Fight. (No. 4)

Fri 10 Feb – noise from smoking area at 9pm (No. 4)

Fri 17 Feb – noise from smoking area at 9pm (No. 3)

Fri 3 Mar – noise from car park at 11.30pm. Shouting and arguing. (No. 4)

Sat 4 Mar – noise from car park at 10pm. (No. 6)

Sat 18 Mar – noise from smoking area at 8pm (No. 4)

Officers were not able to verify the complaints. There has been a restriction on the number of officers on out of hours duty this year. When officers did attend, the noise had either stopped or on one occasion was not audible.

Officers visited the premises on Saturday 4 March to speak to Mr. Fitzsimmon but were told that since the end of last year he has not been involved in the running of the business. It was noted that the doors and windows are single glazed and there is no lobby at the front or rear of the premises.

The Environmental Health Department was not approached by the applicant before submitting this application for variation. Given the history of noise nuisance caused by the premises, Environmental Health officers consider that an extension of hours is likely to lead to more noise nuisance issues.

Representation of John Blakely No. 4 Kellaway Avenue

Dear Sir / Madam,

I am writing to strongly object to the application to extend the licence for The Rose pub. These premises have caused me serious disturbance ever since I bought my house in 2012.

In the early days, whilst getting used to the area I would hear occasional noise from the premises. This would get worse at weekends and mainly related to use of the smoking area which I can see from my bedroom window, and from people when they came out of the premises after having a few drinks.

Because the car park is large and not far from the high street, it seems to be a place where people congregate and chatter after a night out. The premises do little to control their customers or others who loiter in this area.

I was also disturbed by music from the juke box at the pub. There would regularly be rowdy singalongs to some of the songs and this was made worse when the doors to the pub were left open. The staff seemed oblivious to the noise issue and a fire extinguisher would be used to prop the door open.

Things were getting worse until late 2014 when the premises were taken over by Mr. Fitzsimmon.

Since Mr. Fitzsimmon has been running the premises, I would accept that they have been better managed. Although he claims it is a gastropub and food led, it really remains a pub and I believe several of the old regulars still go to the pub to drink. I myself have been once or twice to try the food. I have had fewer problems with noise from the smoking area and when I see Mr. Fitzsimmon I have been able to speak to him about the noise.

However, I have also been disturbed on occasion and have complained to the Council's Environmental Health Department using their out of hours number.

In the last few months, I have noticed an increase in the problems with noise. I would say that I have been disturbed by noise from the car park at or around closing and from the smoking area almost every weekend. I do not think this is acceptable. My son comes to stay with me every other weekend and his bedroom is at the rear of my property. I don't want his sleep to be affected by noise from the pub. I have not seen Mr. Fitzsimmon at the premises since the new year.

Finally, I have seen fights in the car park and people congregating there. I cannot say whether they have always come from the pub, but I think the fact that it is open encourages people to be there.

In short, if this application is granted, it will turn the premises into a late night bar. The idea that 100 people will fill the pub on Fridays and Saturdays with live and music and DJs, before spilling out into the car park, fills me with dread. This is a residential area and there is no need for a nightclub in this area. They should be located in cities.

I therefore ask you please to reject this application.

Representation from Miss G. Jones of No. 3 Kellaway Avenue

I live at No. 3 Kellaway avenue with my husband. We have lived here for over 15 years.

The Rose Pub used to cause us trouble because we would often see fights in the pub or fights which spilled out into the car park. When returning from the high street we have to walk passed the pub to our house and the car park often provides a convenient cut through on our way home.

However, when the pub is open we often find people congregating in the car park. They are intimidating and the staff don't seem to do anything to keep them under control or move them on. They shout and talk loudly and I'm sure they are up to no good. I suspect that they have been dealing drugs in the past if not now.

I have complained to the Council before about noise and fights. I would accept that I cannot hear the noise much from inside my house (we are on the other side of the road), but we can see what is going on from our living room window. It does not enhance the area and if anything brings it down.

I have never felt able to speak to the management about my concerns. I doubt they would listen as they are just after profits.

This is not the high street or a city centre, but a leafy suburb. We don't want a nightclub opening here. Pubs should be quiet places where people go to socialise over a drink or two. I feel the current management want to turn this pub into a nightclub. This location is not suited to such a premises.

I am aware that other people in the area would want to object but were not made aware of this application. Some are afraid to come forward. I think this is unfair.

Please refuse this application.

Representation of David Slater, No. 10 Kellaway Avenue

Dear Sir / Madam ,

I wish to object to any extension of the licence for The Rose. This will cause more nuisance and more trouble in the area. We don't need a nightclub or late night bar. What about residents and their sleep?!

Yours Faithfully

David Slater