

## **Decision of Felwood Borough Council**

### **Application for variation of premises licence for the Rose Pub and Restaurant, Kellaway Avenue, Elstead**

#### **REFUSED**

- 1 The Sub Committee considered an application for a variation of the premises licence to allow live and recorded music and dancing until 0100 hrs with alcohol on Friday and Saturday nights.
- 2 The Sub-Committee heard from the Applicant, Police, Environmental Health and from 2 local residents, namely Mr. Blakely and Miss Jones, and Miss Jones.
- 3 The Sub-Committee considered that the licensing objectives of the prevention of crime and disorder, and the prevention of public nuisance were engaged. It also considered the national guidance and the Council's Licensing Policy.
- 4 The Sub-Committee considered the area of the premises to be predominantly residential. Although the high street contains some commercial premises, the immediate environment of the premises is residential.
- 5 The history of these premises shows that there has been a level of crime and disorder, and noise disturbance. Both are a matter of concern. The Sub-Committee had regard to the fact that the level and frequency of incidents were such that the police were considering bringing a review application. This was avoided by the sale of the premises to Mr. Fitzsimmon and its change to a food led business.
- 6 Although Mr. Fitzsimmon's involvement appears to have led to a degree of improvement, the Sub-Committee was mindful of the fact that the number and frequency of incidents involving fights and noise disturbance appeared to be increasing in recent months.
- 7 In particular, the Sub-Committee considered that the following recent incidents of disorder had occurred:

20 Jan 2017 – 2 males fighting in the premises which then continued outside. There was a lack of effective intervention by staff at the premises and a failure to call the police. The fight should not have been allowed to continue outside.

3 March 2017 – this fight started inside the premises. It could have been dealt with more effectively by ensuring that those involved were kept apart. The police could have been called more quickly.

- 8 In addition, the operation of the premises had led to noise disturbance on 20 Jan, 10 Feb, 17 Feb, 3 Mar, 4 Mar, and 18 Mar. Although these disturbances were not verified, the Sub-Committee considered that there was a consistency in the evidence given by Mr. Blakely and

Miss Jones and that complaints made to the Council's EH Department had been properly made. The Sub-Committee considered that these disturbances had arisen as a result of the operation of the premises on those occasions.

- 9 The Sub-Committee considered the national guidance that there was no definition of public nuisance under the Act and that public nuisance should be given its broad common law meaning. It could include the reduction of the living and working amenity and environment of other persons living in the area of the licensed premises (para. 2.15). This applied to the residents at Nos. 3, 4, 6, and 10 Kellaway Avenue.
- 10 The Sub-Committee noted that each of the above incidents occurred on Fridays and Saturdays and at various times. It was also noted that Mr. Fitzsimmon had not been present on each occasion, and he appeared not to be taking an active role in the operation of the premises in recent months. The Sub-Committee also considered that although the car park was outside of the red line for the licensed premises, the management could and should exercise some control over what happened there as part of its responsible management of the premises as a whole.
- 11 Given the history of disorder and noise nuisance, and the recent incidents, the Sub-Committee considered that the absence of Mr. Fitzsimmon had led to a lack of control at the premises.
- 12 Under Policy 4 of the Council's Licensing Policy the Council seeks the highest standards of management in its operators. Given the extended hours sought and the failure of proper management in recent months leading to disorder and nuisance, the Sub-Committee considered that the application should be refused. The hours sought were beyond the framework hours for pubs and bars under Policy 3 and the highest standards of management would be required if such hours were to be granted. The premises had not demonstrated that it could run, even on the current hours, in accordance with good business practices. They had not sought the advice of the responsible authorities.
- 13 Because of the concerns about the lack of proper management at the premises, it was not felt that conditions would meet the Sub-Committee's concerns. The Sub-Committee were not satisfied that appropriate conditions would be complied with.
- 14 For all of the above reasons, the application is refused.
- 15 The applicant is hereby notified that he may appeal against this decision to the magistrates' court within 21 days beginning with the date of notification of this decision.