

**Licensing Sub-Committee
DECISION NOTICE**

DETERMINATION OF AN APPLICATION FOR A PREMISES LICENCE

Meeting: LICENSING SUB-COMMITTEE HEARING at Folkestone and Hythe District Council on 7 August 2023

Premises: The Green Room, The Grand, The Leas, Folkestone CT20 2XL

Applicant: Beton Collective CIC

Address: 26 Page Road, Hawkinge, CT18 7SF

Background:

The application before the committee was for a premises licence at The Green Room, The Grand, The Leas, Folkestone CT20 2XL. The Applicant was seeking a license for the following licensable activities:

- The sale or supply of alcohol (on and off sales): Mon- Sun 08.00-21.30
- Regulated entertainment: -
 - Performance of plays: Mon-Sun 08.00-22.00
 - Exhibition of film: Mon-Sun 08.00-22.00
 - Performance of dance: Mon-Sun 08.00-22.00
 - Entertainment of a similar description to live music, recorded music or performance of dance: Mon-Sun 08.00-22.00

Relevant representations were received from the following interested parties:

1. Tatiana Dudova
2. Thomas von Nordheim
3. Chris Fallon
4. Robert Dancy
5. Grenville Hancox

Summary of meeting:

The Sub-Committee carefully considered and gave the appropriate weight to the following: -

- (i) The report presented by Licensing Specialist Briony Williamson
- (ii) The verbal representations from Interested Persons and from Georgia Patterson on behalf of Robert Dancy;
- (iii) The Applicant's submissions.

Representations

The Sub-Committee heard from residents of the Grand and noted the concerns raised with regard to the age and construction of the building, the noise complaints resulting from previous events held at the premises under Temporary Events Notices (TEN's) and the apprehension that future events would give rise to further noise nuisance. Amplified music was considered to be wholly unsuitable for the premises and reference was made to restrictions imposed on the previous premises licence in 2005.

Consideration was also given to representations regarding access to residential areas of the Grand by patrons of the premises, noting that the fob operated security system was of limited effect whilst patrons of the premises were given access through internal doors to the building.

Consideration was given to the lack of particularisation in the application as to the type and frequency of events to be held and the number of attendees.

The Sub-Committee noted that Interested Persons did not oppose the use of the premises for some commercial events generally but felt that the events should be sympathetic to the residential use of the building.

The Sub-Committee heard from Georgia Patterson acting on behalf of Robert Dancy. She made submissions that the application failed to promote the licensing objectives of prevention of public nuisance, prevention of crime and disorder and public safety, adding and that the conditions proposed by the Applicant were unworkable. It was further submitted that playing amplified music would contravene the existing planning permission for the Grand and would make quiet enjoyment of the residential premises impossible. It was submitted that the plan accompanying the application was not compliant with Regulations. It was submitted that the application in its current form should be refused.

The Sub-Committee heard from Grenville Hancox, resident of the Grand and director of the GRFL who was in support of the application.

Applicant Submissions

The Sub-Committee considered the submissions of the Applicant, the recent history of those events being operated under TEN's, the number of complaints received from residents in response to previous events and the positive steps taken by the Applicant to communicate with residents with a view to mitigating any noise disturbance.

The Sub-Committee noted that the Applicant had sought to engage two noise consultants and had initiated contact with residents to secure their cooperation in facilitating an effective noise assessment to be undertaken. No noise assessment had been undertaken prior to the application being submitted.

The Sub-Committee further considered the frequency of events proposed by the Applicant who anticipated events would be held two to three times per week.

Other matters

A number of issues raised by Interested Persons and the Applicant did not fall within the remit of the application and therefore were not open to the Sub-Committee for consideration and were disregarded.

Both Interested Persons and the Applicant sought to introduce supplementary documentation in support of their position. The parties were refused permission to introduce any supplementary evidence.

Decision: Application Refused

In arriving at the decision the Sub-Committee considered the application and all relevant verbal and written submissions from Interested Parties and the Applicant. The Sub-Committee also considered the Licensing Act 2003, the Secretary of State's Guidance issued under section 182 of the Licensing Act 2003, and Folkestone & Hythe District Council's Statement of Licensing Policy.

The Sub-Committee accepted that previous events operated under TEN's at the premises had resulted in disturbance to residents of neighbouring properties and that there was evidence that the prevention of public nuisance licensing objective had been undermined.

The Grand is a building of mixed commercial and residential use. The premises is located in very close proximity to residential properties, some residential premises being situated directly above. The Sub-Committee noted evidence from Interested Parties to the extent that they can hear their own neighbours and that if that was the case, they would undoubtedly hear music and customer noise.

The Sub-Committee accepted the evidence that previous recent events at the premises operated under TEN's had given rise to noise nuisance to occupiers of neighbouring properties and that those events had resulted in complaints being made to the Applicant. The Sub-Committee were not convinced that sufficient measures were in place to ensure that further complaints relating to licensable activities would not ensue.

Given the use of the Grand is primarily residential accommodation and considering the age of the building and its construction, the Sub-Committee believe that the use of the premises for licensable events presents a significant risk of noise nuisance being caused to residents were the application to be granted.

The Sub-Committee were not provided with a noise assessment carried out by a suitably qualified acoustic consultant and the application failed to demonstrate to its satisfaction that any of the conditions proposed (or that could practically be implemented) would serve to adequately prevent public nuisance from occurring. The Sub-Committee felt that this was a significant oversight where public nuisance arising from music and customer noise was a key issue. The Sub-Committee were concerned that were they to grant a premises licence at this location then this could lead to the public nuisance licensing objective being undermined.

The Sub-Committee noted that no limit on the frequency or type of events was proposed by the Applicant in the application. The Sub-Committee therefore considered that events could be provided 365 days per year.

The Sub-Committee considered the representation advanced relating to security at the Grand, specifically the unrestricted access by the patrons of the premises to the residential communal areas. The Sub-Committee agreed that access by patrons to residential areas was unsatisfactory. The Sub-Committee was not persuaded that the Applicant had given sufficient thought to access and egress from the premises and how the prevention of crime and disorder licensing objective would be promoted in such close proximity to residents. The Sub-Committee did not feel that they would be promoting the prevention of crime and disorder licensing objective by agreeing to the Applicant's proposals.

The Sub-Committee noted the representations regarding the Licensing Plan, but this was not a determinative factor in their thinking.

The Sub-Committee considered whether it could impose additional conditions to promote the licensing objectives. The Sub-Committee did not feel that the addition of conditions was a suitable means of dealing with the issues identified in relation to this application. The issues were too numerous and the risk to the licensing objectives clearly made out by those making representations.

The Sub-Committee considered whether the licence could be granted with certain licensable activities excluded from the scope of the licence. The Sub-Committee found, after considering all of the evidence, that removing one or more licensable activities would not ameliorate their concerns, particularly regarding the prevention of crime and disorder and the prevention of public nuisance. The Sub-Committee were not convinced that the measures proposed by the Applicant were sufficient to prevent these objectives from being undermined.

Having considered matters in the round, and having heard evidence from all parties, the Sub-Committee decided to refuse the application. The Sub-Committee felt that, on balance, the prevention of public nuisance and the prevention of crime and disorder licensing objectives would not be promoted by granting this application and that sufficient measures were not proposed to promote those objectives.