

IN THE CAMBERWELL GREEN MAGISTRATES' COURT
AN APPEAL UNDER THE LICENSING ACT 2003

Date: 12th April 2019

Before :

DISTRICT JUDGE HOLDHAM

Between :

PETER JACKSON
SOUTHWARK BREWING COMPANY LTD
(at 46 Druid Street Southwark SE1 2EZ)

Appellants

- and -

THE LONDON BOROUGH OF SOUTHWARK
LICENSING AUTHORITY

Respondent

1. This is an appeal by the Southwark Brewing Company against a decision of Southwark Council's Licensing Sub-Committee to refuse a variation of a premises licence in respect of the Southwark Brewing Company at 46, Druid Street, London SE1 2EZ.
2. The premises licence is held by Peter Jackson and the Southwark Brewing Company Limited. On 28th August 2018 the appellants applied to vary the premises licence by

extending the hours for the sale of alcohol and the opening times from 23.00 to 01.00 on Fridays and Saturdays. At the hearing of the Licensing Sub-Committee, the appellants amended their application to seek a variation of the times for the sale of alcohol from 23.00 to 00.00 on Fridays and Saturdays and to extend the opening time on Fridays and Saturdays from 23.00 to 00.20. For the purposes of this appeal, the appellants seek a variation in the licence to sell alcohol until 00.00 on Fridays and Saturdays and to close on these days at 00.20.

3. The Licensing Sub-Committee hearing took place on 28th October 2018 and the Sub-Committee heard representations from the responsible authorities, the objectors and the appellants and refused the application to vary the licence.
4. The Licensing Sub-Committee set out the reasons for the refusal in their Notice of Decision dated 22nd October 2018. (DM/14 p C51 of the bundle) Their reasons were that the premises were in a residential area. Southwark's licensing policy recommends no later than 23.00 as a closing time in residential areas. They also took into account the matters listed at paragraph 109 of the policy and observed that paragraph 150 of the licensing policy required applicants to explain fully the arrangements intended to be put in place to ensure that the premises did not add to the cumulative impact. The applicants did not provide details of any such measures nor any measures to mitigate against crime, disorder and public nuisance.
5. I remind myself of how I should approach this appeal as set out in *the Queen on the Application of Hope and Glory Public House Limited v. The City of Westminster Magistrates' Court* [2011] EWCA Civ 31 where Toulson LJ said at paragraph 28:

“It is not in dispute that the appeal is a rehearing at which the affected parties are all entitled to call evidence, and that the court must make its decision on the full material before it.”

And further at para 45:

“It is right in all cases that the magistrates court should pay careful attention to the reasons given by the licensing authority for arriving at the decision under appeal, bearing in mind that Parliament has chosen to place responsibility for making such decisions on local authorities. The weight which the magistrates should ultimately attach to those reasons must be a matter for their judgment in all the circumstances, taking into account the fullness and clarity of the reasons, the nature of the issues and the evidence given on the appeal.”

6. I heard evidence from the following witnesses:
7. The appellant **Peter Jackson**, is the designated premises supervisor who holds a personal licence. He explained that he was applying for a variation in the licence hours to cater for the demand for private parties which wanted late licences. He had applied for Temporary Extension Notices (TENS) in the past, all of which had been granted, but these were limited to 15 years and if he wished to accommodate further functions with late licences he had no option other than to apply for a permanent variation to his licence although he

did not intend to open late every weekend. He would wish to open late maybe 20 weekends a year- it depended on demand. He pointed out that the Southwark Brewing Company was opposite the St. John's estate rather than the Arnold estate, from where most of the complaints originated. The form provided on-line by the licensing authority did not make it easy to set out his proposals although he provided some information in the boxes which related to the licensing objectives. In the form he said that

- i) All staff will be adequately trained in the objectives and the premises adequately staffed.
- ii) Supervisory control will be provided at all times including security staff when appropriate.
- iii) Staff to maintain observation of the environment ensuring safety of the public.
- iv) Staff to be trained not to serve anyone who appears to be under the influence of alcohol. Special attention given when the public are leaving the premises to ensure noise levels are kept to acceptable levels.
- v) Under 18s to be accompanied by an adult. Challenge 25 programme to be followed.

8. There had been no complaints specifically about noise at his premises or from patrons who had been to his premises.
9. He referred to the photographs exhibited by Jayne Tear which had been taken from the premises website. He said the photographs had been taken before 2015. Since a visit from a licensing officer in September 2018, their practices had changed and they no longer permitted drinking outside. The doors remained opened until 10pm in the week and until 7pm on Saturdays. The photograph of the shellfish stall was for promotional purposes and had never traded outside, it had only traded inside the premises and no longer did so. The photograph of the Bermondsey Beer Street festival was a completely separate event in a park. The Southwark Brewing Company had been asked to be the official providers of beer. It was an annual event which finished at 6pm in September. He said there was train noise from the trains from London Bridge until well after midnight.
10. The respondent licensing authority called the following evidence:
 11. **Jayne Tear**, a principal licensing officer at Southwark gave evidence that Druid Street was in an area designated as a residential area. This designation was made after a lengthy consultation policy in 2015. She also exhibited the Southwark Statement of Licensing Policy 2016-2020. The policy for closing time for a "public house, wine bars or other drinking establishments" in a residential area was 23.00. She was not aware of anything put forward by the appellants to justify a departure from that policy.
 12. She made representations about the cumulative impact of an extension of the licensing hours. There would be increased footfall, increased noise from patrons calling out walking along Druid Street, more drinking and anti-social behaviour, taxi doors shutting at a later hour.

13. There are 17 licensed premises within a 100-metre radius of the Southwark Brewing Company. Of those 13 have a closing time of 11pm or earlier and four premises have a closing time later than 11pm. The later licences were historic. It was suggested to Ms. Tear that customers started to disperse at 22.30, rather than a large number of customers leaving at 23.00. Ms. Tear's response was that it became continuous and later at night was more of a problem. She said that earlier in the evening residents would be awake watching TV. by 11pm residents were settling down to go to bed, that traffic dies down around this time and in summer residents may wish to have their windows open if the weather was hot.
14. She agreed that she had not seen any conditions which would mean that licence holders could control customers after leaving their premises.
15. She accepted that the photographs she had exhibited were old photographs and did not represent the current situation.
16. She said that there was no pavement in front of the railway arches where the Southwark Brewing Company was situated, thus to walk safely, departing customers had to cross over the road to access the pavement in front of the flats on the St. John estate.
17. She said that the measures that Mr. Jackson had suggested, did not satisfy her in relation to cumulative impact. What she had to consider were the licensing objectives.
18. She was asked about the measures Mr. Jackson had suggested in his application. She observed that security staff could not control people in the street and that it was unlawful to serve patrons who were drunk and that the "Challenge 25" programme was already an existing condition. She had given the application individual consideration.
19. She accepted that there were no complaints specifically against his premises and that Mr. Jackson operated in a proper manner.
20. She did not accept that the patrons who had left premises which closed at 11pm would have left the street by midnight. She felt it would prolong the period during which customers were leaving. She also thought that taxis could cause problems by using their horn and the slamming off doors.
21. She had no status to object to TENS.
22. **P.C. Clements** works within the licensing office of the Metropolitan Police Force. He objected to an extension in hours. Within a short period of time Druid Street had gone from being a quiet residential street to one with a large number of licensed premises which has led to large number of complaints. His objection was the basis of the general impact on noise, nuisance and disorder. If the extension was allowed to midnight then that may lead to increased intoxication levels with a consequential increase in disorder. He also mentioned that the only footpath was on the residential side of the road. He

supported the Framework guidance of closure at 11pm. The measures put forward by Mr. Jackson were not sufficient.

23. Only the police and the environmental health could object to TENS. The police had not objected to a TENS for Southwark Brewing Company in the past because TENS were subject to a “light touch” and there had to be a very good reason for an objection such to be made such as crime and disorder specifically linked to the premises. The concept of cumulative impact cannot be applied to TENS. The current licence has a terminal hour in line with licensing policy which is designed for the promotion of the licensing objectives. A change in closing time from 11pm to 12.20am was not a minor change.
24. **Richard Earis** is the principal Environmental Protection officer for Southwark. He was concerned about the effect an extension to opening hours to 12.20am would have in terms of cumulative impact. He considered it would lead to an extended period when there would be noise from the street. The later time was a more sensitive period when residents were more likely be asleep or trying to sleep. There was increased sensitivity after 11pm which marked the start of night-time in UK and European noise policy. That was why the Southwark policy suggested 11pm for residential areas. A residential area was not appropriate for late opening venues. A dispersal policy did not satisfy his concerns. There was not really any policy or condition which could deal with the problems of noise at night. It was virtually impossible to work out where customers had come from.
25. He had not objected to the TENS because very serious objections were required to object to a TENS. Cumulative impact was not a consideration for TENS because the licence was temporary. It was suggested that when the TENS were granted then the Southwark Brewing Company had successfully managed the late opening. Mr. Earis said that they received complaints about noise on Druid Street but there was no issue about the operation of the premises. A suggestion was made on behalf of the appellants that if an extension was granted then a condition could be made that Mr. Jackson notify the licensing authority when he was holding a function and would use the late licence. Mr. Earis pointed out that once the licence was granted the late licence could be used every weekend upon notice being given.
26. **Cilizia Deidda**, the Public Health Policy officer for Southwark explained that the ward that the Southwark Brewing Company was in, previously was known as the Riverside ward but after boundary changes was the London Bridge and West Bermondsey ward. She referred to research that for each additional hour extension to the opening times of premises selling alcohol there was a 16% increase in violent crime and a 34% increase in alcohol related injuries. These were international studies.
27. She explained the effect that lack of sleep can have especially upon children. She pointed out that a number of organisations including the WHO based on scientific reviews recommend the control of hours of sales of alcohol as a means to reduce alcohol misuse and harm.

28. No measures proposed by Mr. Jackson satisfied her concerns. The Riverside ward accounted for 4th highest number of alcohol related callouts in Southwark.
29. She did consider each case on its own merits but generally they objected when the proposed hours fell outside the hours in the policy document because generally there were concerns about later licensing hours.
30. **Humaira Ali**, Ward Councillor for London Bridge and West Bermondsey was one of three councillors for the ward who together made written representations opposing the application and Damien O'Brien appeared at the Licensing Sub-Committee. The estate opposite the Southwark Brewing Company was St. John's not the Arnold estate.
31. Since she was elected she had heard complaints from many residents about the noise and anti-social behaviour in the whole of Druid Street. The new business had brought the street to life but there was noise from deliveries and anti-social behaviour. Those attending the premises in Druid Street were often boisterous and sometimes aggressive. There was broken glass which was a health and safety issue and food thrown to the floor had led to an infestation of rats.
32. Some residents had young children in the family or elderly parents who needed to go to sleep. Other constituents were shift workers or worked during the weekend so needed to sleep at a reasonable hour. One constituent suffered from post-traumatic stress disorder and was very anxious.
33. The Southwark Brewing Company was not a problem premises. The problem was the cumulative impact of the number of breweries and eateries in a small area. She had spoken to the landlord of the arches about there being too many breweries for a residential area. The area attracted stag and hen parties which sometimes led to drunken behaviour.
34. She said if there was an extension to midnight it may mean more people in the area but primarily it would increase the time that patrons were in the street. It would also mean that customers would move on from the premises that closed at 11pm to those who closed at midnight or beyond. If one set of premises was allowed an extension then it would set a precedent. It was not correct to suggest that patrons leaving the premises that shut at 11pm would have left and those leaving at 12.20am would be going into a quieter area.
35. She accepted that the Southwark Brewing Company had not received complaints but was not surprised that residents did not want to address the brewery directly. They could find it intimidating. Residents have tried to remonstrate with other premises in the past to no effect. Residents are often uncomfortable about confronting those running the premises and are frightened to do so.
36. She did not ask residents what conditions they would wish to have put on an extended hours application. She always asked questions in a very open way such as "do you have any issues in the local area?"

37. **Scarlett Bochan**, co-chair of the Tenants Residents Association for the Arnold Estate explained that it was the St. John estate that faced the Southwark Brewing Company, the Arnold estate was further down Druid Street. The part of the Arnold estate that was closest to the Southwark Brewing Company was about 60-70 metres away from the premises. She spoke about the cumulative impact of having a large number of licensed premises nearby. She said that she and the residents dreaded weekends. They particularly dreaded when the weather was nice as that attracted more people and the Christmas period when there were parties. The area was being aggressively marketed as the Bermondsey Beer Mile encouraging the ideas of a pub crawl and moving from one establishment to the other.
38. She said that the customers were usually perfectly nice people but when they had been drinking, nuisance and anti-social behaviour occurred. She had seen commercial waste thrown into the cycle lane although she accepted that was lower down Druid Street and not where the Southwark Brewing Company was situated. She had seen patrons play-fighting in the street, urinating in the street, traffic cones move to the street. There was chanting and singing-often from birthday parties and when there were sporting events.
39. At weekends the problems were from 3pm to midnight or 1am. Patrons walked back and forth between establishments and there were often taxi doors slamming.
40. The residents found it very stressful; not only the actual nuisance and behaviour itself but the anticipation of what was going to happen. She dreaded weekends. Thursday, Friday and Saturday were problem days with Saturday as the key day. Residents planned outings and events especially with children to ensure they were not at home. Residents used various strategies to cover the noise: switching up televisions, playing music loudly, doing the washing or hoovering. The onus was also on the residents to record the incidents. If a resident complained to the noise team at the council, they were unlikely to have the resources to come out at the time and sort the problem out. They would attend on another day to record the complaint. Further stress was caused by needing to keep records of noise disturbance.
41. Some premises did not close at the agreed time. Patrons tended to mill around or wait for cabs outside the venues. Having an 11pm closing time was vital because even with an 11pm closing the residents really struggled with the noise. Lots of families had rearranged their sleeping arrangements so that the children did not sleep on the side nearest to Druid Street. There was a prolonged period when people just hung around or walked through to go to a place with a later licence.
42. The security staff at the venues did not intervene. They were not effective, it felt as if the licensed premises were using the presence of security staff as a tick box to look as if they were doing something. They did not minimise the disturbances.

43. Some residents were intimidated about complaining. Ms. Bochan complained regularly but other residents could see that she had not achieved anything and would think why bother?
44. She accepted that mismanagement contributed to the problem but said even if premises were well managed then then it was a problem. There were complaints from the Arnold estate but she went to the police panel and the chairs from the other TRAs of all the estates nearby all had complaints.
45. People were outside until about 1am. This was because some premises exceeded their allowed closing time and also people were making their way to London Bridge station and Blue. She did not accept that if the other premises closed at 11pm that their patrons would be out of the area if the Southwark Brewing Company then stopped serving at midnight. The result would not be a staggered departure but extending the time of disruption until much later.
46. **Dorcas Mills**, a principal licensing officer at Southwark had made a statement which exhibited a number of documents from Southwark Licensing Sub-Committee. Her statement was read.
47. The powers I have under S. 181(2) Licensing Act 2003 in respect of this appeal are
- i) To dismiss the appeal
 - ii) To substitute the decision appealed against for any other decision which could have been made by the licensing authority or
 - iii) Remit the case to the licensing authority to dispose of it in accordance with the direction of the Court.
48. I must promote the licensing objectives which are
- i) The prevention of crime and disorder
 - ii) The prevention of public nuisance
 - iii) Public safety
 - iv) The protection of children from harm
49. I have considered the licensing objectives and the April 2018 revised guidance from the Secretary of State for the Home Office and the Statement of Licensing Policy for the London Borough of Southwark for 2016 -2020.
50. The appeal is dismissed. I have considered afresh the evidence and indeed I have heard evidence the Licensing Sub-Committee did not hear. I conclude that the application for the variation in the licence should not be granted and that the Licensing Sub-Committee were correct when they came to the same conclusion. The appellants have not discharged the burden to show that the decision was wrong. The licensing authority's decision is not wrong at the time of this hearing and in the light of the evidence I have heard.

51. The appellants submitted that the Licensing Sub-Committee and those who gave evidence at the Licensing Sub-Committee did not consider the case on its merits but simply saw that the variation would have taken the licenced period outside that in the Statement of Licensing Policy and dismissed the application out of hand. I do not accept that the Licensing Sub-Committee did not properly consider the application and that the Licensing Sub-Committee automatically refused the application because it contravened the Statement of Policy. The case was considered on its merits but it was accepted that it was difficult to think of conditions that would overcome the concerns of cumulative impact. However, it was for the appellants to suggest appropriate conditions to deal with the concerns. The conditions and suggestions put forward were inadequate.
52. The appeal is dismissed for the following reasons:
53. The premises are located in Druid Street which is classed as a residential area. The premises are situated in a railway arch which has no footpath in front of it. In order not to walk in the road, pedestrians are obliged to cross over to the other side of the road where the St. John estate is situated.
54. There are a substantial number of licenced premises in Druid Street. There are 17 licensed premises within a 100-metre radius of the Southwark Brewing Company. The Southwark Brewing Company is located towards the top end of Druid Street, nearer to London Bridge station which is about a 10-minute walk away. It is known and has been marketed as Bermondsey Beer Mile.
55. The residents suffer from noise made by patrons outside the various premises in Druid Street usually when leaving. This takes the form of rowdiness, singing or chanting, the slamming of taxi doors. The residents dread the weekends. An increase in hours as suggested would lead to an extension of the period when patrons are leaving or milling about waiting for taxis or moving on to other later licensed premises. Not only would it be an extension of this period, but it would be an extension into a sensitive time when nearby residents would wish to sleep. As Mr. Earis stated “There was increased sensitivity after 11pm which marked the start of night-time in UK and European noise policy. That was why the Southwark policy suggested 11pm for residential areas”. The appellants have not suggested measures that would effectively deal with the disruption and noise after 11pm. Because it is not possible for premises to control the behaviour of his patrons once they have left it is difficult to think of measures that would prevent or curtail further noise nuisance and disruption.
56. I dismiss the appeal primarily to prevent further public nuisance by noise and disruption. However, I consider that the prevention of crime and disorder and the protection of children from harm are also secondary reasons to dismiss the appeal.
57. P.C. Clements objected on the general cumulative impact on noise, nuisance and disorder. He said if the extension was allowed to midnight then that was likely to lead to increased intoxication levels with a consequential increase in disorder. I was told that there was international research to show that for each additional hour extension to the opening times

of premises selling alcohol there was a 16% increase in violent crime and a 34% increase in alcohol related injuries. Thus, I dismiss the appeal to prevent crime and disorder.

58. I was told of the children who lived in the estates opposite Druid Street and how some parents had changed the bedrooms round to protect their children from the noise on the street and how many families made sure they were not around at the weekend to avoid the noise. The noise from Druid Street disturbed the resident children's sleep regularly. Southwark's Public Health Policy officer explained the serious effects that lack of sleep can have especially upon children. Thus, I also dismiss the appeal to protect children from harm.
59. The appellants have not suggested any measures which would adequately deal with these concerns. The measures that he has suggested in his application either were conditions of the licence in any event or were vague. For example, "security staff when appropriate" "staff will maintain observation of the environment ensuring public safety" He has also since his application said he will erect prominent signs asking customers to be quiet upon leaving and giving numbers of local cab companies and the post code for Uber drivers and a dispersal policy. However, these measures are inadequate to deal with the issues.
60. It is said on behalf of the Southwark Brewing Company that there have been no complaints made against them either generally or when operating a TENS. Witnesses have that it is not a problem premises. The problem is one of cumulative impact. I also note the evidence that some residents do not make formal complaints either from fear of intimidation (whether rightly or wrongly) or because it is thought that the complaints do not achieve anything. It is also difficult for residents to pinpoint which premises people who are being noisy or rowdy have been drinking in.
61. I accept that Mr. Jackson must find it difficult to follow why he has been granted 19 TENS where alcohol was sold until midnight or 1am, since January 2018 without objection. The grounds for objection are different for TENS and a permanent variation to the licence. Cumulative impact cannot be considered when there is an application for a TENS.
62. This decision does not reflect upon Mr. Jackson personally and the way he runs his premises.
63. I make an order for costs in the sum requested against the appellants jointly and severally in favour of the respondents.

Susan Holdham
District Judge (Magistrates' Court)