

Minutes of the meeting of the **Alcohol and Entertainment Licensing Sub-Committee** held in Committee Room 2, East Pallant House on Tuesday 24 November 2015 at 9.30 am

Members Present: Mr J Connor, Mr J W Elliott and Mr J Ridd

Members not present:

In attendance by invitation:

Officers present all items: Mr N Bennett (Litigation Lawyer), Mr L Foord (Licensing Manager) and Mrs K Jeram (Member Services Officer)

1 To elect a Chairman for this Hearing

Resolved

That Mr Ridd be elected Chairman of the Sub-Committee.

2 Declarations of Interests

No interests were declared by members present at the meeting.

3 Old Antique Brewery, 150 St Pancras, Chichester, West Sussex, PO19 7SH

Applicant

Old Antique Brewery Ltd (represented by Mr L Keen, Director/Owner)

Responsible Authority

Mr D Monk, Senior Environmental Health Officer, Chichester District Council

The Chairman formally opened the hearing and introduced the Sub-Committee members and Chichester District Council officers present. He outlined the procedure to be followed at the hearing.

Mr Foord outlined the details of the application for a new premises licence. He advised that the applicant Old Antique Brewery Ltd represented by Mr Keen, who had held a Personal Licence issued by this Licensing Authority since September 2015, would himself be the Designated Premises Supervisor if the application was granted. Mr Foord also confirmed that no issues had arisen since he had been issued with his licence. He reported that a valid application had been received on 14 August 2015, and that the representation period had run for 28 days until 10 September 2015. The statutory notice had been displayed at the premises and a notice published in the Chichester Observer series of newspapers on 27 August 2015. Representations were received from Sussex Police, whose concerns had been successfully mediated, the Environmental Health Authority and the Western Sussex Campaign for Real Ale ('CAMRA') which was in support of the application.

He explained that the application was described as a micro pub concept, which had grown in popularity during the last ten years, in the form of an old fashioned ale house. The application stated that real ales, wines and ciders would be on sale and that it would not have any games machines or loud music. It also stated that a warm and cosy environment would be created with cribbage or bar skittles available to play and that limited food would be available. The target customer age was predicted to be 40 with the expected average age being 55. The absence of games and televisions for sporting events would help detract large crowds of younger people.

Sussex Police had withdrawn their representation, having confirmed that agreement had been made in principle with the applicant to their proposed conditions. However, it remained a matter for the Sub-Committee to consider the inclusion of these conditions. He advised that the representation made by the Environmental Health Authority remained outstanding. He advised that Mr M Malkin who had submitted a letter of support on behalf of the Western Sussex Campaign for Real Ale was not able to attend the hearing but a colleague was in attendance in his place as an observer.

He referred to the unresolved planning matter and advised that the planning, building control and licensing regimes must be separated. The Sub-Committee was not bound by decisions made under the planning regime and vice-versa. He confirmed that the playing of live and recorded music would not take place on a regular basis and was only being applied for on Christmas Eve and New Year's Eve. It was intended that the music played would be incidental to the retail sale of alcohol, which as a result would be exempt from being licensed under the provisions of the Live Music Act. With regard to the retail sale of alcohol this potentially could take place every day and the hours applied for were between the hours of 10:00 and 23:30 hours.

Mr Keen confirmed that Mr Foord had outlined the application correctly.

Mr Keen addressed the Sub-Committee. He said that the public house would be based on the old style of public house. There were a couple of this type of public house in Worthing and one in Shoreham. There were also a great many others especially in the east end of London where they had been built around micro breweries. He advised that he owned four public houses in London that were normal public houses not micro pub. He believed that there was a market in this area for a micro pub. He asked the Sub-Committee to imagine the public house featured on the programme "All Creatures Great and Small" which was how the proposed public house was intended to be i.e. with ale served from jugs on the bar counter. He explained that the public house was unlikely to attract people under 40 years of age and that one feature of the application was that there would not be any music played. The only time music may be played, but probably would not even be music, would be Radio 4 to take the edge off the silence when the premises first opened each day. He identified the premises, in his opinion, being situated in a busy area and pointed out that a Thai restaurant was located next door to the premises and that he would expect there to be the same level of noise as the proposed public house. Woodies wine bar, a completely different business model, was situated opposite his proposed premises and could be very noisy. He advised that the noise

levels inside the proposed public house would be conversation level only. In relation to the running of a public house, he was aware of what worked both in London and in Chichester. He understood today's hearing was not about the planning issues but advised that he intended to appeal against the two refused planning applications. He referred to the term "pop ups" and advised that this was not what the public house would be and that he did not call it that as it gave the idea of a drinking den which was not what he wanted the public house to be.

Mr Keen responded to questions from the Sub-Committee. He advised that the original plan was for customers to have access to the garden at the rear of the premises but this would not now happen. He confirmed that the residential premises above were occupied. The premises would not sell spirits.

Mr Monk representing the Responsible Authority for Environmental Health addressed the Sub-Committee. He advised that the key issue was the resident living upstairs and the potential transfer of noise from the ground floor to the first floor. He asked Mr Keen to advise what noise investigations he had carried out. Mr Keen advised that he had not yet carried out any sound insulation investigations. He had firstly wanted to outline his case to the Sub-Committee. The premises was a listed building for which he had submitted two planning applications. The first application was for change of use of the premises and the second for listed building consent. He was not saying that he did not intend to carry out the sound insulation but had not yet done so as he was awaiting the outcome of his premises licence application due to the fact that the premises was a listed building and that the situation may escalate, and because of the expense. He advised that the occupier of the first floor flat had not objected to the application for a premises licence. He firstly wanted to hear from the Sub-Committee and then do what he could to mitigate any issues.

Mr Monk informed the Sub-Committee that a number of points he had intended to raise had been dealt with. He recognised that the proposal was for a micro pub and Mr Keen's intentions. The premises was a grade II listed building, which had previously been a retail business. He believed that the premises adjoined a motor repair business and a restaurant. The first floor of the premises was residential which gave concern for noise travelling from the ground floor to the first floor. He pointed out that Mr Keen had made it clear that there would only be radio background noise to create an atmosphere and that a different genre of public house would be created without games machines etc. There could still be an impact on the occupier of the first floor flat even through vocal noise from chatting and laughing as well as the putting down of glasses. It was the element of normal sounds that was the issue and understanding their impact. He confirmed the licence application was for the premises and if granted anyone could then run the premises using that licence. Therefore, what Mr Keen was looking to do at the premises was not necessarily what someone else would do.

In response to a comment made by Mr Monk that the second floor flat was occupied by the owner of the whole building, Mr Keen advised that the owner had rented out the second floor flat. Mr Keen also suggested that the retail element of the premises had been vacant for eight years or so.

Mr Bennett commented on the issue of the future use of the premises. Mr Monk was correct that the premises could change hands in the future. If problems occurred under new ownership then representations could be made to the Licensing Authority by Sussex Police, Environmental Health Authority or indeed any person. A hearing could then be arranged to review the premises licence and if necessary the licence revoked or amended. He confirmed that there were a number of legal restraints and controls in place to prevent or deal with any issues in the future.

Mr Monk informed the Sub-Committee that it was not certain what the impact on the flat above would be. If the Sub-Committee granted a premises licence there was still an element of uncertainty whether or not Mr Keen would be able to reduce noise levels as was his intention.

Mr Bennett responded to a request by the Sub-Committee for clarification regarding what would happen to the premises licence if Mr Keen no longer had the premises and whether or not the premises licence would become null and void. He explained that the premises licence would continue and if minor changes to the premises licence were applied for the Council's Statement of Licensing Policy stated that officers had delegated powers to deal with these changes. He confirmed that a premises licence could not be granted purely for the use by one individual only.

In response to a question from the Sub-Committee, Mr Foord advised that Mr Keen would be aware of all the other regulatory regimes that he had to comply with, such as food safety and fire regulations. He advised that representations from the Environmental Health Authority was based on the preventative action of applicants. He explained that Mr Keen had not yet carried out any preventative measures as he had wanted to outline his application to the Sub-Committee in the first instance.

Mr Monk confirmed that no sound testing had yet been carried out by Mr Keen. He advised that if the premises licence was granted it would restrict the action that could be taken if issues arose. Mr Bennett added that a premises licence could not be used to achieve outcomes that fell within other regimes, such as planning. In response to a member's comment he explained that he was not saying that Mr Monk's concerns could not be taken into account but stated that they could be addressed in appropriate conditions being attached to the premises licence.

Mr Keen informed the Sub-committee that he intended to lease the building from the owner once he had received planning and licensing approval. If he succeeded with his licensing application but not with his planning appeal he could surrender his premises licence.

Mr Foord confirmed that once a premises licence was granted it could be revoked following a review, transferred to another party or be surrendered. He read out paragraph 9.40 of the current Home Office Guidance, as follows "In the context of variations or minor variations, which may involve structural alteration to or change of use of a building, the decision of the licensing authority will not exempt an applicant from the need to apply for building control approval, planning permission or both of these where appropriate". If the premises licence was granted there was still an obligation for the applicant to gain planning permission and if this was not received then the applicant could surrender the premises licence if he wished to do so.

Mr Bennett confirmed that a premises licence could not be granted subject to the applicant obtaining planning permission and that paragraph 9.40 of the Government's Guidance made it clear that the two regimes had to be dealt with separately. Mr Keen could have a conversation with officers on the practicalities. The Sub-Committee must make their decision based on the four licensing objectives and the premises licence application before them.

Mr Monk responded to a question from the Sub-Committee concerning the existing ambient noise from traffic outside the premises. He explained that this was a different type of noise and nature. People tended to have a different perception of noise distributed through the structure of premises.

Mr Holland who was sat in the public gallery asked if he could make a representation to the Sub-Committee. Mr Bennett advised that the hearing regulations did not allow those who had not made a representation to address the Sub-Committee. This was accepted by Mr Holland.

Mr Foord then summed up the relevant sections of the Council's current Statement of Licensing Policy, which provided the general approach to be taken when considering a licensing application. He explained that each application was taken on its own individual merits. There were a wide range of premises across the District and he advised that the Policy could not set out all the requirements of the four licensing objectives. The licensing function was not intended as a mechanism for the general control of anti-social behaviour as other mechanisms, outside the licensing regime, were available to address such issues. However, the premises licence holder was expected to take responsibility and demonstrate within his operating schedule that he was taking steps to minimise any issues within the vicinity of his premises and to demonstrate this in practice. He explained that the decision of the Licensing Authority would not affect the applicant if he wished to pursue his planning applications. The Licensing Authorities decision was made under the Licensing Act 2003 and was not binding on the receipt of planning permission and vice-versa.

The Members of the Sub-Committee then retired to discuss and make their decision, Mr Bennett having first obtained the consent of all the parties to retire with the Sub-Committee in order to offer legal advice, only if required.

When the Sub-Committee returned, Mr Bennett advised that the Sub-Committee had not sought any further or specific legal advice in making their decision.

Resolved

The Sub-Committee considered the licensing objectives and the relevant case and statute law. They also considered all written representations and listened carefully to all persons at the hearing in particular those of the applicant and the environmental health officer.

The Sub-Committee noted the lack of representations from local residents in particular those of properties adjacent to or above the premises.

The main focus of consideration was the licensing objective of the prevention of public nuisance and evidence relating to that objective.

The main evidence which the Sub-Committee considered relevant to nuisance objective was:

- The experience of the applicant company and its officers in running other licensed premises
- The support of the Campaign for Real Ale and their written representations
- The representations by Police and the conditions recommended by them
- The representations of the applicant as to their management style, and their intentions as to management of noise levels.
- The lack of investigation into sound transmission into premises above by the applicant and the advice of the environmental health officer that this was necessary. The representation by the applicant that they would undertake such investigation work if their application was successful.
- That the premises are a Grade 2 listed building
- The location of the premises and the context of other businesses nearby including information as to the types of business and the vicinity which was well known to the Sub-Committee
- The Sub-Committee noted the advice from the licensing officer as to Para 9.40 of the relevant national licensing guidance as to licensing and planning applications. They noted in particular that it is a legal requirement to treat licensing considerations separately to planning applications and they therefore removed all planning issues from their considerations in this matter.
- The Sub-Committee noted the benefits of an active entertainment industry but also the need to preserve a healthy environment for those living nearby and considered these issues against the local licensing policies guidance on achieving that balance.

Having considered all of the above the Sub-Committee felt that on the evidence before them the application showed that the licensing objective as to management of nuisance was properly met.

The Sub-Committee therefore decided to GRANT the license in the terms applied for, as amended by the conditions recommended by Sussex Police.

4 Consideration of any late items as follows:

There were no late items for consideration at the meeting.

The meeting ended at 10.50 am

CHAIRMAN

Date: