



Minutes of the meeting of the **Alcohol and Entertainment Licensing Sub-Committee** held in Committee Room 2 at East Pallant House East Pallant Chichester West Sussex on Wednesday 3 October 2018 at 14:30

**Members Present**

Mr A Collins, Mr J Connor and Mr J W Elliott

**Members Absent**

**Officers Present**

Ms G Di Lauro (Litigation and Licensing Lawyer),  
Mr L Foord (Divisional Manager for Promotion and Events) and Mr G Thrusell (Legal and Democratic Services Officer)

**11 Election of Chairman for Hearing**

It was proposed by Mr Elliott and seconded by Mr Collins that Mr Connor be elected as the chairman for this meeting of the Alcohol and Entertainment Licensing Sub-Committee (AELSC).

Mr Connor consented to act as chairman and duly chaired the whole of the meeting.

Mr Connor confirmed the address of the premises which were the subject of the hearing which would take place in respect to agenda item 3 as being East Walls Hotel 3 East Row Chichester West Sussex PO19 1PD.

Mr Connor ascertained that the AELSC members had received and read the agenda papers for this meeting, namely: (a) the agenda; (b) the agenda supplement, which circulated the officer report which had been unintentionally omitted from the agenda; and (c) a set of proposed conditions to be added in relation to the licensing objectives (including those put forward by the police), which were circulated in a letter dated 27 September 2018 by Mr L Foord (Divisional Manager Communications, Licensing and Events Chichester District Council).

In addition each AELSC member and the officers present had been provided immediately prior to the start of this meeting with an A3 set of the maps and plans in the agenda papers at pages 7, 9, 31, 33, 35 and 37. Additional copies of the maps and plans were made available for the use of the applicant and its representative and to the members of the public who were present to make oral representations or observe during the hearing.

The entirety of the meeting would be held in public session (apart from when the AELSC retired to consider its decision) and so there would be no need at any point

to pass a resolution to exclude any press representatives (none in attendance) or the public.

[**Note** Hereafter in these minutes Chichester District Council is denoted by CDC]

12 **Declarations of Interests**

There were no declarations of interest made at this meeting.

13 **East Walls Hotel 3 East Row Chichester West Sussex PO19 1PD**

*Preliminary Matters*

Mr Connor had earlier confirmed the address of the property which was the subject of the new premises licence application (minute 11).

Mr Connor read out the emergency evacuation procedure for the benefit of the members of the public who were present.

Mr Foord advised that there were no issues arising with regard to the regulation 6 notice of hearing.

Mr Connor introduced the AELSC members and the three CDC officers who were present (their names appear in the list on the first page of these minutes). Ms Di Lauro explained her role as the litigation and licensing lawyer. She explained that she was present to give the AELSC legal advice during the hearing and that she would accompany the AELSC when it retired to reach its decision in order to advise it if requested but that she would play no part in the decision it reached.

Mr Connor repeated that the AELSC had read all of the papers and the members were conversant with the representations which had been submitted. When oral representations were made, the speakers did not need to repeat what they had already submitted.

*Licensing Officer's Introduction*

Mr Foord introduced his report which had been circulated in the agenda supplement.

The remit of CDC as the licensing authority (LA) at this hearing was to determine a premises licence (PL) application for East Walls Hotel 3 East Row Chichester West Sussex. The application had been submitted by East Walls (Chichester) Limited, which was represented at this hearing Mr C Denny of Innpacked, a company which provided a consultancy service to licensing applicants as well as professional training to the licensed retail and hospitality industry. In addition, the applicants Mr D Haughey and Mrs C Haughey were present.

He apologised for the omission, due to technical reasons during the publishing process, of his report from the agenda papers. Nevertheless all parties had received in advance of this hearing all relevant information in relation to this matter, including

that report and the conditions offered by the applicant and agreed in principle with Sussex Police during the representation period.

He pointed out that the LA had received a second comment from Sussex Police on Monday 1 October 2018. This merely clarified its interpretation of the hours within the application, which concurred with the LA's and the applicant's view. Reference to the hours would be made during his presentation.

The original application appeared at pages 11 to 37 of the agenda; a summary was set out in para 4.3 of his report (pages 2 and 3 of the agenda supplement). Maps and plans for the subject premises were on pages 7, 9, 31, 33, 35 and 37 of the agenda.

The applicant sought a PL solely for permitting the sale of alcohol (and no other licensable activity) at the East Walls Hotel, which was described as a 'high class boutique hotel' with 11 en-suite bedrooms, as follows:

Application seeking	Standard days, timings and non-standard standard timings being applied for
<p>'Supply of alcohol'</p> <p><b>RESIDENTS OF THE HOTEL</b></p> <p>(for consumption 'on' the premises)</p>	<p><b>Everyday</b></p> <p><b>00:00 – 00:00</b></p> <p><b>No non-standard timing or seasonal variations</b></p>
<p>'Supply of alcohol'</p> <p><b>GUESTS OF HOTEL RESIDENTS</b></p> <p>(for consumption 'on' the premises)</p>	<p><b>Monday to Sunday</b></p> <p><b>11:00 – 23:00</b></p> <p><b>No non-standard timing or seasonal variations</b></p>
<p>'Supply of alcohol'</p> <p><b>GENERAL PUBLIC</b></p> <p>(for consumption 'on' the premises)</p>	<p><b>Monday to Sunday</b></p> <p><b>11:00 – 18:00</b></p> <p><b>No non-standard timing or seasonal variations</b></p>

The valid application for a PL was submitted on 8 August 2018. The representations period was for 28 consecutive days concluding on 5 September 2018. During that period the requisite statutory notice was displayed at the premises and in addition an appropriate advertisement was published in the *Chichester Post* on 17 August 2018. There were 26 representations: 14 in support and 12, including Sussex Police, against. The basis of these objections and supporting comments was summarised in paras 6.1 and 6.2 (ie the first of what are two paras 6.2) at pages 4 and 5 of the agenda supplement.

He apologised for the need to correct the second and final line of the second bullet point at the end of para 6.1 of the report. The word 'noise' had been erroneously omitted between the words 'that' and 'should'. That bullet point should in fact read (if quoting *verbatim* from the representation) thus: 'Signs are put up in the hotel reminding guests they are in a quiet residential area and to keep noise to a minimum'.

The applicant had agreed in principle with Sussex Police to various conditions (circulated to all interested parties) being imposed in the event of a PL being granted. In view of that consensus Sussex Police was not attending this hearing. It was of course ultimately for the AELSC to determine what, if any, conditions to attach to any grant of a PL.

#### *Applicant Representative's Opening Comments*

Mr Denny acknowledged that Mr Foord's introduction was an accurate and thorough appraisal of his client's application. He said that the designated premises supervisor (DPS) in the application form (page 21 of the agenda) had left the applicant's employment (para 4.5 of the officer report on page 3 of the agenda supplement) and Mr Haughey would be nominated as the DPS in due course. He explained that he had been engaged by the applicant on 14 September 2018, which was after the consultation period had ended, and his advice was that the application lacked sufficient detail with regard to the licensing objectives and did not state that the supply of alcohol to the hotel's residents would be for 24 hours. He and Mr and Mrs Haughey had held an informal meeting on 25 September 2018 with residents, as a result of which additional conditions had been offered to address the prevention of public nuisance. Accordingly the application now before the AELSC was different and much clearer than the one originally submitted and was accompanied by a range of proposed conditions.

#### *Questions to the Licensing Officer*

Mr Foord responded to questions by the AELSC as follows:

- The previous licensing history conditions for the premises when it traded as the Sussex House Hotel until the licence was surrendered on 10 May 2012: recorded music could be played daily without time restriction; late-night refreshments were served until 00:00 or 00:30; alcohol was served until 00:00 daily (23:30 Sundays); other conditions included serving of alcohol with meals. There were no complaints about the licensable activities.

- The proposed conditions submitted by the applicant with the agreement of Sussex Police were carefully considered by officers to ensure that they were practicable, enforceable and realistic. As to the eight proposed conditions for the prevention of public nuisance: (a) condition 1 had been amended to clarify which windows and external doors would be closed after 23:00 and making an exception for access to and egress from the premises: (b) condition 6 was amended to permit lighting to enable safe access to and egress from the premises; and (c) condition 5 had been deleted because that activity had been deregulated and so any condition in relation to it would be unenforceable.

### *Applicant's Opening Address*

Mr Haughey spoke as the applicant. He had proposed condition 5 (which would now be deleted as it was unenforceable) in order to reassure residents about the noise levels from music played outside. The reference to '40 persons' in condition 3 was based on a maximum of 22 guests (two for each of the 11 bedrooms) and allowing for no more than 18 friends visiting. As to smoking in condition 4, this would be reinforced by the use of signs to request and remind those using the rear garden area to be courteous and considerate at all times for the sake of residents.

Mr Haughey replied to questions by the AELSC with regard to:

- The number of covers in the restaurant: 16 for breakfast with some eating in their rooms, which took account of the limited space to seat guests comfortably.
- His background experience: in addition to having been in the banking industry, he had bought and managed holiday lets and also buy-to-let properties of high quality.
- The hotel had opened for business on 28 May 2018 and there had been guests using the garden during the summer. Although hotels could be noisy places, East Walls Hotel was being promoted as affording the opportunity for a quiet night's sleep; entertainment was not offered as one of its attractions. So far, the clientele had included business professionals, chief executive officers, a planning inspector, relatives of local residents, theatre goers and tourists for West Wittering beach.
- The previous hotel which had operated on the premises had the rear garden and he could only assume, as he was not sure, that it had been available to guests.

Mr Denny said that he had no more to add at this stage to his client's case.

### *Oral Submissions by the Representors*

The following representors addressed the AELSC:

(1) Ms Mannam on behalf of Mr and Mrs Barry, Ms Bartholomew and Ms Arden-Brown

Their objections remained regarding the adverse impact on the quality of their lives and general amenities by the hotel's rear garden being used for smoking and drinking. During the past decade the premises had not operated as a hotel and the garden had not been used. The background experience outlined by Mr Haughey was not reassuring and he had ignored complaints about the disturbance caused during the construction works and also difficulties experienced with people who had occupied a first floor flat in the hotel premises. They had not been invited to the meeting with residents that Mr Haughey had arranged.

Mr Connor informed Ms Mannam that her complaints about Mr Haughey were not relevant to the application for determination at this hearing and would not be taken into account.

The AELSC had no questions for Ms Mannam.

(2) Mrs Lewis on behalf of Mrs Moon, Mr and Mrs Butler, Mr Marshall and Mr and Mrs Lecompte

She identified on the map on page 7 of the agenda where those whom she represented resided in close proximity to the hotel, with overlooking and sharing a wall with the hotel's rear garden. Although they acknowledged the need for a PL, they were nevertheless concerned about the potential nuisance which might arise from the use of the garden in what was a quiet residential area with a number of elderly residents. The rear area of the hotel had not previously been used as a garden and this new development with the disturbance risk it carried was unwelcome. The primary concern was noise from use of the garden to as late as 23:00 from what might be as many as 40 people in a small space. The fact that this was to be a 'high class boutique hotel' did not allay residents' concerns. They sought conditions that (a) windows and doors should not be opened after 23:00; (b) the display of signs that patrons should be considerate of neighbourhood amenity; (c) the garden should not to be used after 21:00 so as to restrain light pollution affecting neighbours' sitting rooms and bedrooms, which was not an unreasonable curfew hour given the number of drinking establishments in the city which would be open until later.

The AELSC had no questions for Ms Lewis.

(3) Mr Dean on behalf of his wife and for himself

He did not object to the grant of a PL for this hotel *per se*, which was perfectly reasonable, but he had proposed three appropriate conditions. He was concerned at the release of additional information, in that whilst it had been received by representors it had not been sent to and seen by those who had not made representations. At the meeting at the hotel to which residents had been invited, Mr Denny had given an assurance that there would be no large events in the garden. However, Mr Haughey had mentioned for example plans for late-night dining and a supper club. Whilst Mr Denny had said at that meeting that more details would be

forthcoming, not everyone concerned was present at this hearing to hear the additional information. Mr Foord's letter dated 27 September 2018 with the proposed conditions had been circulated quite a while after the consultation deadline and made mention of a maximum of 40 people (which was obviously more than the maximum number of bedroom occupants) in the garden and up to 23:00 (which was far too late) with the consequent increased noise level; again this would not be known to everyone. The map on page 7 of the agenda revealed a significant number of properties to the rear of the hotel, which were in direct line of the hotel garden in terms of light, noise and overlooking. He was fairly sure that the garden of the former Sussex House Hotel had not been used for the use of guests; indeed, Mr Haughey had said that the garden was filled with rubbish. The block diagram (page 35 of the agenda) did not show most of the properties overlooked by the hotel garden. The application was, therefore, a bit flawed in some respects and there was the unfortunate late circulation of the report and the proposed conditions. The supper club should have been added in section I of the application form (page 20 of the agenda) and the proposed conditions should have appeared in section M (page 23). Of the 25 properties behind the hotel, 19 knew nothing of this application (the notice was displayed at the hotel behind frosted glass). He had sympathy with the application. The hotel refurbishment was splendid but it had been designed to maximise bedroom space with minimal communal space and so the breakfast and bar areas were not sufficiently large and since the garden was larger than the bar area it was unsurprising that the garden was to be used for events. The condition stipulating a maximum of 40 people in the garden was causing considerable concern. He was surprised that CDC did not advertise licensing applications in a similar manner to planning applications.

Mr Foord responded to Mr Dean's points as follows: (a) the application did not include late-night refreshment; (b) the maps and plans were provided purely for illustrative purposes to aid the AELSC's understanding and the block plan only delineated the boundaries of the licensed premises; (c) the applicant had complied with all the statutory requirements; (d) the publicity process was very different from that for planning applications and there was no statutory requirement or any stipulation in the government guidance to display public notices: the applicant had displayed a notice at the hotel premises and placed one in a local publication, the *Chichester Post*, as required, and in addition, CDC published a weekly list of current and new licensing matters; (e) the applicant was entitled to apply to vary the terms of any PL granted, in respect of which representations could be made; (f) whilst it was correct that only interested persons would receive supplemental information, it was quite common for additional material or points to arise during the mediation process; and (g) whilst the reference in proposed condition 3 (prevention of public nuisance) to a maximum of 40 people in the garden had not appeared until late September 2018, it should be noted that prior thereto there was no upper limit at all.

The AELSC had no questions for Mr Dean.

#### (4) Mrs Cameron

She said that overall she was delighted and thrilled with the hotel and was very happy to support the application. She had visitors who had stayed at the hotel. As the wall of her property adjoined the hotel, she had concerns about the proposed

times in the application and the maximum of 40 people in the garden, which was an appreciable number and it had not been a known fact during the consultation.

The AELSC had no questions for Mrs Cameron.

Neither Mr and Mrs Haughey nor Mr Denny had any questions for the representors.

#### *Applicant Representative's Further Address*

Mr Denny said that the representations must relate to the four licensing objectives. The plans could be clearer in certain respects, for example the height of the rear garden boundary wall was not apparent. It was ten feet high and he had observed that morning while at the hotel that from the rear of the premises he could see only the chimney pots of the East Walls properties and so he doubted how many, if any, of the 25 properties to the rear of the hotel were in the line of sight of the garden. The figure of 40 people in the rear garden was a maximum and would not be exceeded. It was calculated with regard to the maximum number of bedroom guests and allowing each of those one visiting guest to the hotel. His clients had not discussed at all holding events in the garden. The emphasis was very much put on a quiet stay at a high class boutique hotel with sociable drinking in the evening. There were varying views on what were acceptable noise levels in a city in the evening. The use of the garden by some guests in the evening until 23:00, which was more likely in the summer months, was not unreasonable. Late finishes save for special occasions such as Goodwood events were not anticipated as being regular occurrences. Mr and Mrs Haughey would usually be available to oversee their guests' use of the hotel.

#### *Questions to the Applicant's Representative*

Mr Elliott asked if account had been taken that the properties to the rear had their living accommodation on the first rather than the ground floor. Mr Denny explained that during the inspection he had carried out that morning he had noticed the first floor windows of the properties to the right and left of the garden but he could only see chimney pots when looking straight ahead and in his judgment the occupiers of the properties on each side of the garden would be able to see the hotel but not the garden. If there were in the future to be a supper club, no food or drink would be consumed in the garden after 23:00.

Representors were invited to ask questions of Mr Denny on matters of evidence only.

Mr Dean queried Mr Denny's comment about how much he had been able to observe from his vantage point (which had not been clearly identified) of the surrounding properties. He said that his bedroom was on the first floor of his home and he could see from there into the hotel garden. In any event, noise could be heard regardless of any line of sight.

Mr Denny said that he had stepped out of the rear of the hotel onto the decking and from that immediate vantage point he had noticed the sight lines on all three side of the garden. He acknowledged that noise could be heard regardless of sight lines.

There were no other questions for Mr Denny.

#### *Applicant Representative's Closing Summary*

Mr Denny emphasised that the subject premises was an 11-bedroom high quality boutique hotel. It currently offered bed and breakfast. The terms of the application for a PL were clear. The four licensing objectives and residents' concerns had been properly addressed. The applicant would comply with the conditions attached to any grant of a PL.

Mr Foord had no questions to ask of Mr Denny.

Mr Elliott asked how critical it was to the hotel's day-to-day operation to have up to 40 guests in the garden.

Mr Haughey repeated the basis on which the number had been calculated and said that he and his wife had considered this to be a fair approach. He added that they could consider a limited reduction in that number.

#### *Licensing Officer's Conclusion*

Mr Foord said that the Licensing Act 2003 and the regulations made thereunder required that CDC as the local licensing authority should carry out its functions with a view to promoting the four licensing objectives: prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm. In reaching its determination the AELSC must have regard to recently revised Home Office guidance in April 2018, CDC's current Statement of Licensing Policy, and the oral and written evidence submitted in relation to this application. Of the 26 representations received, 14 were in favour and twelve were objections, including initially Sussex Police.

#### *Final Opportunity for Submissions*

Mr Connor ascertained that everyone felt they had had sufficient opportunity to address the AELSC and that no-one wished to make any new points.

#### *Retirement to Reach Decision*

Mr Connor explained that the AELSC would retire with the CDC Litigation and Licensing Lawyer in her clearly defined role (as had been outlined earlier during this hearing) to consider its decision. The AELSC would return to announce its decision within, he anticipated, the next hour.

The AELSC retired at **15:52** to make its deliberations and reach a decision with respect to the application. The members were accompanied by Ms Di Lauro (Litigation and Licensing Lawyer).

## *Decision*

The AELSC returned at **16:34** from its deliberations to announce its decision with respect to the application.

The applicants, their representative Mr Denny, one member of the public, Mr Foord, Ms Di Lauro and the Democratic Services representative were present.

Mr Connor announced that the AELSC had not needed to seek legal advice from Ms DI Lauro during the adjournment and she had not been involved in its deliberations.

Mr Connor read out the AELSC's decision, which was, as he explained, an indicative version only. The final version would be published with any necessary corrections made.

The final perfected version is set out as follows:

'The AELSC considered the Licensing Act 2003, relevant law and guidance including Chichester District Council's Statement of Licensing Policy 2016 -2021 and the Revised Home Office Guidance of April 2018 as well as Human Rights considerations and equality considerations.

In particular, the AELSC focussed upon the licensing objectives under section 4 of the Licensing Act 2003, namely: a) the prevention of crime and disorder; b) public safety; c) the prevention of public nuisance; d) the protection of children from harm.

The AELSC had considered the merits of the application, and in doing so took into account all evidence provided both in writing (through the report and supplemental evidence) and all submissions made at the hearing.

Particular consideration was given to the following:

- (1) The location of the premises which is in a residential part of the city of Chichester, this being relevant to the prevention of public nuisance.
- (2) The relevant representations from local residents, both those in favour and those in opposition of the application.
- (3) All the representations made by the applicants and the applicants' representative; the officer's report and the representations made by the Responsible Authority, Sussex Police.
- (4) Section 17 of the Crime and Disorder Act 1998, under which the Council is under a duty to exercise its functions with due regard to the likely effect on crime and disorder in its area and to do all that it reasonably can to prevent crime and disorder.

The AELSC further noted the ability for the licence to be reviewed and varied if required, in particular if the promotion of the Licensing Objectives had been adversely impacted.

Having considered all of the above the AELSC decided to **grant** the Premises Licence.

The grant of the premises licence was subject to all the conditions as proposed by the Applicant and agreed in principle by Sussex Police **subject** to the following **amendments**:

### **The Prevention of Public Nuisance**

#### **Condition 1**

All windows and external doors to the rear of the premises on the ground floor leading to the garden will be closed at 23:00 hours other than when used for access and egress to and from the premises.

#### **Condition 5**

Deleted as de-regulated by the Licensing Act 2003 and the Home Office guidance issued under it, whereby live or recorded music played between 8:00 am and 11:00 pm does not require a licence, therefore this condition would be unenforceable.

#### **Condition 6**

Other than providing suitable external lighting for safe access and egress to and from the premises, all other external lighting in the garden area will be switched off no later than 23:00 hours.

**Sussex Police suggested Condition 2** to be **amended** as follows: ‘...Refresher training for all staff shall be conducted thereafter at intervals of no more than 12 weeks for the first year of employment and subsequently at six monthly intervals. ...’

#### 14 **Late Items**

There were no late items for consideration at this meeting.

**[Note** The meeting ended at 16:40]

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CHAIRMAN

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DATE