



Minutes of the meeting of the **Alcohol and Entertainment Licensing Sub-Committee** held in Virtual on Thursday 13 May 2021 at 9.30 am

Members Present: Mrs T Bangert, Mr G McAra and Mr A Sutton

Members not present:

In attendance by invitation:

Officers present all items: Miss H Giudici (Licensing Assistant (Technical)), Mr L Foord (Divisional Manager for Communications, Licensing & Events) and Ms G Di Lauro (Litigation and Licensing Lawyer)

55 **To elect a Chairman for this Hearing**

Ms Di Lauro opened the hearing and confirmed her role within the hearing as the Licensing Lawyer. She explained that her role was to advise the Sub-Committee and to ensure that procedure is followed in accordance with Regulations under the Licensing Act 2003. Ms Di Lauro confirmed that she would retire with the Sub-Committee, subject to no objection, in order to ensure that the Principles of Natural Justice were adhered to in the decision making process and to provide any other legal advice, as required. Ms Di Lauro explained that should any advice be provided to the Sub-Committee once they had retired to consider the application, it would be recorded in the decision notice.

It was proposed by Cllr Sutton and seconded by Cllr McAra that Cllr Bangert be elected as the Chairman for this meeting of the Alcohol and Licensing Sub-Committee.

Cllr Bangert consented to act as Chair and duly chaired the whole meeting.

Cllr Bangert confirmed the purpose of the hearing was to consider a full Premises Licence variation application and confirmed the address of the premises which were subject to the hearing and, which would take place in respect of Agenda Item 3 as; East Walls Hotel, 3 East Row, Chichester, West Sussex, PO19 1PD.

The Chair formally opened the meeting and introduced all those present, including fellow members of the Sub-Committee, officers, the applicant and representors. The Chair informed the Sub-Committee that Mr Cameron was a representor to the original application but had failed to respond to the hearing notice in the given time; she explained that she would allow him to speak if all parties agreed. The Chair consulted with fellow Sub-Committee members and Mrs Kelly on behalf of the

applicants, all confirmed that they were happy to allow Mr Cameron to address the hearing.

56 Declarations of Interests

There were no declarations of Interest.

57 Licensing Hearings

Preliminary Matters

The Sub-Committee followed the procedure set out at page 3 of the document pack. The membership was as set out in the pack.

Licensing Manager's Introduction

Mr Foord, Divisional Manager for Communications; Licensing & Events outlined details of the application and clarified the basis of the application was to vary an existing licence under the Licensing Act 2003.

He explained that the application related to the existing East Walls t Hotel at 3 East Row, Chichester, Mr Foord drew the Sub-Committee's attention to page 17 of the agenda pack, which provided further detail of the Hotel and how it currently operated.

Mr Foord explained that the application being considered seeks to change a condition on the Hotel's current Premises Licence which had originally been granted (following a hearing) on 3 October 2018. He drew the Sub- Committee's attention to page 51 of the Agenda pack which set out the full Licence that had been granted on 3 October 2018, as well as all the attached conditions. Mr Foord explained that the conditions set out on pages 55 and 56 were attached following the last hearing on 3 October 2018.

Mr Foord informed members that the applicants had provided a summary of their application, and drew the Sub-Committee's attention to page 25 of the Agenda Pack.

Mr Foord informed the Sub-Committee, as stated on page 6 of the agenda pack, that the applicants had originally sought to amend Condition 2 of Annexe A as follows;

Current: 'Alcohol may only be sold and/or served to non-guests and non-residents between the hours of 11:00 and 18:00'.

Original proposal: 'Alcohol may only be sold and/or served to non-guests and non-residents between the hours of 11:00 and 23:00.

Mr Foord highlighted paragraph 4.5 on page 6 of his report to the Sub- Committee. This paragraph outlined a number of steps that the applicants had proposed in order to promote the four Licensing Objectives under the Licensing Act 2003; Mr Foord explained that these steps would normally be translated into Conditions and attached to any Licence granted. However, he explained that much of what has been outlined by the applicants was already included within Conditions attached to the original licence, and would therefore be automatically incorporated in the varied licence, should the variation be granted.

However, the applicants has stated that 'Alcohol will only be served to those with restaurant reservations'. This would mean that beyond the existing hour of 18:00, non-guests and non-residents would only be sold alcohol where it was associated with a restaurant reservation.

Mr Foord confirmed the basis on which the Sub-Committee had been convened was as a result of the Licensing Authority receiving six relevant representations. Of the representations received, the one from Sussex Police has been resolved following mediation, Mr Foord reminded the Sub- Committee that the Police were a Responsible Authority under the 2003 Act and a copy of their original representation and evidence of their agreed condition with the applicants was included within the Agenda Pack at page 35. The remaining five representations were from local residents.

Within the Agenda Pack Mr Foord explained that a full copy of the licence application had been included and could be viewed from pages 15 thru to 31. A map depicting the application site and the residential properties from where representations had been made was also included within the Agenda Pack.

Mr Foord confirmed that the Agenda papers had been made available to all parties connected with the hearing as well as being made publically available for inspection. The Licensing Team ensured that the statutory Notice of Hearing under the Licensing Act 2003 (Hearings) Regulations 2005 was sent to the applicant and all persons who had made relevant representations.

Following receipt of that Notice, a party was required to give the Licensing Authority notice, stating whether they intended to attend or be represented at the Hearing and whether they considered the Hearing to be unnecessary. In respect of this Hearing, Mr Foord confirmed that parties were required to give notice no later than five days before the date of the Hearing.

He iterated that to assist proceedings the response received from Sussex Police, along with the mediation outcome had been included within the Agenda Pack at page 33. Further evidence had been included at page 47, and shows in principle the agreement that has been made between Sussex Police and the applicants regarding the condition that could be applied should the Sub-Committee be minded to grant the Licence variation.

Mr Foord reminded the Sub-Committee that the inclusion of any proposed conditions was ultimately a matter for the Sub-Committee to determine even where they were agreed in principle with a Responsible Authority.

Mr Foord informed the Sub-Committee that for the avoidance of doubt, and to address the concerns of local residents, the applicants was now offering to close the Terrace at 10pm each day. He explained that this meant, if considered appropriate by the Sub-Committee, that the final condition would be more restrictive than what the applicants had originally applied for.

Mr Foord highlighted to the Sub-Committee some of the existing conditions included within the current Premises Licence regarding the use of the garden area. These could be found at page 56 of the Agenda Pack. He explained that these conditions were attached at the Hearing on 3 October 2018.

Mr Foord informed the Sub-Committee that since the Hearing on 3 October 2018, there have been no issues formally lodged with the Licensing Team regarding the operation of the Hotel. He also highlighted to the Sub-Committee that the Environmental Health Team, who are the Responsible Authority for noise pollution have not submitted a representation or commented on this application.

Mr Foord introduced the applicants and invited them to address the Sub-Committee by way of confirming his Report accurately outlined their application.

Before the applicants addressed the Sub-Committee, the Chair, Cllr Bangert invited Sub-Committee members to ask any questions as to the papers for clarification purpose before the Hearing continued.

Cllr. Sutton enquired how any issues that may arise, if the Sub-Committee were to grant the licence would be dealt with. Mr Foord explained that if the Sub-Committee were to grant the licence then there is an expectation on the Licence Holder that they act in accordance with the permission granted and any attached conditions. If complaints were to arise then the Licensing Team will work with the Licence Holder to address any concerns that would have been raised. Mr Foord also reminded the Sub-Committee that if negotiations were unable to resolve any concern raised, the Licence review process could be invoked if the operator was undermining any of the four Licensing Objectives. However, he reiterated that there was no record of any complaint regarding the premises since it's the Licence had been granted in 2018.

With regards to the representations included within the Agenda Pack, Cllr. Sutton questioned whether the representation made by Mr Barbour (page 36 of the Agenda Pack) was an actual representation as he felt it was quite ambiguous. In response Mr Foord explained that Mr Barbour does make reference to noise disturbance from the garden area and this would fall into the domain of the Licensing Objective of the Prevention of public nuisance.

Cllr. McAra asked if the sale of alcohol to non-guests with reservations up to 11pm and the concession from the applicant that no alcohol would be permitted on the garden Terrace after 10pm was also applicable to guests of the Hotel. Mr Foord explained that under the Licensing Act 2003, as a staying guest of a hotel the person is entitled to purchase alcohol 24 hours a day, seven days a week, subject to any conditions on the Licence. However, Mr Foord explained that the applicants had

offered the condition regarding the use of the garden terrace, which suggests that the Garden would be closed to all, including residents of the Hotel.

Through the Chairman, Ms Di Lauro asked that the applicant Mrs Kelly, turn on her video to ensure that a level of openness and transparency was being maintained. Mrs Kelly agreed to switch her video on; however, due to technical difficulties in turning on the video, the Hearing was adjourned for ten minutes to allow Mrs Kelly time to resolve these issues.

Applicants opening Address

Mrs Kelly informed the Sub-Committee that they were looking to extend their licence. She acknowledged that most of the concerns that had been raised through the application were regarding potential noise from the garden, therefore they had suggested that the garden would not be accessible to non-residents of the hotel after 10pm, she confirmed that hotel residents did have access to the garden until 11pm.

Mr Foord explained that following this proposal to end the consumption of alcohol in the garden at 10pm, the Licensing Team had forwarded this proposal to all the representors seeking their feedback. No feedback was received, which means that the proposal is still valid and available to the Sub-Committee to consider, along with the wording from the Sussex Police as set out in the agenda pack.

Representations

Mr Foord confirmed that a response had been received from Mr Dean and Mr Barbour expressing their wish to attend the Hearing; however, he informed the Sub-Committee that neither had confirmed whether they wished to address the Sub-Committee. Mr Cameron was in attendance but had not responded to the Notice to confirm that he wished to address the Sub-Committee. Mr Foord explained that it was within the Sub-Committee's discretion, subject to agreement from all parties, whether to allow any of the representors to address the Sub-Committee.

Cllr. Bangert asked Mr Cameron if he wished to speak. Mr Cameron confirmed that he did. Cllr. Bangert conferred with her fellow Members of the Sub-Committee and both agreed that they were in agreement for Mr Cameron to address the Sub-Committee. The Applicants did not object to this.

Cllr. Bangert invited Mr Cameron to make his representation.

Mr Cameron explained that whilst has (and his neighbours) were fully supportive of seeing the Hotel thrive, their main concern was over potential noise late at night. He acknowledged that whilst the terrace would be shut to non-residents from 10pm, it did not address the real issue of noise as it would still be open to residents. Mr Cameron questioned how this could be regulated and wanted to understand how the applicant proposed to manage this issue.

In response Mrs Kelly acknowledged concerns and agreed that there was no real answer, however, she explained that their target age group was an older audience (she acknowledged that this was not something that could be legislated as people of any age may book the hotel) and an older customer base is not ordinarily known for creating excessive noise or behave disrespectfully. In addition, she explained that the Hotel did not serve beer on tap, there were no sport rooms or TV showing sport and there was no music being played outside.

The Chair asked Mr Foord to comment and Mr Foord drew attention to page 56 of the agenda pack which set out the conditions that were added following a meeting of the Sub-Committee held on 3 October 2018. Mr Foord explained that these conditions were added in response to concerns at the time regarding the use of the outside area. In particular conditions 5 to 9 which all relate to controls in the garden area, including all windows and doors to the rear of the property on the ground floor, that lead to the garden are to be shut after 11pm except for access and egress; notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly; a the total number of persons permitted in the garden area at any one time shall not exceed 40 persons; and that the Hotel is to have staff on duty to monitor and control the behaviour of people and all lights in the garden will be switched off at 11pm (other than safety lighting). He confirmed that these additions would remain on the licence as Mrs Kelly was not seeking to amend or remove any of those conditions. Mr Foord informed the Sub-Committee that there had been no complaints since the last Sub-Committee hearing in 2018 when the additional conditions had been attached.

The Chair asked Mr Cameron if he had any further comments, Mr Cameron confirmed that he had no further comments.

The Chairman asked if Mr Barbour and Mr Dean would like to speak. Both confirmed that they would like to take the opportunity to address the Sub-Committee.

The Chairman invited Mr Barbour to speak. Mr Barbour informed the Sub-Committee that he resided at 6 East Row Mews, which was located directly next door to the Hotel terrace. He explained that he had viewed the property both internally and externally with the applicants and confirmed that he was satisfied with the set-up; they had also explained to him the smoking set-up and he was confident that this would not affect him as it was located close to the Hotel building. In his view the set-up was very much a restaurant and did not look like a pub, which he felt was very appropriate. He explained that his concern had been regarding the terrace but given the conditions of a 10pm curfew for all non-residents and an 11pm lights out policy in the garden area, he felt comfortable that his concerns were being appropriately managed and wished the applicant much success.

The Chair invited Mr Dean to speak. Mr Dean informed the Sub-Committee that he supported the comments made earlier by Mr Cameron. He explained that at the Sub-Committee hearing in 2018 there had been a lot more objections to the application which related to concerns regarding potential noise disruption late at night. He acknowledged that there were a number of conditions in place (which had been read out by Mr Foord); however, he felt that these were impractical and what

was required was more of an understanding between the applicants and residents that the concern is one of noise. He explained that the original applicants, three years ago, had not been able to confirm there would be no noise disruption from weddings for example; however, following a meeting with the current applicants, he felt more reassured that they did understand the concerns residents had regarding potential noise disruption. In the meeting with the applicants he informed the Sub-Committee that he had commented that it would have been helpful if the applicants had put a note through all the neighbouring properties (a total of six houses back onto the Terrace) and the Hearing may have been avoided.

The Chair invited members of the Sub-Committee to ask any questions they had for both the applicants and the representors.

Cllr. Sutton asked the applicants and Mr Foord if they could clarify whether the proposed 2200 hours curfew applied to just non-residents or whether it applied to both non-residents and residents of the Hotel. Cllr. Sutton also asked if the applicants could explain to the Sub-Committee how they thought the difference in a 2200 hours curfew and a 2300 hours curfew might affect their business. Mrs Kelly explained that the proposed 2200 hours curfew was a compromise to try and accommodate all parties. In addition she referred to The Ship Hotel in Chichester, where guests are 'tapped on the shoulder' by staff at 2300 hours to confirm if they are a resident of the hotel or not, and if they are not a resident then they are asked to leave.

To help clarify the position further in the distinction between residents and non-residents, Ms Di Lauro suggested that Mr Foord be invited to provide further detail.

Mr Foord drew the Sub-Committee's attention to the current licence, which included specific conditions about the sale of alcohol and who it could and could not be sold to. He drew the Sub-Committee's attention to page 5 of the Agenda pack, at Annexe 2; '... alcohol may only be served between the hours of 11am and 6pm'. Mr Foord explained that the applicant had originally sought to vary the second of those two conditions to allow the sale of alcohol to non-residents and non-guests up until 11pm. In addition Mrs Kelly then agreed, as set out in the Police representation (at page 33), that if the sale of alcohol was to go on until 11pm for non-guests and non-residents, that alcohol sale may only be supplied with a restaurant reservation and seated at tables; therefore alcohol sales are ancillary to a meal. Mr Foord explained that this meant someone would not be able to walk into the Hotel and purchase alcohol; they would only be permitted to purchase alcohol if they had a restaurant reservation and were sat at a table consuming food with the alcohol. Mr Foord highlighted that the premise licence does already allow the retail sale of alcohol both indoors and outside, but stressed that there were already a number of conditions on the current premises licence regarding the management of the garden area (set out at page 56 of the agenda pack). He informed the Sub-Committee that the experience of this Licensing Authority, to date, is that the conditions are working as there have been no formal complaints made regarding the hotel; and the Environmental Protection Team had not objected to the application.

Mr Foord asked Mrs Kelly to clarify the situation regarding the conduct of people in the garden, and to confirm whether she was proposing in her compromise; which

had been circulated to all objectors; that the terrace would be closed to all non-residents at 10pm or everyone at 10pm.

Mrs Kelly confirmed that the compromise was for non-residents. Mr Foord explained that this would mean residents of the Hotel would be able to stay in the garden until 11pm, however, as set out in Condition 9 all lights (except safety lighting) are switched off at 11pm in the garden. Mrs Kelly confirmed that this was correct.

The Chair acknowledged that communication was key and was interested to have observed that Mr and Mrs Kelly were in the same room as Mr Cameron. She encouraged the applicants to keep communicating with residents and local groups to keep them informed; so that they feel comfortable they can liaise with the applicants. Mrs Kelly confirmed that this was her intention and a number of residents had her direct mobile number so they could get in touch straight away should there be any concerns.

The Chair invited the applicants to ask any questions they may have for the representors. Mrs Kelly confirmed that she had no questions; in addition, Mr Kelly reiterated that it was in the interest of the Hotel to keep noises to a minimum.

The Chair confirmed that there were no further questions to be asked and invited the applicant to make her closing statement.

Applicants' Closing Statement

Mrs Kelly informed the Sub-Committee that the variation application was solely about the restaurant so that the Hotel would have a good restaurant. She explained that it was not economically viable to have it for only 21 residents guests, which is why they would like to open it up to the general public and the initial feedback, they had received, had indicated that this was a very popular option.

Following the conclusion of the applicants' closing statement, the Chair invited the representors to make any final comments. The representors confirmed they had no further comments.

The Chair invited Mr Foord to make his final statement.

Licensing Manager's Closing Statement

Mr Foord explained that the Licensing Act 2003 and accompanying Regulations requires that the Council, as the local Licensing Authority, undertake their required functions with a view to promoting the four Licensing Objectives. He advised that in reaching their determination, the Sub-Committee must have regard to Guidance issued by the Home Office in 2018 and the Council's current Statement of Licensing Policy 2020 – 2022; as well as all the oral and written evidence provided for this application and all relevant representations made.

Mr Foord referred to the following paragraph from the Council's current Statement of Licensing Policy 2020-2022:

‘The Licensing Authority, in adopting this policy, recognises both the needs of residents and visitors for a safe and healthy environment in which to live, work and enjoy their recreation.

The Licensing Authority, in adopting this policy, has set out the general approach that it will take when it considers applications under the 2003 Act. The Licensing Authority confirms that each application will be considered on its merits. In view of the wide ranging variety of premises and applications, the policy necessarily cannot set out all the factors which will result in the Licensing Objectives being achieved, nor all the necessary and appropriate control measures required for each premises’.

In addressing any issues such as those raised by Cllr. Sutton, the Licensing Authority does have regard to the wider consideration affecting the amenity of the local area, including noise.

The Licensing Authority works with appropriate partners to ensure that licence holders operate in accordance with their premises licence if granted and any conditions attached should be applied in practice.

In particular to this application, Mr Foord stressed that in line with the Chichester Vision and supporting documents; as well as the Council’s Event Strategy 2020 – 2025, this Licensing Authority recognises, and aims to support, encourages and helps facilitate the growth of the local economy, night time economy and visitor’s economy.

Following Mr Foord’s closing statement, the Chair invited Ms Di Lauro to address the Hearing and confirm her role.

Ms Di Lauro explained that she is the Licensing and Litigation Lawyer. Ms Di Lauro informed the Hearing that, subject to no objection, she would retire with the Sub-Committee. She confirmed that her role was to act as the legal advisor, she was not a member of the Sub-Committee and would not partake in the decision making process. She explained that the only time she would express any view would be if the Sub-Committee ask for any legal advice or if they failed to consider something which they should be taking into account. Any advice provided by Ms Di Lauro would be reported back to the Hearing when the Sub-Committee reconvened and would be reflected in the written determination.

Ms Di Lauro explained that she would be reminding the Sub-Committee that they must only consider what the applicants are applying for and not consider amending any other conditions already attached to the licence. She informed the Sub-Committee that their primary consideration was Section 4 of the Licensing Act 2003 and the four Licensing Objectives contained within. Ms Di Lauro also advised that she would remind the Sub-Committee to consider the Home Office Guidance updated in April 2018, the Human Rights Act and the Equality Act as well as all information presented at the Hearing and provided in writing.

She informed the Hearing that when the Sub-Committee reconvened a ‘brief determination’ would be provided; a full decision would be forwarded to all interested

parties within five working days of the Hearing and the written Determination would be the binding one.

Determination

Before informing the Hearing of the determination of the Sub-Committee, the Chair explained that the statement she was about to read was a summarised version and that the full decision would be made publically available within five working days of the Hearing.

The Chairman read the following statement:

The Chichester District Council (CDC), Alcohol and Entertainment Licensing Sub-Committee (the Sub-Committee), have considered an application to vary a Premises Licence by East Walls Hotel, 3 East Row Chichester, under Section 34 and 35 of the Licensing Act 2003 (and hereafter the 2003 Act). The variation applied for in the application was for a condition the existing licence to be changed to; 'Between the hours of 1800 hours and 2300 hours alcohol may be only served/supplied to non-guests and non-residents with a restaurant reservation and seated at tables, with the supply of alcohol ancillary to the table meal only.'

The current condition is for alcohol to be sold and or supplied to non-residents and non-guests between the hours of 1100 hours and 1800 hours.

The Sub-Committee considered the application as originally submitted, all valid representations made in writing and verbally at the Hearing, the officer's written Report and his verbal presentation at the Hearing, the applicant's submissions at the Hearing; as well as all the documentation enclosed within the pack. The Sub-Committee was aware that no representations were received from Responsible Authorities as defined by the 2003 Act; apart from one by Sussex Police as described in the pack.

The Sub-Committee in reaching its decision focused its mind on the promotion of the four Licensing Objectives of the Licensing Act 2003, (in particular the issue of Public Nuisance as this was the main concern in the representations submitted), as well as the Home Office Guidance of 2018; the Council's current Statement of Licensing Policy; and the Human Rights and the Equality Act considerations.

The Sub-Committee was satisfied that there have been no reports of public nuisance or crime and disorder at this venue. The Sub-Committee was satisfied that all four Licensing Objectives would still be promoted by this condition being varied and that the law offers a mechanism to review the licence, should any issues arise which do not promote the Licensing Objectives. The current condition already restricts the use of the garden area satisfactorily and permits up to 40 people in the garden to consume alcohol until 2300 hours; albeit at the moment those are for residents and guests of the hotel only. The number of people in the garden will not increase the maximum of 40 and the varied condition for non-residents brings it in line with the residents' condition.

The Sub-Committee has decided to GRANT the variation as applied for, namely:

Between the hours of 1800 and 2300 hours alcohol may only be supplied to non-guests and non-residents with a restaurant reservation and seated at tables, with a supply of alcohol ancillary to the table meal only.

A full determination will be made available within five working days of the Hearing, this will be the final decision of the Sub-Committee, providing an explanation in full of all the matters considered at the Hearing by the Sub- Committee.

The Chair thanked everyone present for attending and closed the Hearing.

58 **Consideration of any late items as follows:**

There were no late items for consideration.

The meeting ended at Time Not Specified

CHAIRMAN

Date: