



Minutes of the meeting of the **Alcohol and Entertainment Licensing Sub-Committee** held in Committee Room 2, East Pallant House on Tuesday 17 January 2017 at 2.30 pm

**Members Present:** Mr J Connor, Mr J W Elliott and Mrs C Purnell

**Officers present all items:** Mr N Bennett (Legal and Democratic Services Manager), Mr L Foord (Licensing Manager), Mrs K Jeram (Member Services Officer) and Ms G Di Lauro (Litigation and Licensing Lawyer)

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

**RESOLVED**

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

**5 Declarations of Interests**

Mr Connor declared a personal interest as a Chichester District Council appointed member of the Chichester Harbour Conservancy.

**6 The Quarterdeck Cafe, The Street, Itchenor, Chichester, West Sussex, PO20 7AE**

**Applicant**

Mr T Sturton-Davies, Applicant/Designated Premises Supervisor

The Chairman formally opened the hearing and introduced the Sub-Committee members and Chichester District Council officers present.

Mr Foord confirmed that Sussex Police had withdrawn their representation. He advised that Mr C Fox, an interested party, was in attendance today to represent himself and a number of interested parties who had made representations. Mr Fox had been advised that in his address he was required only to expand on the contents of his own and the representations of those interested parties he was representing.

Mr Bennett obtained the consent from the applicant to retire with the Sub-Committee in order to give legal advice only when they made their decision in respect of the application.

Mr Foord outlined the details of the application for a new premises licence. He advised that the applicant, Mr Sturton-Davies, who resided at the premises site, was present at today's hearing. He referred to the premises layout plan, which had been superseded by the plan contained on page 21 of the agenda papers. He referred to a series of screenshots, showing images from the applicant's Facebook page, which had been circulated to all parties at the request of Mr Fox.

He reported that a valid application for a new premises licence was received on 17 November 2016, and that the representation period had run for 28 days until 15 December 2016. The statutory notice had been displayed at the premises and a notice published in the Chichester Observer series of newspapers on 24 November 2016. The only licensable activity that was being applied for was for the Supply of Alcohol for consumption on and off the premises. He confirmed that the provision of Late Night Refreshment or Live Entertainment had not been applied for.

The applicant had entered into successful mediation with Sussex Police and the Chichester Harbour Conservancy (CHC). Following CHC's objection the applicant had agreed in principle the following amendment to the hours, of everyday 10:00 hours to 23:00 hours, that had been applied for, in respect of the Supply of Alcohol as follows:

1 October to 31 March:

- Thursday to Saturday: 10:00 hours to 23:00 hours
- Sunday to Tuesday: 10:00 hours to 21:00 hours

1 April to 30 September:

- Everyday: 10:00 hours to 23:00 hours

Mr Foord advised that the proposed amendments may have changed further following further mediation and, if this was the case, the applicant would provide details later on during the hearing. However, it remained a matter for the Sub-Committee to consider these amendments and make a decision with reasons.

He referred to the steps the applicant intended to take to promote the four licensing objectives, as outlined in the operating schedule on pages 34 and 35 of the agenda papers. He advised that 52 representations had been received in total, both objecting and supporting the application from residents living in the local community as well as some living considerably further away. These representations were included in Attachment D of the agenda papers and summarised on pages 4-6. The representation from Sussex Police, dated 30 November 2016, had been included on pages 114-115 of the agenda papers. He advised that Sussex Police were not in attendance at today's hearing as the applicant had agreed to all their requirements, including the provision of CCTV. The concerns of the CHC had been resolved in principle by the applicant. Due to the volume and variety of the representations received from the interested parties, mediation with them had not been entirely successful. However, the Licensing Authority was aware of the efforts made by the applicant in entering into mediation.

Mr Sturton-Davies confirmed that Mr Foord's summary was an accurate outline of the application.

It was noted that Sussex Police Letter dated 2 December 2015 should read 2 December 2016.

In response to questions from the Sub-Committee, Mr Foord confirmed that the latest correspondence had been included in the agenda papers. He read out an email from CHC to the Licensing Team, received the previous day, confirming that subject to the terms of the successful mediation they had withdrawn their objection.

Mr Sturton-Davies, the applicant, addressed the Sub-Committee. He referred to the representations received in respect of his application, of which 19 were from interested parties who lived elsewhere in the Country. He hoped that that it would be taken into consideration that 13 of the representations received were identical. He advised that the Quarterdeck Café had opened during 2015 and had been very popular with both locals and visitors. The premises closed at 17:00 hours each day. He now wanted the option to be able to serve alcohol as a natural progression to meet customers demand by offering its sale during evenings for which more staff would be employed. The serving of alcohol had been popular during temporary events, of which three had taken place, and as far as he was aware these had not caused any issues. The premises did not have a full kitchen and in any case he was not trying to open a restaurant. He intended to serve bread and olives as an accompaniment to alcohol. He was not his intention to buy cheap alcohol such as alcopops. The alcohol to be sold would be different to that sold in the nearby Ship Inn public house and Itchenor Sailing Club. It was his intention to provide somewhere for customers to enjoy a quiet drink. The CHC's representation had included an objection on the grounds of light and noise pollution natural light further amendments.

As a result of the CHC's representation and taking into concern the concerns of neighbouring residents he had made further amendments to the amended timings, advised of earlier during the hearing, for the 'Supply of Alcohol' as follows:

1 October to 31 March:

- Everyday: 10:00 hours to 21:00 hours

1 April to 30 September:

- Sunday to Wednesday: 10:00 hours to 21:00 hours
- Thursday to Saturday: 10:00 hours to 23:00 hours

He confirmed that he would ensure customers abided by the drinking up times required by Sussex Police.

The Chairman informed all the parties that it would be a matter for the Sub-Committee to take into account representations received from interested parties living far away as well as from those living in the area. The original representation received from the CHC was an objection on the grounds that planning permission for the use of the premises as a café had not been granted. He advised that planning issues were not a relevant consideration when considering the application as they were under a separate regime. Mr Bennett added that the sole legal test in respect of representations received was whether or not they were relevant to the matter and the four licensing objectives. They should not be frivolous and should

have some substance. Although the location of some of the interested parties may be far away they may have a connection to the area, such as mooring their boat nearby.

Mr Sturton-Davies responded to questions asked by the Sub-Committee. Mr Elliott referred to page 5 of the agenda papers and the summary of relevant representations. Under the Prevention of Public Nuisance concerns had been raised about the access route to the premises, which stated that the main advertised route was along an unlit path across a number of gardens. He had visited the premises and had seen the start of the signage. Mr Sturton-Davies advised that the premises could be accessed by three routes. He was of the view that the access route past the public car park could be deemed to be the main access. If customers chose to use the footpath they could do, but he did not believe that this was the main route taken. In response to a further question from Mr Elliott regarding boatyard hazards and the safety of customers, he advised that he was not aware of any issues and pointed out the route of a public footpath ran through the middle of the shipyard.

The Chairman asked if public parking was permitted in the boatyard and if he was satisfied that the shipyard provided suitable access for customers visiting the premises particularly after darkness. Mr Sturton-Davies confirmed that he had permission from his landlord for his customers to park behind the café. He did not think that there was an issue with customers visiting the premises after darkness as there was low level lighting and security lighting in place.

The interested parties were then given the opportunity to address the Sub-Committee having been advised to focus on the four licensing objectives.

Mr Fox representing himself, Mrs C Dunmore, Mrs S Shepherd, Mrs A Griggs, Mrs J Esdaile, Mr I Walker, Mrs A Stone, Mr P Stone, Mr D Owers, Mr A Frisk, Mr A Aylwin, Mr C Fry, Mr J Beery, Mrs K Fox, Mr A Levitt, Ms G Fox, Dr D Bourne, Mrs E Fox, Mrs S Owers and Mrs A Backhouse addressed the Sub-Committee.

He advised that the interested parties he was representing today were not able to attend as they either had to work or were on holiday. He informed the Sub-Committee that the Chichester Harbour was a very special place and that he had grown up there. There were about 200 properties nearby. Itchenor was regularly enjoyed by visitors. There was one public house and a sailing club in the village and no shops. He referred to the fact that Itchenor was within the Area of Outstanding Natural Beauty. A document produced by the CHC commented on its peace and tranquillity. He was objecting to the application as the premises are located in the wrong place. He referred to page 17 of the agenda papers and the plan depicting where the local interested parties lived and advised that some of the dots had not been shown in the correct location as it did not show that all the residents of the properties nearest the premises had objected to the application. He pointed out that the objections received from interested parties living elsewhere in the Country were visitors to the area. He was concerned that there were no restrictions on the playing of live or recorded music. He advised that the comments of the Itchenor Society, which represented two thirds of the village, were included on page 81 of the agenda papers. The applicant sought to increase the food menu and to accompany food

with beer, wine and spirits. He referred to the images that he had obtained from the premises Facebook page that had been circulated on his behalf to all parties by the Licensing Authority. He considered that the advertising shown gave the impression that the business was all about the alcohol and that the premises was being advertised as a bar.

He pointed out that a number of the interested parties who had made comments in support of the applications referred to the selling of alcohol during the day and did not seem to be aware that the premises intended to sell alcohol during the evenings as well as mention had only been made of "beer with lunch". He also referred to the comments made by the supporters that it "would not affect the noise levels associated with the café". He referred to the applicant's intention to serve olives and bread with alcohol and said that the application was all about attracting a different customer base and creating a bar as a party venue. With regard to the safety of children, 17 of the objectors had children or grandchildren. He was concerned, on the grounds of public safety, that the footpath leading to the premises ran through residents' gardens and through the boatyard. The premises were currently only being used during the hours of daylight. He had heard that the boatyard had in the past tried unsuccessfully to obtain permission to re-route the footpath. The premises were located well away from the road, the water and coastal path. The outside area of the premises was larger than the inside and children's bedrooms were nearby. The premises already caused problems, however he did see its benefit in providing a cafe. The allowing of the sale of alcohol would create problems both day and night. He referred to the current planning permission for the shipyard. The Council's planning officers were aware of the noise issues as they had granted planning permission with conditions attached. These conditions did not allow the boatyard to operate after the hours of 18:00 hours Monday to Friday or after 13:00 hours on Saturday, and placed restrictions on the opening of doors and windows. He advised that when the nearby properties were purchased, the buyers knew that the shipyard would be busy and noisy but they would have tranquil evenings. Residents deserved peace and tranquillity. It was the wrong application in the wrong place.

Following a short adjournment, Mr Foord explained the legal position regarding the playing of live and recorded music at the premises, which had not been applied for by the applicant. Under the Live Music Act 2012 the playing of music for an application of this scale would not require a licence as it would be incidental to the sale of alcohol. Music would not be played outside of the hours of between 23:00 hours and 08:00 hours and there would be less than 500 people in attendance. If live or recorded music had been applied for the Council's Health Protection Team would have been consulted and very carefully considered the proposal and would if necessary, have made representations. The applicant was still required to comply with the Noise Act by ensuring that the premises were not creating a nuisance. He confirmed that if nuisance was being caused by the licensable activities and other activities, then the Health Protection team should be contacted. He pointed out that no objections had been received to the granting of three Temporary Event Notices granted for Christmas Eve 2016, New Year's Eve 2016 to New Year's Day 2017, and on 13 and 14 January 2017. He confirmed that as far as he was aware no complaints had been received after the temporary events had taken place.

In response to questions from the Sub-Committee, Mr Fox confirmed that the shipyard was able to operate from 07:00 hours and that when he purchased his property he had been aware of the hours that the shipyard was able to operate. With regard to the existing noise, he said he experienced this had increased. However, Mr Sturton-Smith ran a café, which he was entitled to, from which noise was heard from people talking and dogs barking etc. If alcohol was allowed to be sold noise levels would increase. With regard to the footpath that went past his garden, he advised that there was fencing and that he was in the process of slowly cutting down his hedge, which was approximately 5 feet from his house. The other end was panelled fencing. It confirmed that his garden was not an open garden with people walking across his lawn. He also answered questions regarding the nearby John Davis permissive path, which he said had now been in place for some time.

Mr Sturton-Davies clarified a number of the points made by Mr Fox. He advised that in most instances, the representatives in support of the application lived the closest to the premises, with one supporter living the closest. The shipyard's operating time restrictions only applied to the newest of the buildings, which were located slightly away from and below the premises. The remaining area of the shipyard had authority to operate 24 hours, seven days of the week.

In response, Mr Fox stated that he believed Mr Sturton-Davies' statement was correct as the shipyard's business had been operating there for many years and he expected that if new planning applications were submitted conditions would be in place similar to those put in place for the newest buildings.

Mr Foord advised that following changes to the licensing legislation regarding the removal of the 'vicinity' test, whereby the distance that interested parties lived from the premises lived was no longer taken in to account. However, the representations received would still need to be relevant and relate to one or more of the licensing objectives.

The planning issues raised by the objecting interested parties, were not directly relevant to the licensing procedure. However, if a significant issue arose liaison would take place between the Planning Authority and the Licensing Authority.

The following interested parties addressed the Sub-Committee:

Mr G Colbourne informed the Sub-Committee that he had lived in Itchenor since 2015. He was a regular visitor to the premises, which a useful amenity for visitors. He had attended the temporary events held there, which had been well arranged and had not caused any nuisance to the village and residents. There were many licensed cafes in the Chichester Harbour such as Chichester Marina (with a very different environment) and Thornham Marina (with a similar environment). Itchenor Parish Council had not made a representation as there had not been an opportunity to discuss the application. With regard to the Itchenor Society, they did not hold open meetings nor did they produce agendas and minutes. Most members of the Society did not know that a representation had been made and in any case the contents of the response sent were not unanimous.

Mrs R Fawcett advised that she had lived in Itchenor for a long time. She was a regular visitor to the premises during the day along with her children and grandchildren. She felt comfortable visiting the premises on her own unlike the nearby public house. She pointed out that the Itchenor Society had not asked for her opinion on the application. With regard to the concerns raised earlier in the hearing about the footpath, she advised that customers were able to park behind the premises.

Mr E Maney stated that he lived in Itchenor opposite the nearby public house, which as a much bigger establishment with alcohol consumed right outside his window. The public house was not a den of iniquity and the only disturbance was from the Morris performers when they carried out a display. He felt that much of the objections came down to the perception that if the application was granted, it would result in the premises attracting thugs, which was not the case. The footpath that went past the premises was perfectly acceptable. He used the path regularly and at night time the lights came on that lit the path. His response to the objection submitted by the Itchenor Society was that it had not been submitted in his name.

At the request of Mr Fox, Mr Maney explained in more detail where he lived in comparison with the public house. He pointed out on the location plan on page 17 of the agenda papers where he lived in relation to the public house. His house was identified at '44' on the plan, which was next door and north of the public house, separated by a road. His balcony overlooked the seating area.

Mr Sturton-Davies made his closing representations. He was sorry to hear that his premises had caused a nuisance in its current form. He would put in place signage to encourage people to keep the noise down and leave quietly. He was happy to put this signs up even if his application was not approved. He hoped that if any issues arose, those concerned would approach him in the first instance. It was in his best interest to encourage customers and not create a nuisance.

In response to a request from Mr Fox to have the opportunity to make closing representations, Mr Bennett explained that this request was not prescribed in the Sub-Committee's Protocol and Procedure note. However, Mr Fox was permitted to inform the Sub-Committee that two of the objectors were members of Itchenor Parish Council.

Mr Sturton-Davies advised that he had nothing further to add.

In his closing submission, Mr Foord drew to the attention of the Sub-Committee the need for them to consider the four licensing objectives, those relevant parts of the Council's Statement of Licensing Policy, the Guidance published by the Home Office, and the written and oral evidence heard from the interested parties.

The Chairman sought confirmation that all parties were satisfied they had said all they wished to.

The members of the Sub-Committee then retired to discuss and make their decision, along with Mr Bennett who had obtained the consent of all parties to retire with the Sub-Committee in order to offer legal advice, if required. Consent was also sought

and given for Mrs Di Lauro to accompany the Sub-Committee as an observer, taking no part in the discussion.

**RESOLVED**

The Sub Committee considered the contents of the written report and all relevant representations both within the report or stated at the hearing.

The Sub Committee assessed the application against the Council's current Statement of Licensing Policy, current Home Office Guidance, relevant human rights considerations and the wider statutory position, in particular the Licensing Act 2003 and s.17 of the Crime and Disorder Act 1998 as it applies in a licensing context. The members of the Sub Committee have all received up-to-date training on these matters.

Specific aspects of relevance were:

- 1) The large number of representations by members of the public (positive and negative). The Sub-Committee noted the importance of the views of persons actually using the premises and in understanding the context of the business and acknowledge the effort of the local community in making representations;
- 2) The lack of representation from some responsible authorities and the mediation leading to resolution in principal of certain concerns to the satisfaction of the Sussex Police Force as explained in the report by the Police Assistant Licensing Officer Hannah Squibb as relevant to all licensing objectives;
- 3) Representations specific to the location of the premises within a working shipyard were considered against public safety and protection of children objectives;
- 4) Representations as to potential public nuisance in relation to the specific context of the premises being near water and residential properties including as to the current operation of the premises and the use of TENS at the site historically. Members were conscious of the nature of Itchenor and its tranquil environment both from their own knowledge of the area but also from the comments of several representations today;
- 5) Representations as to access of children to the premises and living in the vicinity of the premises were considered against the protection of children and public safety objectives;
- 6) Representations relating to planning matters were expressly dis-regarded by the Sub-Committee.

Having considered all of the above against the Licensing Objectives the Sub-Committee decided to GRANT the licence as applied for (subject to the opening and closing times as amended by the applicant today).

The meeting ended at 4.25pm

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CHAIRMAN

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Date:

