



Minutes of the meeting of the **Alcohol and Entertainment Licensing Sub-Committee** held in Old Court Room, The Council House (Chichester City Council), North Street, Chichester on Thursday 27 April 2017 at 2.30 pm

**Members Present:** Mr P Budge, Mr J Connor and Mr H Potter

**Officers present all items:** Mr N Bennett (Legal and Democratic Services Manager), Miss K Davis (Member Services Officer) and Mr L Foord (Licensing Manager)

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

**RESOLVED**

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

9 **Declarations of Interests**

There were no declarations of interests.

10 **The Foundry, 1 Southgate, Chichester, West Sussex, PO19 8DH**

**Applicant**

Mr J Whelan, Operator and Designated Premises Supervisor  
Mr P Warne, TLT Solicitors

**Responsible Authority**

Mr T Horne, Principal Environmental Health Officer.

The Chairman formally opened the hearing and advised that Mr Bennett would retire with the Sub-Committee, in the event of any legal advice being required, when they made their decision in respect of the application.

The Chairman sought clarification that there were no items arising from Regulation 6 (notice of hearing) of the Licensing Act 2003 (Hearings) Regulations 2005. He referred to an additional document received from the applicant that had been circulated that set out an offer of two additional conditions.

Mr Bennett advised that West Sussex Police had withdrawn their representation. He also advised that the decision made by the Sub-Committee today would be an oral decision and that the written decision would be final and set out the detail of the decision made.

Mr Foord outlined details of the application for the variation of the premises licence in respect of The Foundry submitted by the Spirit Pub Company (Lease) Ltd Group. He referred to a minor amendment to the plan which was shown on the enlarged copies circulated before the start of the hearing. The application was seeking to change the layout of the premises with the addition of a servery to the car park area that would incorporate the existing garden area. The sale of alcohol was the only licensable activity being applied for in the outside area. An amended plan had been received and the applicant was seeking to remove one condition. The current hours and permitted licensable activities remained unaltered. He explained that the original date for the hearing had been re-scheduled to enable mediation to take place between the Responsible Authority for the Prevention of Public Nuisance and the applicant, with the aim of successful mediation. The formal notice from the Licensing Authority advising of the re-arranged date was published on 3 April 2017 allowing mediation to take place for a further 28 days. On 24 April 2017 a second supplement to the agenda, containing the report of the Responsible Authority, was circulated.

He reported that a valid application had been received on 6 February 2017 and that the representation period had run for 28 days until 7 March 2017. The statutory notice had been displayed at the premises and a notice published in the Chichester Observer series of newspapers on 9 February 2017. During the representation period representations were received from the following responsible authorities: Sussex Police and Mr Horne, Responsible Authority for the Prevention of Public Nuisance. He advised that Mr Horne would provide details of the mediation that had taken place between himself and the applicant. The concerns raised by Sussex Police had now been resolved and the proposed conditions they had requested were set out on page 42 of the report. He advised that any amendments proposed remained a matter for the Sub-Committee to consider.

Mr Warne confirmed that Mr Foord's summary was an accurate outline of the application.

Mr Warne advised that in essence this application was fairly straight forward. The application had been made by the Spirit Pub Company (Lease) Ltd, which was part of Greene King pub partners. Mr Whelan was the Designated Premises Supervisor and the operator of the premises licence. A role he was very experienced in. He referred to the outside area on the layout plan of the premises that showed the proposed increase of the licensable area and the new bar servery outlined in red. He advised that the premises was already allowed to have an outside bar and that the previous temporary bar had been removed for aesthetic reasons. The additional area for customers to sit outside would not require a change to the current licence. It was only the new bar that required the amendment to the licence. Mr Whelan was continuing the renovation of the premises since he had taken it over a year ago and had made very significant changes. He referred to page 4 of the report and the successful mediation referred to at paragraph 6. Following mediation two conditions proposed by Sussex Police were accepted by the applicant. These were offered to Mr Horne on 13 April 2017 to see if they dealt with his concerns, with the aim of removing the need for a hearing today. The premises had a refusal log and garden management plan. He referred to paragraph 9.43 of the Home Office revised guidance issued under Section 182 of the Licensing Act 2003 that stated "The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve". He was of the view that the variation licence would promote at least three of the licensing objectives. He referred to the fact that Mr Horne had advised that his representations were made on behalf of any person who had made a complaint. However, no representations had been made and no one had given authority to Mr Horne to represent them in respect of the application. He advised that the bin store location would be repositioned away from the proposed location by the neighbouring property, Globe House, but in any event it this was not part of the licence application.

Mr Bennett confirmed that the position of the refuse bins did not form part of the licensing objectives.

Mr Warne provided details of the amount of money that Mr Whelan and Greene King had invested in the premises, which amounted to nearly £500,000. The premises had previously been promoted as a sports bar and had not been food led, with the majority of the clientele being male. Customers had not been happy with how the premises was being run and the decision was taken to close the premises to carry out a refurbishment. This had resulted in the premises becoming a public house that was trading well. It was now female friendly and had a real mix of people. Certain previous clientele had been told to “brush up or get out”, which had resulted in some no longer frequenting the premises whilst others had taken on board the rules ie. no baseball caps. With regard to the garden area, he advised that it had previously contained televisions and pool tables, which he thought would have been the cause of any nuisance issues. His client had waited a year to see how the premises, following the changes, had bedded in before applying for the garden extension. The garden could become very busy and the extension would provide slightly more room and additional seats.

He explained why he considered a garden extension would help meet the licensing objectives. Mr Whelan currently operated a number of other public houses with gardens with residents nearby. With regard to the Prevention of Crime and Disorder, the garden nestled into the premises and would adjoin the extended garden area. There would be constant supervision of the garden area, including the staff car park that it adjoined. The train and bus stations were nearby and the supervision of the area was required to prevent people using the staff car park area for various reasons, including using it as a toilet. A bar in the garden would stop the need for customers to go in and out of the premises as the toilets were situated near the garden entrance and there would be waitress service for food orders. This would allow some control of the movements of customers in the garden for health and safety reasons. The premises was a member of ChiBac.

He explained that the proprietors of Globe House, the building that adjoined the rear of the premises had approached Mr Whelan about the proposals for the premises. They raised no specific issues concerning the garden extension. To get to the garden area customers had to go through the inside of the premises, which would ensure they were vetted. The units at Globe House were used for rehearsal and teaching space, including maths classes. The representation received raised concern about cigarette smoke and noise from customers. Four very small windows were located at the back of Globe House. The garden extension would not extend to the wall of Globe House and would be a distance of 2.3 metres away. There was no evidence of any noise complaints having been received in respect of the current garden area. If gardens in public houses were supervised they did not cause problems. He had viewed the Globe House website which advised that its rooms were well insulated for noise, meaning noise emanating from Globe House itself, such as from music instruments. If there was no insulation noise issues would occur between their users due to the conflicting nature of music lessons verses maths lessons. No evidence had been received from Globe House to suggest the garden extension would cause a problem. The opening hours at Globe House were Monday to Friday 15:00 hours to 18:30 hours, Saturday 09:00 hours to 16:00 hours and closed on Sunday. There was nothing to suggest that the garden area extension would cause a problem. There were a lot of ifs as to whether or not on a sunny Saturday customers would cause a problem. Mr Whelan was a very experienced operator and would deal with any complaints in the correct manner.

Mr Warne responded to questions from the Sub-Committee. His clients were of the view that the provision of background music would help create the environment for a female friendly garden with food available. The garden had four speakers facing into the garden

and no music was played into the booths. The gate to the side of the garden provided a fire escape, emergency access and a delivery point only. He confirmed that the external bar was secure. The bin store location had been moved away from Globe House to stop the issue of noxious smells.

Mr Bennett advised the Sub-Committee that the staff car park area did not form part of the licensing activities.

Mr Warne responded to a number of questions from Mr Horne. He explained that the refuse collection currently took place at the entrance to the car park. Mr Bennett provided advice in respect of Mr Horne's further questions and comments concerning the original position of the bin and the applicant's planning application for the extension of the existing pub outdoor seating area and the creation of an external bar and subsequently withdrawn, which he advised were not part of the licensable activities. Mr Warne confirmed to Mr Horne that when Mr Whelan first took over the premises discussions had taken place with the proprietors of Globe House. On Thursday, Friday and Saturday nights groups would be either sitting or standing in the garden area. The garden extension would create a nicer space and give customers enough room without bumping into each other. He could only give figures for the whole of the premises and not the number of customers in the garden at any one time. He confirmed that the issue of a fire risk was taken into account.

Mr Horne commented that customers could drink anywhere outdoors on the premises including the boundary of the existing car park. Customers would be closer to the adjoining properties if the application was granted and if 120 of them were all talking the noise would become very loud.

Mr Warne responded to a number of comments made by Mr Horne. He referred to condition 24 of the current licence that required a complaints log and apologised that he had not spotted this in the conditions when referring to there not being a log earlier during the hearing. He advised that he bristled slightly at being called disingenuous. Garden management plans could run into four or five pages. The garden management plan for the premises would be adapted to deal with different circumstances, including dealt with people being boisterous.

Mr Whelan advised that he had got experience of managing pub gardens and in his role had attended relevant training courses. Customers who raised their voices would be told to keep the noise down and would be asked to leave if they did not.

Mr Horne addressed the Sub-Committee. He referred to his report and summarised its main points, referring to its proximity to the Station Yard. In referring to the garden area he referred to the background noise from the outside speakers. The proposal to extend the garden area with a more permanent bar would result in the garden area being extended to a distance of 2.3m from Globe House. Clarification of condition 18 may be required as the condition stated no re-admittance after 01:30 hours with the exception of those using the outside garden area. The new garden boundary would be formed by a low wall with open steel slates above up to 1.6m in height. Three windows from Globe House overlooked the area. The plan submitted by the applicant showed the extent of the existing area that could be used under the Licensing Act 2003 outlined in red. The applicant had offered a garden management plan at a fairly late stage. The garden area extension could result in a 50% increase in customers using this area, which would result in more conversational noise and more noise overall when mixed with music. If this noise was close to the boundary it may affect adjacent premises such as Brampton Court, which was 70m away. The use of the garden area would increase during the summer months and residents would leave their windows open. The proposed garden boundary was inferior for noise containment. In his view the noise and smoke emissions from the garden area would have an adverse on those

living and working nearby. Although no complaints had been received, one comment had been received from a resident about outside noise. When asked to clarify, he advised that that the comment was received during the first variation of the premises licence at the end of 2016 from a resident of Brampton Court to the application seeking later opening hours, which were granted. His point was that a full summer had not yet passed to enable any impact resulting from the new operating hours to be assessed.

In response to Mr Horne's final comment, the Chairman advised that if the premises licence was granted it could be reviewed at any time if complaints were made.

Mr Horne referred to his email dated 6 March 2017 that had been circulated with the second agenda supplement setting out his concerns regarding the use of the extended premises and the prevention of public nuisance. In light of his concerns that the use would cause 1) noise disturbance to persons working in the vicinity; 2) cigarette smoke to infiltrate areas where persons are working in the vicinity; 3) the use of refuse bins will cause malodours to infiltrate areas where persons are working in the vicinity; and 4) late evening and night time use would result in noise nuisance to occupants of nearby residential properties, he did not see how there was any scope for mitigation and hence there was the need for today's hearing.

With regard to a question from the Sub-Committee whether or not more substantial fencing would alleviate his concerns, Mr Horne advised that it was not sensible to provide a barrier of any sort as the windows of Globe House would overlook the garden.

Mr Warne confirmed that condition 9 (access to the beer garden via the main premises building only) would be kept. He explained that there had been a misinterpretation, possibly arising from an oversight when the premises licence application was drafted.

Mr Warne had no questions to ask of Mr Horne.

Mr Warne explained that the application did not seek to add any additional licensing activities or extending hours. A planning application would deal with the specific details regarding barriers.

He confirmed that the applicant was in agreement to the two conditions requested by Sussex Police, which were 1) no re-admission on Friday and Saturdays after 01:00 hours and 2) documented risk assessment to be written and agreed. He also reiterated that a garden management plan would be in place and was happy for this to be included in a condition and that condition 9 would be kept.

He referred to an email sent on 13 April 2017 to Mr Horne, during the mitigation period, which he did not receive a response to until 23 April 2017.

With regard to the use of the premises garden, Mr Warne commented that if pub gardens in towns were a disturbance to anyone there would be no pub gardens. There was no evidence of public nuisance at the premises or that there would be. The concerns raised by Mr Horne were suppositions only. He could not see why smoking in the premises garden would be an issue as there would not be enough smoke entering the windows of Globe House to cause a nuisance. A person could visit a café and smoke in its garden area and it would not be a public nuisance. He referred to the relevant paragraphs of the revised Home Office guidance issued under Section 182 of the Licensing Act 2003, which related to the determining actions that are appropriate for the promotion of the licensing objectives. Paragraph 9.43 required the Licensing Authority's determination to be evidence based and he pointed out that there was no evidence that this application would not meet the four licensing objectives. Paragraph 9.44 required the Local Authority to consider the potential

burden (such as a financial burden) a condition could have on the public house if restrictions on licensable activities were placed when deciding what actions or steps were appropriate for the applicant to take for the promotion of the licensing objectives. The Licensing Authority was expected to assess the risks versus the benefits and in his view there were no risks. He drew attention to the review procedure for a premises licence.

In his closing submission, Mr Foord summed up the relevant sections of the Council's current Statement of Licensing Policy. The licensing function was not intended as a mechanism for the general control of anti-social behaviour outside of the control of the premises as other mechanisms were in place. With regard to the garden management plan it was important that every holder of a licence should minimise any anti-social behaviour in any case, for example in the operating schedule and conditions, and be able to demonstrate this. The licensing function was not a panacea to solve all problems within the community and there was a clear separation between the planning and licensing functions.

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**

That the Sub-Committee considered the Licensing Acts, relevant law and guidance including local policies as well as Human Rights considerations, equality considerations and Section 17 of the Crime and Disorder Act 1998. The Sub-Committee focussed upon the licensing objectives in particular the prevention of public nuisance due to the nature of the representations from the Environmental Management Team.

The Sub-Committee 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:

- The April 2017 guidance on evidence based decision making at paragraph 9.43 was expressly considered and was considered particularly relevant to the assessment of the Sub-Committee in this matter where concerns as to potential harm were being raised;
- The lack of licensing representations from local residents and businesses;
- The representatives of Mr Whelan who is an operator of 8 other locations as to his ability to properly manage licensed premises in accordance with the licensing objectives;
- The arguments presented by the representative of the applicant as to the garden plan and the manner in which it was intended to operate in support of the licensing objectives. Further the evidence presented as to the actual operation of similar plans in other licensed premises for which the applicant is responsible was found to be particularly relevant to member consideration;

- Representations from the applicant that the Garden Management Plan is not fixed and that the operator would amend it to reflect issues which arise in operation to maintain a proper management of the area in light of the licensing objectives; and
- The location of the premises, and the relative locations of the train station, adjacent major roads and other properties.

The representations of the Principal Environmental Health Officer was not found to be sufficiently persuasive and his concerns as to the potential impact of the operational changes were found not to be supported by direct evidence and the probable impact of the concerns were not considered so significant that any amendment to the licence was proportionate or necessary. The Sub-Committee further noted the ability for the licence to be reviewed if their assessment of the impact upon the Licensing Objectives was not correct.

Representations relating to planning matters from any person were expressly disregarded by the Sub-Committee.

Having considered all of the above the Sub-Committee decided to GRANT the licence as sought with the following amendments:

- 1) Proposed condition 1 (relating to the garden management plan) shall be applied to the licence; and
- 2) Conditions agreed with Sussex Police shall be applied to the licence.

For the avoidance of doubt condition 9 of the original licence sought shall apply to this licence.

The meeting ended at 4.10 pm

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CHAIRMAN

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Date: