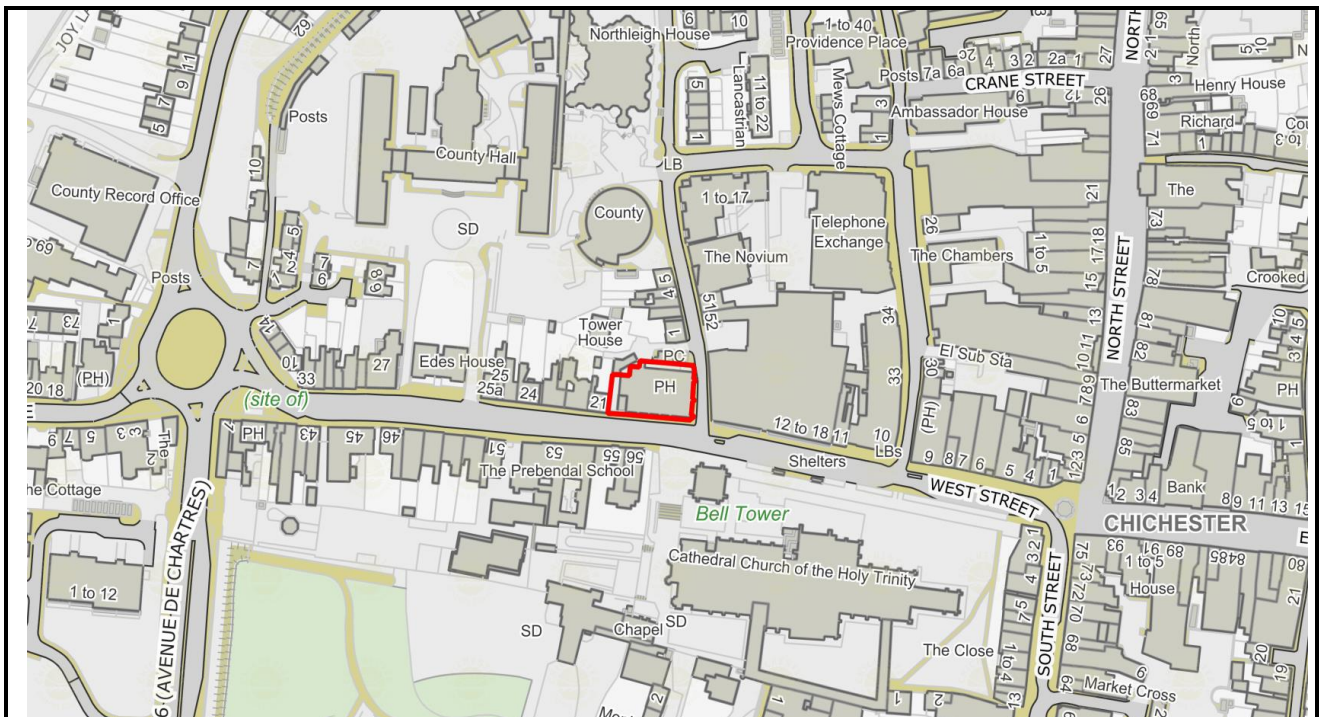



|                       |                             |
|-----------------------|-----------------------------|
| Parish:<br>Chichester | Ward:<br>Chichester Central |
|-----------------------|-----------------------------|

**CC/23/00600/FUL**

|                  |  |              |              |
|------------------|--|--------------|--------------|
| <b>Proposal</b>  | Variation of conditions 4 and 16 of Planning Permission CC/98/00156/FUL (Change of use to A3 (food and drink) licensed premises) to i) vary condition 4 to allow later last orders up to 11.30pm on Fridays, Saturdays and Bank Holiday Mondays so as to align with the Premises License; and ii) vary condition 16 to control the timing and volume of amplified music. |              |              |
| <b>Site</b>      | Duke And Rye St Peters Market Formerly St Peters Church West Street Chichester West Sussex PO19 1QU  |              |              |
| <b>Map Ref</b>   | (E) 485891 (N) 104867  |              |              |
| <b>Applicant</b> | Marston's Estates Limited  | <b>Agent</b> | Hannah Hayes |

**RECOMMENDATION TO PERMIT**



|   |                            |  |
|---|----------------------------|--|
|  | <p><b>NOT TO SCALE</b></p> | <p>Note: Do not scale from map. For information only. Reproduced from the Ordnance Survey Mapping with the permission of the controller of Her Majesty's Stationery Office, Crown Copyright. License No. 100018803</p> |
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## **1.0 Reason for Committee Referral**

1.1 Red Cards: Cllr Bell and Cllr Vivian - An exceptional level of public interest

### **Update for 10.01.24 Planning Committee:**

**1.1a The application was withdrawn from the agenda ahead of the Planning Committee meeting of 12.07.23, to be considered at a future committee following receipt of further information concerning noise.**

**1.1b Since the item was withdrawn from that meeting agenda further information has been provided by the applicants, with the submission of a Noise Impact Assessment and a Heritage Statement.**

**1.1c Updates to the committee report following consideration of this additional information and associated consultation periods are set out below in bold text.**

## **2.0 The Site and Surroundings**

2.1 The application property is a Grade II listed building, which was historically a church. The application site is located to the north side of West Street within the Chichester Settlement Boundary and the Chichester Conservation Area. The application site is located across the road to the north of The Prebendal School and Chichester Cathedral and there are a number of listed buildings within the surrounding area.

2.2 The Historic England description for the property is:

'593/3/131A WEST STREET 05-JUL-50 (North side) FORMER CHURCH OF ST PETER THE GREAT (Formerly listed as: WEST STREET CHURCH OF ST PETER THE GREAT)

GV II DATES OF MAIN PHASES, NAME OF ARCHITECT: 1848-52 by R C Carpenter.

MATERIALS: Coursed ashlar masonry. Red clay tiled roofs except for the N aisle which is slated.

PLAN: Four-bay nave and N and S aisles, two-bay chancel with S aisle, W narthex, NE vestry.

EXTERIOR: The S side fronting West Street consists of the S aisle, with the four bays demarcated by buttresses and each with a three-light curvilinear window (all with the same design); a two-bay chancel aisle, unbuttressed and with two two-light windows, again with curvilinear tracery (same design as one another), and beneath these two doorways; a W narthex under a hipped roof and with a Decorated style doorway with foliage detail in the hollow of the head and polygonal responds. The nave/chancel and S aisle/S chapel are under their own gabled roofs. The E windows of the church have rich curvilinear tracery, the chancel aisle having four lights and the chancel five. There are no parapets to the principal components of the building although there are plain ones to the narthex and vestry. There is no clerestory.

INTERIOR: The aisle arcades are well-proportioned with four filleted shafts to each pier, moulded capitals and moulded arches. The tall chancel arch is in a similar style and the chancel is divided from the aisle by a two-bay arcade. The nave has a good open roof of eight closely-spaced arch-braced trusses with two tiers of wind braces; there are similar roofs to the aisles and S chapel. In the chancel there is a boarded tunnel vault. The interior has been subdivided into different areas using altered floor levels and low screens

PRINCIPAL FIXTURES: The building, having been converted to a public house, has lost its ecclesiastical fittings'

### **3.0 The Proposal**

3.1 Planning permission CC/98/00156/FUL was granted in April 1998 for the change of use to A3 (food and drink) licensed premises. This application seeks permission to vary conditions 4 and 16 of that permission.

3.2 Condition 4 states:

*“The A3 (food and drink) use hereby permitted shall not be used by customers other than between the hours of 0830 hours and midnight Monday to Saturday and 0900 hours and midnight on Sunday with last orders being taken everyday before 11.00pm. The building shall be vacated by all customers and public by 12.00 midnight.*

*Reason: In the interests of amenity.”*

3.3 Condition 16 states:

*“At no time shall any amplified music (whether live or recorded) from the building be audible from the public highway.*

*Reason: To protect the character of the Conservation Area and the amenities of residents.”*

3.4 The application seeks permission to i) vary condition 4 to allow later last orders up to 11.30pm on Fridays, Saturdays and Bank Holiday Mondays so as to align with the Premises License; and ii) vary condition 16 to control the timing and volume of amplified music.

**3.4a The application to vary the conditions is made under section 73 of The Town and Country Planning Act 1990. If permitted it would grant a permission with alternative conditions. In considering the principle of this application, it is a significant material consideration that planning permission has been granted under application CC/98/00156/FUL.**

#### 4.0 History

|              |     |  |
|--------------|-----|--|
| 74/00497/CC  | REF | Notice board.  |
| 81/00626/CC  | PER | Change of use -to ground floor retail with offices over.   |
| 81/00630/CC  | PER | Change of use - to ground floor retail with offices over (LBC).  |
| 82/00592/CC  | PER | Two wall boards, 1 hanging sign (non-illuminated).   |
| 82/00596/CC  | PER | Minor amendments to comply with fire and building regulations rooflights, 2 fire escape doors (LBC).   |
| 83/00436/CC  | PER | Metal gates.   |
| 84/00490/CC  | PER | One board sign with Times Roman type red lettering.  |
| 84/00488/CC  | WDN | One banner sign.   |
| 85/00088/CC  | PER | One board sign to replace existing.  |
| 89/00680/CC  | REF | Change of use - from retail to office (Taxi and Car Hire) (Unit 17). (LBC).  |
| 98/00151/LBC | PER | Remove extng non-structural timber framed partitioning forming 16 no. retail units.Construct 2.3m high partitioning to form ladies, gents & disabled toilets.Formation of wash-up area & kitchen.Convert storeroom to form storage area. |
| 98/00156/FUL | PER | Change of use to A3 (food and drink) licensed premises.  |
| 98/00781/LBC | WDN | Internal strip out of non-loadbearing partition. Installation of mortar injection DPC. External stone, roof and window repairs and repairs to RWP's.   |
| 98/00816/LBC | PER | Revised internal layout, flue extraction, boiler outlets, ventilation for toilets and staff areas for proposed A3 licensed retail development.   |
| 98/00817/FUL | PER | Flue extraction, boiler outlets, ventilation for toilets for proposed A3 licensed retail development.  |

|              |     |   |
|--------------|-----|---|
| 98/02559/FUL | WDN | Amendment to condition no. 4 on application no CC/98/00156/FUL to allow opening until 1AM on Christmas Eve, New Years Eve, Easter Saturday and Easter Monday and Late Summer Bank Holiday.                    |
| 98/02709/LBC | REF | retrospective application for erection of 1 satellite dish, wall murals and a video wall.   |
| 98/02724/FUL | PER | Erect wooden shed as store.   |
| 99/00287/LBC | PER | Proposed satellite dish and retention of painted wall mural.  |
| 99/00545/LBC | PER | Install sound resisting screens to north west corner windows.   |
| 99/00612/FUL | PER | Install external lighting.  |
| 99/00739/LBC | REF | Installation of netting into recessed window reveals and vertical stainless steel wires in strategic positions to deter pigeon roosting.  |
| 99/01118/FUL | PER | Variation of condition 4 of planning permission CC/98/00156/FUL to enable customers and public to remain on premises after 12.00 midnight on 31/12/99 but to vacate premises by 02.00hrs on 1st January 2000. |
| 00/00163/LBC | REF | Install video wall.   |
| 00/02461/ADV | PER | Redecoration of existing signs.   |
| 00/02747/FUL | PER | Variation of condition 4 of Planning Permission CC/98/00156/FUL to allow festive season opening.  |
| 01/02699/FUL | PER | Variation of condition 4 of planning permission CC/98/00156/FUL to allow New Years Eve opening.   |
| 01/02792/FUL | REF | Variation of condition 4 of planning permission CC/98/00156/FUL to allow festive season opening.  |
| 02/02935/FUL | PER | Festive season 2002. Variation of Condition No.4 of planning permission CC/98/00156/FUL, to allow customers to vacate premises after midnight on three occasions.   |

|              |     |  |
|--------------|-----|--|
| 03/00391/LBC | PER | Interior works of refurbishment to existing class A3, licensed premises.   |
| 03/02828/FUL | PER | Variation of Condition No.4 of planning permission CC/98/00156/FUL to allow New Years Eve opening.   |
| 15/02756/LBC | REF | Installation of lightweight timber partition to create a room for the refrigerated units and external stonework restoration.   |
| 16/01009/LBC | PER | Cleaning and repair of exterior stonework.   |
| 22/03201/LBC | PDE | Replacement of broken/missing glass within leaded light windows; proposed DOFF cleaning technique for external stonework; replacement of external stonework and partial replacement of timber floor. |

## 5.0 Constraints

|                            |     |
|----------------------------|-----|
| Listed Building            | YES |
| Conservation Area          | YES |
| Rural Area                 | NO  |
| AONB                       | NO  |
| Tree Preservation Order    | NO  |
| EA Flood Zone              |     |
| - Flood Zone 2             | NO  |
| - Flood Zone 3             | NO  |
| Historic Parks and Gardens | NO  |

## 6.0 Representations and Consultations

Since the original consultation took place, a further consultation was undertaken following the submission of a Noise Impact Assessment and a Heritage Statement (Second Consultation). In addition, a further additional consultation period took place following the submission of 'Issue 2 - Noise Impact Assessment' (Third Consultation).

Comments received in response to these consultations are shown in bold text below.

## 6.1 Chichester City Council

### **Chichester City Council comments during Second Consultation:**

**Thank you for the re-consultation on the above application. The objection remains. Uncontrolled by the current condition, the noise would harm residential amenity and the tranquillity of the conservation area.**

Objection. Condition 16 is precise and enforceable and thereby provides effective protection for residents against noise disturbance. The Noise Management Plan, although welcome as an additional measure, is not sufficiently precise for the LPA to determine a breach of planning control in respect of noise, or to enforce against it. Therefore Condition 16 must remain in place in order to prevent unacceptable harm to residential amenity. Objection in respect of the variation of condition 4 due to the harm to the tranquillity of the conservation area and harm to residential amenity

## 6.2 Sussex Police

### **Sussex Police Designing Out Crime Officer during Second Consultation (Summarised):**

**A copy of initial comments made are provided as the concerns remain extant.**

**Details of the planning application have been forwarded for the Sussex Police Licensing Officer to be in contact with the Council.**

### **Sussex Police Licensing during Second Consultation:**

**Sussex Police Licensing have no objection to the planning permission permitted hours for the supply of alcohol to be brought into line with the same permitted hours on their premises licence (Licensing Act 2003).**

**With reference to the comment about amending condition 16 in relation to the volume of music, there is no condition 16 on the premises licence, so we assume condition 16 is a planning permission condition? We recommend you consult with your own Council Noise Team on this point if need be, as they are probably better placed to consult on this that we are.**

**We are aware of some complaints and allegations from local residents in relation to this pub. However we have reviewed our records subsequently, and we have no current issues with the pub.**

Thank you for your correspondence of the 4<sup>th</sup> of May 2023, advising me of a planning application for change of use to A3 (food and drink) licensed premises - (Variation of conditions 4 and 16 of Planning Permission CC/98/00156/FUL (Change of use to A3 (food and drink) licensed premises) to i) vary condition 4 to allow later last orders up to 11.30pm on Fridays, Saturdays and Bank Holiday Mondays so as to align with the Premises License; and ii) vary condition 16 to control the timing and volume of amplified music at the above location, for which you seek advice from a crime prevention viewpoint.

The National Planning Policy Framework demonstrates the government's aim to achieve healthy, inclusive, and safe places which are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of attractive, well designed, clear, and legible pedestrian and cycle routes, and high-quality public space, which encourage the active and continual use of public areas.

Despite the levels of crime and anti-social behaviour in Chichester district being below average when compared with the rest of Sussex, additional measures to mitigate against any identified local crime trends and site-specific requirements should always be considered.

I have had the opportunity to examine the detail within the application and in an attempt to reduce the opportunity for crime and the fear of crime I offer the following comments.

With regards to the proposed variations pertaining to the premises licence – if the applicant has not already done so – then I would strongly urge that they engage with the licensing team at Sussex police to discuss the proposals.

From a crime prevention perspective – despite assurances as detailed within the accompanying noise management plans, I do have concerns with regards to the amenity of the surrounding local community. I would ask moving forward that a degree of sensitivity is shown to ensure that the local community are not unduly disturbed when patrons leave the premises during the hours of darkness.

Thank you for giving me an opportunity to comment.

The Crime & Disorder Act 1998 heightens the importance of taking crime prevention into account when planning decisions are made. Section 17 of the Act places a clear duty on both police and local authorities to exercise their various functions with due regard to the likely effect on the prevention of crime and disorder. You are asked to accord due weight to the advice offered in this letter which would demonstrate your authority's commitment to work in partnership and comply with the spirit of The Crime & Disorder Act.

### 6.3 CCAAC

#### **CCAAC comments during Third Consultation:**

**The Committee strongly objects to this Application. Our previous strong objections to extending the licencing hours and permitting amplified music so as to regularise the currently-unlawful practices by the applicant, still stand. There is nothing in the revised Noise Impact Assessment (validated 15 November 2023) to alter our conviction that the requested changes will not be harmful to the character of the**



**Conservation Area, will not be unneighbourly for those living nearby in this hitherto quiet residential street and not be a source of great public nuisance to the boarders trying to sleep at the Prebendal School opposite. The said revised Noise Impact Assessment still fails to address noise levels inside the school and the associated Noise Management Plan has not been revised and so still does not convince that the essential tenet of Condition 16, i.e. that no music shall be audible from the public highway, can possibly be met, especially as no sound-proofing measures are proposed for the building, so the existing condition should be retained.**

**CCAAC comments during Second Consultation:**

**The Committee strongly objects to this Application. Our previous strong objection to extending the licencing hours and permitting amplified music so as to regularise the currently-unlawful practices by the applicant, still stands. There is little in either the Heritage Statement or the Noise Assessment now supplied that convinces that the requested changes will not be harmful to the character of the Conservation Area, will not be unneighbourly for those living nearby in this hitherto quiet residential street and not be a source of great public nuisance to the boarders trying to sleep at the Prebendal School opposite. The noise assessment did not address noise levels inside the school and the noise management plan does not convince that the essential tenet of Condition 16, i.e. that no music shall be audible from the public highway, can possibly be met, especially as no sound-proofing measures are proposed for the building, so the Condition should be retained.**

The Committee strongly objects to this Application. Extending the licencing hours and permitting amplified music so as to regularise the current unlawful practices by the applicant, will be harmful to the character of the Conservation Area, be unneighbourly for those living nearby in this hitherto quiet residential street and be a source of great public nuisance to the boarders trying to sleep at the Prebendal School opposite. The noise management plan does not convince that the essential tenet of Condition 16, i.e. that no music shall be audible from the public highway, could come anywhere near being met, especially as no sound-proofing measures are proposed for the building, so the Condition should be retained. Furthermore the fragile nature of the west window of this listed building should be taken into account when considering the effects of low-frequency bass notes.

6.4 **CDC Senior Environmental Health Officer**

**CDC Senior Environmental Health Officer comments during Third Consultation:**

**Our department initially provided a formal consultation response, 22nd May 2023. A copy attached for reference and convenience. It is intended that this email is read in conjunction with our previous consultation response provided.**

**Subsequent to the initial consultation period, it was determined that the applicant should provide a Noise Impact Assessment from a competent professional and also a Heritage Statement. Both have been provided and an additional consultation period allowed.**

**Of note, our department's position has not changed since the initial consultation. It is maintained, that when looking to appropriate noise standards and guidance and further to intensive monitoring, our department is satisfied that the Noise Management Plan (NMP) submitted to accompany this variation application shall avoid an adverse noise impact and keep noise to a practicable minimum. Our department supports the variation application in full, on the proviso that the Noise Management Plan, submitted with this application, is made a necessary condition of any permission granted. The Noise Management Plan stipulates a Music Noise Level limit internally and also prohibits live amplified music.**

**Our department considers that live unamplified music shall be acceptable for the limited frequency and duration anticipated. Live unamplified music may include carol singing or an unamplified singer with an unamplified instrument (specifically stated in the NMP not to include a traditional drum set). It is acknowledged that in the instance of unamplified singing, the music noise level may exceed 80dB LAeq but this genre of music does not have a high bass content and would not be considered to be able to cause a detriment to amenity at sensitive neighbouring receptors. Patrons inside the pub currently talk and sing and cheer over 80dB LAeq and it has been witnessed this does not cause a noise issue externally.**

**The following comments are provided to offer further clarification to our department's position of support.**

#### **Noise Impact Assessment:**

**Our department reviewed Acoustic South East's Noise Impact Assessment (Ref: J3691, 12/09/2023, Issue 1) on the 27th September 2023. We raised some queries with the Acoustic Consultancy and made the Planning Department aware of these queries. The most notable query was that relating to the assessment criteria used, as per the quoted DEFRA (October, 2005) Noise from Pubs and Clubs Guidance. Our department pointed out that the Duke and Rye had indicated that currently the venue only has DJs on a Saturday but the desire would be to have the flexibility to have DJs on both Friday and Saturday nights most weeks. For this reason, a different criteria from the DEFRA Guidance would have to be applied in the Noise Impact Assessment.**

**Acoustic South East provided a revised Noise Impact Assessment (Ref: J3691, 01/11/2023, Issue 2). Our department was satisfied that all our queries had been addressed and that the appropriate criteria had been applied for the assessment.**

**Our department considers that the Noise Impact Assessment (Issue 2) is robust and we accept the survey methodology, assessment criteria and ultimately the findings of the Report. The Report concluded that the installed sound limiting device was working to ensure the music noise levels were adequately restricted to those specified in the Noise Management Plan (NMP). It was also demonstrated, through measurements, that the limited Music Noise Level is likely compliant with the objective DEFRA Guidance for the provision of DJs two nights a week. The following points are also raised from the review of the Noise Impact Assessment (Issue 2).**

- Section 2.7.1. is completely relevant as it highlights case law where an inaudibility condition, prescribed to a Licensed Premises, has been deemed inadequate and unenforceable, as highlighted in our department's previous consultation comments.
- The assessment of music noise levels, in accordance with Defra Guidance, provides an objective criteria.
- The number of patrons inside the pub would have minimal bearing on the assessment of the Music Noise Levels. The Music Noise levels were played around the limited level for the duration of the survey. If the pub had been particularly busy with patrons, there may well have been a decrease in the internal music noise level that was realised due to the patrons absorbing sound and providing a less reverberant space.
- Section 3. the Consultant independently states that "the control of noise levels at source with a noise limiting device have been instrumental in reducing the noise breakout around the venue with a particular reduction in bass frequencies".
- The survey monitoring positions Locations A and B are wholly adequate for the purposes of assessment. Location B is closer to the venue than the Prebendal School opposite West Street.
- Section 6. 1) "The Noise Limiting Device was operational and effective with front of house measured sound pressure levels restricted below 80dB LAeq,1 minute and 80dB Leq,1minute in all spectral bands". This is our department's experience that the noise limiting device is working across all bass frequencies.
- Section 6. 2) "The premises is not operating as a club and the internally measured sound pressure levels are comfortably below those experienced in other licenced premises and club venues". This is a really important point. The music noise levels have been set to a very conservative level, in acceptance with the venue. The venue can not be run as a club, as the limited music noise levels do not allow.
- Section 6. 5) "The measured external data is within the suggested range detailed within the premises noise management plan". This is also our department's experience.
- Section 6. 7&8) The Noise Impact Assessment considers that measurements taken broadly demonstrate that the music noise levels comply with the objective DEFRA Guidance. Where levels are experienced above background this is attributed to extraneous noises in the locality. It should be noted that the Duke and Rye public house is located on West Street, a busy route into the centre of Chichester. Buses, taxis and private vehicles regularly drive by until the early hours. Two other licensed premises are located along the route (Wetherspoons and the Chichester Inn) and pedestrians regularly walk along West Street including during evenings.
- Section 8. "It is recommended that the local planning authority vary condition 16 of CC/98/00156/FUL to a more suitable and enforceable condition". Our department agrees with this concluding statement.

#### **Further Monitoring:**

Since our last consultation response our department has conducted additional monitoring.

Of particular note, our department conducted noise monitoring at the Duke and Rye between 22:00 and 23:30 on Saturday night, during the busy Revival weekend (Saturday 9 September).

The monitoring was unannounced to begin with, no issues identified. An exercise was then carried out with the knowledge of the pub where two fully calibrated sound meters were used to check compliance with the music noise levels that have been set. The NMP was being adhered to. All staff were fully briefed and monitoring had taken place.

The music was audible in the street during the monitoring exercise, so not compliant with Condition 16 (Ref: 98/00156/FUL). At no time however was the music noise considered to be unreasonable. A noise nuisance was not witnessed and the music noise levels were limited to a level that avoided a significant adverse noise impact and mitigated impact to a practicable minimum. The NMP was fully adhered to and monitoring notes were up to date.

A resident stated that we should have been there 10 minutes earlier and that the Duke and Rye clearly knew we were there. This was not the case, when the comments were made. Another resident stated that we should come back next week when the University was back as the music was bound to be louder. This would be irrelevant, as the noise limiter would not allow the music to be played any louder with more or less patrons.

Subjective monitoring was also conducted by representatives from the Council on Saturday 12th August 2023 between 22:45 to 23:30; Saturday 26th August 2023 at 22:30 and Saturday 9th September 2023 at 21:15. The subjective unannounced monitoring did not suggest that the NMP was not being adhered and noise levels were not considered unreasonable.

#### **Planning Noise Advice Document Sussex (November 2023):**

Planning Noise Advice Document for Sussex has been adopted as a Technical Advice Note for Chichester District Council. I was a member of a recent working group that finalised the latest revision. The document is an advice document, specifying relevant noise criteria when making and assessing planning applications. Section 4 of the Document highlights "Entertainment Premises". Design criteria is offered and it is further stated that if a noise report indicates that the design criteria would not be achievable, the development may still be considered but subject to appropriate conditions. As stated above, Noise Impact Assessment (Ref: J3691, 01/11/2023, Issue 2) concludes the variation would be acceptable subject to condition. Our department also considers that the variation will be acceptable, subject to necessary and enforceable condition.

Our department considers that it has been clearly demonstrated, through our own monitoring and the Noise Impact Assessment, that the proposed conditions, for this variation application, are appropriate for the proposed changes and it has been demonstrated they offer an appropriate level of neighbouring amenity. As such, the variation is in line with the above advice stated in the Planning Noise Advice Document for Sussex.

Summary bullet points provided, as our department finds:

1. Noise complaints were made, to our department, historically dating back to October 2021.
2. Our department investigated these complaints by the installation of noise recording equipment in to neighbouring homes and visits to site.
3. Noise issues were identified.
4. Our department worked with the pub and the brewery, to informally agree a Noise Management Plan (NMP) and set Music Noise Levels, for DJs, by way of a limiter.
5. It was agreed that the venue is not appropriate for live amplified music without a specific assessment to determine the level of required noise mitigation. The provision of live amplified music does not form part of this variation application.
6. Our department considers that live non amplified music shall not give rise to a detriment of amenity for the frequency and duration anticipated. Visits to site has shaped this view.
7. Variation of Condition 4 (Ref: 98/00156/FUL) is purely to regularise planning restrictions in line with current opening times and those specified on the Premises Licence. Our department considers that dispersal procedures in the NMP and the requirement that music noise levels are reduced at 23:00 negates any adverse noise impact for the proposed extended timings.
8. Our department considers that Condition 16 (Ref: 98/00156/FUL) is unenforceable and this is established in case law notably *Developing Retail Limited v East Hampshire Magistrates Court*. The judge in this case stated that “ without some degree of specificity as to what is meant by inaudibility, the condition is in my judgment so vague as to be unenforceable” and also stated that “This could lawfully have been prevented by the imposition of a condition that specified the particular nearby locations (presumably residential premises) intended to be protected, and required that noise from the licensable activities did not exceed a specified level of decibels measured at a particular location over a particular period”.
9. The Duke and Rye has informally agreed to adherence of the NMP. Our department’s unannounced monitoring indicates the requirements of the NMP are being upheld and an appropriate level of amenity is subsequently provided. It is evident the NMP is fit for purpose.
10. Our department is satisfied that adherence to the Noise Management Plan avoids an adverse noise impact and keeps noise to a practicable minimum. As such, we support that it is formalised through this variation application. Adherence to the Noise Management Plan and Music Noise Levels therein is precise and enforceable and is preferable to the current situation. The enforceability of the NMP is shared by the Council’s Planning Enforcement Department.
11. A Noise Impact Assessment conducted by a competent acoustic professional concludes that the local planning authority vary Condition 16 (Ref: 98/00156/FUL) to a more suitable and enforceable condition. It was also determined that “from the measured data, the site is compliant with the pubs and clubs guidance which was applied prior to 23:00 hours and post 23:00 hours. The installed Sound Limiting Device was noted to be working with internal sound pressure levels restricted to those levels required by the noise management plan”.
12. Residents have suggested that the Noise Management Plan and Music Noise Levels are not adhered to when our department is not around. This is despite us conducting unannounced visits. We have also offered residents the use of the Council noise recording equipment, in their properties, but this has not been taken up at this time. We have therefore not been able to assess from within properties

however our monitoring externally satisfies us that an appropriate level of internal amenity shall be attained with the implementation of the NMP.

**13. Our department supports the variation application in full, on the proviso that the Noise Management Plan, submitted with this application, is made a necessary condition of any permission granted.**

**14. If this variation application was refused, it is considered that an unenforceable planning condition would remain and that it is a much more preferable situation to have the Noise Management Plan formalised through the Planning Regime as it adequately safeguards neighbouring amenity.**

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Our department is supportive of the proposed variation of Conditions 4 and 16 (Ref: 98/00156/FUL) on the proviso that adherence to the Noise Management Plan (NMP), submitted to accompany this application, is made a stipulation of any variation that may be granted. It is considered this is necessary to provide an adequate level of amenity to the locale.

The following comments are provided to offer context and the reasoning behind our department's position.

#### Variation of Condition 4:

The proposed planning variation is to amend last orders on Friday, Saturday, and Bank Holiday Monday from 11:00pm until 11.30pm, to match the timings granted on the Premises Licence.

It is acknowledged that where timings under Planning and Licensing do not accord, then the more restrictive timings should be observed. The premises currently operates to the Premises Licence requirements and the variation application is purely to regularise the current operations taking place. As such, there will not be an extension of current hours of operation.

Our department considers that adherence to the dispersal procedures detailed in the Noise Management Plan shall mitigate the potential for disturbance and that regularising the current hours, through planning, will not be detrimental to amenity.

In addition, the Noise Management Plan stipulates that music shall be turned down, internally, to background levels from 11pm, so to avoid potential public nuisance. Our department has witnessed that this action will avoid public nuisance and provide adequate amenity after 11pm.

#### Variation of Condition 16:

Condition 16 currently states: "At no time shall any amplified music (Whether live or recorded) from the building be audible from the public highway. Reason: To protect the character of the Conservation Area and the amenities of residents".

Of note the condition purely relates to amplified music and not patron activity. In addition, any planning condition has to meet certain planning tests namely: to be necessary; relevant to planning and; to the development to be permitted; enforceable; precise and reasonable in all other respects.

It is suggested that the current condition is not enforceable, precise or reasonable. Case law and Inspector's decisions have deemed that inaudibility conditions are not appropriate for use (given partly the variation in hearing ability of the population). As such, our department no longer recommends their application for Licensing or Planning purposes.

Under Planning requirements, namely the National Planning Policy Framework, development shall "mitigate and reduce to a minimum potential adverse impact resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life" (Paragraph 185 a).

It is considered that by conditioning the Noise Management Plan, that these reasonable and necessary criteria shall be met. The imposition of a front of house music noise level, that is restricted by a tamper proof limiter, is precise and enforceable by officers of the Council.

When assessing whether a good standard of amenity can be achieved, National Planning Practice Guidance (PPG) is provided. A significant adverse noise impact is avoided where noise may be heard and causes small changes in behaviour and/or attitude and should be mitigated and reduced to a minimum.

Our department is a consultee for planning applications; however, we do not investigate or enforce planning conditions. This is a requirement of the Planning Enforcement Department. Our department is however responsible for investigating and enforcing under statutory nuisance legislation, which stands outside the planning regime.

Our department has received past noise complaints in relation to operations at the Duke and Rye. Some of these relate to previous management to that currently in place. We have investigated these complaints. For example, our department visited site from 9.30pm and 11pm on Friday 19th August 2022, during a DJ set. Issues were identified, with bass levels, found to be dominant externally.

We have subsequently liaised with the Brewery, Management and Agents to bring about improvements with noise control. The Noise Management Plan has been formulated through discussion and monitoring exercises. The main controls of the Noise Management Plan are highlighted below:

- Planning and Licensing requirements, relating to noise, are clearly documented.
- Music noise levels are physically limited to no more than 80dB LAeq,1min at front of house. Bass frequencies are limited to not exceed 80dB Leq at all octave bands.
- Amplified live music shall not take place unless a full noise impact assessment has been conducted to determine the level of mitigation required.
- The speakers on site are noted and positioned to offer a diffuse sound throughout the venue.
- Monitoring shall take place by staff to access indicative sound levels, at agreed locations and a log kept of the monitoring results.
- Dispersal procedure in place.

- Doors and windows closed when music played.
- Music to be turned down to no more than background levels at 11pm, even though the Premises Licence permits beyond this on certain days.
- Staff training.
- Broken stain glass panes of glass were identified and repaired to mitigate noise breakout

Our department carried out a monitoring exercise on Friday 28th April 2023 between 10pm and 11pm. This was conducted to assess the effectiveness of the Noise Management Plan. The pub allowed us access, during the monitoring session. A calibrated sound level meter was set up at front of house, taking 1-minute recordings (see photo attached, Figure 1). We conducted external monitoring with another time synchronised calibrated sound level meter at various points around the venue. We are satisfied that the music is being played through and restricted by an appropriate noise limiter. The music was restricted to no more than 80dB and we are satisfied the music volume was typical during the monitoring session, around 80dB at all times before 11pm.

We stood outside neighbouring properties, including outside the Prebendal School. Music was audible but not considered to be at a volume to cause unreasonable levels internally with windows open for ventilation. The bass levels are described as subdued. A level of 48.8dBA was measured outside the prebendal school. To put this in context, a bus passing, in the street, gave rise to a measurement of 68.8dBA as measured from the pavement.

We monitored from Tower Street to the rear. A massive improvement was witnessed since our monitoring in August the previous year, at the same location. Pre-11pm levels were 41.8dB and the bass had reduced by up to 15dB. (Hugely significant in acoustic terms. 3dB is a halving of sound energy, with 10dB offering a subjective halving of volume to the human ear).

As per the Noise Management Plan the music noise levels were turned down to background sound levels internally at 11pm. Levels, front of house, went down to around 72dB LAeq. The corresponding measurement at Tower Street after 11pm dropped below 40dBA and a further reduction was witnessed with the bass. The music was subjectively barely audible externally at Tower Street.

Since the introduction of the Noise Management Plan our department has approached residents and Prebendal School to arrange internal noise monitoring, but the offers have not been taken up, to date.

When looking to appropriate noise standards and guidance and further to intensive monitoring, our department is satisfied that the Noise Management Plan submitted to accompany this variation application shall avoid an adverse noise impact and keep noise to a practicable minimum. As such, the variation application is supported.

There is concern locally that extended drinking hours and increased music volume will lead to the venue becoming a nightclub. This shall be safeguarded against by the imposition of the Noise Management Plan that our department has assisted with.



## 6.5 CDC Conservation and Design Officer

### Follow up clarification comments

The following are updates to my recently issued comments:

Our environmental health officers have issued an important clarification on the level of vibration within the premises. I have also clarified the position with regards to Historic England guidance. The allowed level of sound is very unlikely to cause harm to the structure of the church. This is clarified in the British Standard guidance as well as in relevant case history.

In any event, the premises already has permission and consent for amplified music at this level, it would therefore not be reasonable in planning terms to object to it now.

### Original Comments

External:

Our environmental health team have conducted detailed work with the applicants that demonstrates no real adverse impacts at street level from additional music amplification. They are also to correct to identify condition 16 as not being enforceable, precise or reasonable. The example of music heard across the street being significantly lower than background traffic noise for example is compelling. This part of the Chichester Conservation Area is busy, has a relatively high level of traffic and has several venues nearby that operate within the night time economy. A somewhat higher level of noise and activity is to be expected in our town centres and is part of their character as urban meeting points. Given the conclusions of the environmental health team and the busy character of the local area I find that the varied conditions would do no harm to the character and appearance of the Chichester Conservation Area.

We should not consider refusing the application on the basis of harm to the conservation area. It is my view that this is highly likely to be unsuccessful at appeal.

Internal:

The effect of additional amplified music internal to the premises is another matter. Low octave amplified bass music can cause vibrations which can affect less stable architectural features, such as windows. The West Window of the former church is in a somewhat fragile state and there is no analysis of how the music may affect its stability. The applicant should investigate this matter with the assistance of a historic buildings consultant and the correct analysis methods and submit the information before we issue a decision.

Summary:

The application will cause no harm to the character and appearance of the Chichester Conservation Area. Effects on the internal fabric of the building should be explored further as suggest above, before a decision is issued.

## 6.6 CDC Economic Development

### **CDC Economic Development Comments during Third Consultation:**

**The Economic Development Service [EDS] fully supports this application, in line with our previous comments on this application.**

**We recognise that town and city centres are in a state of flux and a flexible approach to the uses found in them are desirable. The EDS supports good quality evening and night-time economy facilities, especially on existing sites and in the city centre.**

**At present the city centre has a limited evening and night-time economy so this venue is a crucial part of the existing offer. It is recognised that the vicinity around this venue includes a number of existing night-time establishments, close to main visitor attractions, such the Cathedral, Novium Museum, the Cross and is within the central business area of the city.**

**There is a need for a safe, enticing, diverse and appealing evening and night-time offer where people can find a range of activities. The ability to have later opening and licencing hours for venues is really important to give them the flexibility to put on special events and during holidays. This especially important for the 20-40 year old age groups, where there is a limited offer and the city centre loses out to surrounding locations.**

**The “Chichester Tomorrow” Vision document, adopted by all three local authorities and Chichester BID, encourages the night-time economy and the development of a lively evening and night-time economy within the city centre.**

**There has been a decline in venue playing live or amplified music across the country with the exception of London. These venues need to be supported to enhance the cultural offer in the city centre. This is one of the few venues in the city centre that has the ability to stage live music.**

**As town and city centres transition, with fewer retail businesses – they will become more experiential. The evening and night-time economy is experiential by nature and is a sector that will help grow the local economy.**

The Economic Development Service fully supports this application.

Many things have changed in terms of leisure in the 25 years since the planning permission was agreed, one thing that has remained is that people still expect and require in terms of entertainment from a city centre public house. For example, live music or a DJ set. This not only supports the business by attracting new customers it provides entertainment. A city centre should be a thriving economic hub for the area, attracting an excellent evening and night-time economy offer. This application is a vital step in ensuring that a vibrant and robust evening and night-time economy is supported within this District.

The Economic Development Service feels that the overly restrictive planning conditions on this site has a bearing on the viability of the business and feel that the conditions should be brought into line with other city centre public houses.

## 6.7 Third Party Comments

**1 no. letter of objection was received during Third Consultation concerning:**

- a) That the site is not within the central business area of the city
- b) Events at the Cathedral and Novium do not require late live music.
- c) That there would be no noise limit on live music and there would no restrictions on frequency
- d) The Chichester Inn and The Crate & Apple host live music without disturbing local residents
- e) The site is not in a suitable location due to the absence of noise insulation in the Grade II Listed Building and position adjacent to residential properties and within a Conservation Area.

**15 no. letters of objection were received during Second Consultation concerning:**

- a) Impact from noise
- b) Disturbance from users of the premises leaving the site
- c) The area has become more residential since the original planning permission
- d) It is not in a commercial area of the city
- e) Location opposite Cathedral, Bell Tower and Boarding School
- f) Impact on the Conservation Area
- g) Heritage Statement does not reference the boarding school
- h) The site is not within a vibrant area
- i) There are other areas of the city where young people can enjoy themselves in their own way
- j) Planning permission was granted for a restaurant with licensing
- k) The site is not a purpose built public house
- l) The planning conditions are not overly restrictive and are sound
- m) Noise management plan would not be an effective substitute for conditions
- n) There are inaccuracies in the Heritage Statement and Noise Impact Assessment
- o) The welfare and wellbeing of the children sleeping opposite has not been accurately considered in the Noise Impact Assessment
- p) There is no breach management for the Noise Management Plan
- q) Noise management tests are not a correct representation of the noise if the venue know they are taking place
- r) Noise Management Plan does not cover management for live music or vocal entertainment
- s) The Noise Impact Assessment incorrectly states that the DJ plays on one night.
- t) Noise Impact Assessment does not include evidence of noise level inside noise sensitive properties
- u) Requesting a decision is made to avoid protracted series of applications

34 no. letters of objection have been received concerning;

- a) The impact from noise levels from the premises
- b) The disturbance to residential properties
- c) The disturbance to the dormitories of the Prebendal School
- d) Amplified music should be rejected
- e) Serving of food and drink up to 11.30pm is acceptable but accompanied by greater door security and management of customers
- f) Disruption from noise, nuisance, litter and anti-social behaviour would increase and be later in the day
- g) The impact on West Street
- h) Permission would not have been granted originally without the restrictive conditions
- i) The proposal would have a detrimental impact on the character of the Conservation Area
- j) The impact on the Listed Building
- k) There is no requirement for the planning permission to be in line with the License
- l) 80db LAeq is not justified now as people need to sleep
- m) Noise limiting device is not effective
- n) The music on the night it was monitored was at a much lower volume than normal
- o) Speakers are next to windows which are not sound proofed
- p) Noise vibration can damage historic buildings and leaded light windows
- q) Surrounding properties lack modern soundproofing
- r) The proposals would allow them to mention the volume of music without any control
- s) The Council should refuse to accept applications
- t) The site is opposite the Cathedral
- u) The use is unsuitable in this location and is an inappropriate use
- v) There is an existing breach of condition
- w) Customers block the pavement smoking
- x) That the application should be not be valid as a noise assessment and heritage statement have not been submitted
- y) Raising enforcement breaches
- z) Absence of noise survey means it is not possible to conclude that the mitigation measures are acceptable
- aa) Queries raised regarding the specification and location of the noise limiting device
- bb) Conservation Area Character Appraisal refers to the cathedral and associated buildings and spaces as a notable quiet area within the Conservation Area
- cc) The Noise Management Plan only applies to amplified music and live music would be without constraint
- dd) The proposal would attract more traffic and parking problems
- ee) Conditions should not be relaxed and should be restricted further
- ff) The proposals could lead to increased damages to the Cathedral and its associated properties

## **7.0 Planning Policy**

### The Development Plan

7.1 The Development Plan for the area comprises the Chichester Local Plan: Key Policies 2014-2029, the CDC Site Allocation Development Plan Document. There is no made Neighbourhood Plan for Chichester.

7.2 The principal policies relevant to the consideration of this application are as follows:

Chichester Local Plan

Policy 1: Presumption in Favour of Sustainable Development  
Policy 2: Development Strategy and Settlement Hierarchy  
Policy 10: Chichester City Development Principles  
Policy 38: Local and Community Facilities  
Policy 47: Heritage and Design

National Policy and Guidance

7.3 Government planning policy now comprises the ~~revised National Planning Policy Framework (NPPF 2021), which took effect from 20 July 2021.~~ **the latest version of the National Planning Policy Framework published on 19 December 2023 (NPPF 2023).** Paragraph 11 of the revised Framework states that plans and decisions should apply a presumption in favour of sustainable development, and for decision-taking this means:

- c) approving development proposals that accord with an up-to-date development plan without delay; or
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
  - i. the application of policies in this Framework that protect areas of assets of particular importance provides a clear reason for refusing the development proposed: or
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole

7.4 Consideration should be given to Sections 2 (Achieving Sustainable Development), 4 (Decision-making), 6 (Building a Strong, competitive Economy), 7 (Ensuring the Vitality of Town Centres), 8 (Promoting Healthy and Safe Communities), 12 (Achieving Well-Designed and Beautiful Places) and 16 (Conserving and Enhancing the Historic Environment) of the NPPF. In addition, the relevant paragraphs of the National Planning Practice Guidance have also been considered.

## 7.5 Consideration should be given to:

- Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

### Chichester Local Plan 2021 – 2039: Proposed Submission (Regulation 19)

7.6 Work on the review of the adopted Local Plan to consider the development needs of the Chichester Plan Area through to 2039 is now well-advanced. Consultation on a Preferred Approach Local Plan has taken place. Following detailed consideration of all responses to the consultation, the Council has published a Submission Local Plan under Regulation 19, which was approved by Cabinet and Full Council for consultation in January 2023. A period of consultation took place from 3rd February to 17th March 2023, and the Submission Local Plan is expected to be submitted to the Secretary of State for independent examination in ~~late Summer/early Autumn 2023~~ **early 2024**. In accordance with the Local Development Scheme, it is anticipated that the new Plan will be adopted by the Council in 2024. At this stage, the Local Plan Review is an important material consideration in the determination of planning applications, the weight that can be attached to the policies contained therein is dependent on the significance of unresolved objection attributed to any relevant policy, commensurate with government policy at paragraph 48 of the NPPF (2024~~3~~).

The relevant policies are:

- Policy S1 Spatial Development Strategy
- Policy S2 Settlement Hierarchy
- Policy NE20 Pollution
- Policy NE23 Noise
- Policy P10 Listed Buildings

### Other Local Policy and Guidance

7.7 The following documents are also material to the determination of this planning application:

- Chichester Conservation Area Character Appraisal

7.8 The aims and objectives of the Chichester in Partnership Community Strategy 2016-2029 which are relevant and material to the determination of this planning application are:

- Support local businesses to grow and become engaged with local communities
- Maintain the low levels of crime in the district in the light of reducing resources
- Influence local policies in order to conserve and enhance the qualities and distinctiveness of our area

## 8.0 Planning Comments

8.1 The main issues arising from this proposal are:

- i. Principle of development
- ii. Impact upon the amenity of neighbouring properties
- iii. Impact upon the character of Chichester Conservation Area and Listed Buildings
- iv. Other matters

i) Principle of development

8.2 The application site is located within the designated Settlement Boundary Area of Chichester which is designated within the development plan as the sub-regional centre for the District. The principal policies of the development plan support development within the settlement. Policy 10 of the CLP supports proposals in principle which enhance the city's existing entertainment and leisure offer, including the 'evening economy'.

8.3 The site is an established food and drink licensed premises, granted planning permission under application reference 98/00156/FUL and this allows the live and amplified music. The application seeks to vary conditions 4 and 16 of that permission.

8.4 Condition 4 states:

*"The A3 (food and drink) use hereby permitted shall not be used by customers other than between the hours of 0830 hours and midnight Monday to Saturday and 0900 hours and midnight on Sunday with last orders being taken everyday before 11.00pm. The building shall be vacated by all customers and public by 12.00 midnight.*

*Reason: In the interests of amenity."*

8.5 The application proposes to vary condition 4 to allow later last orders up to 11.30pm on Fridays, Saturdays and Bank Holiday Mondays.

8.6 Condition 16 states:

*"At no time shall any amplified music (whether live or recorded) from the building be audible from the public highway.*

*Reason: To protect the character of the Conservation Area and the amenities of residents."*

8.7 The application seeks to vary condition 16 to control the timing and volume of amplified music, with a noise management plan submitted accompanying this application.

8.8 The broad principle of the proposed variations to an established premises is acceptable, subject to an assessment against other material considerations.

ii) Impact upon the amenity of neighbouring properties

- 8.9 Paragraph 430 135 of the National Planning Policy Framework (NPPF) states that planning policies and decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 8.10 Paragraph 474 180 states that planning policies and decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Paragraph 485 191 states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should: a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development - and avoid noise giving rise to significant adverse impacts on health and the quality of life.
- 8.10a A Noise Impact Assessment with an accompanying Noise Management Plan (NMP) was submitted during the application. Concerns were raised about inaccuracies in the second consultation.**
- 8.10b During the second consultation period, CDC Environmental Health raised some queries with the Acoustic Consultancy, in particular relating to the assessment criteria used, as per the quoted DEFRA (October, 2005) Noise from Pubs and Clubs Guidance. CDC Environmental Health pointed out that the Duke and Rye had indicated that currently the venue only has DJs on a Saturday but the desire would be to have the flexibility to have DJs on both Friday and Saturday nights most weeks. For this reason, a different criteria from the DEFRA Guidance would have to be applied in the Noise Impact Assessment.**
- 8.10c Acoustic South East provided a revised Noise Impact Assessment (Issue 2). CDC Environmental Health were satisfied that their queries had been addressed and that the appropriate criteria had been applied for the assessment. A further consultation period was undertaken.**
- 8.10d The Council's Environmental Protection Team have concluded that the department's position has not changed since the initial consultation. They comment that "It is maintained, that when looking to appropriate noise standards and guidance and further to intensive monitoring, our department is satisfied that the Noise Management Plan (NMP) submitted to accompany this variation application shall avoid an adverse noise impact and keep noise to a practicable minimum. Our department supports the variation application in full, on the proviso that the Noise Management Plan, submitted with this application, is made a necessary condition of any permission granted. The Noise Management Plan stipulates a Music Noise Level limit internally and also prohibits live amplified music."**



- 8.11 The application site is located on the northern side of West Street, on the corner of Tower Street. West Street, although within the core of the city, does contain many residential properties, which are in close proximity to the application site. This includes children's sleeping accommodation at the Prebendal School on the opposite side of West Street. The Conservation Area Character Appraisal identifies West Street as being more mixed, with the Cathedral, County Hall, and the Prebendal School all influencing the character of this part of the city.
- 8.11a The submitted Noise Assessment identifies the nearest residential dwellings as 21 West Street and 1 Tower Street. Although it does not specifically mention the Prebendal School the Council are aware of the location of the site and surrounding uses. The Senior Environmental Health Officer comments refer to taking measurements outside of Prebendal School as part of previous monitoring. CDC Environmental Protection comment that the survey monitoring positions in the Noise Impact Assessment, Locations A and B, are wholly adequate for the purposes of assessment. Location B is closer to the venue than the Prebendal School opposite West Street.**
- 8.12 Third party comments have made reference to disturbance from anti-social behaviour from patrons leaving the premises and raise objections to the proposals.
- 8.13 Sussex Police have been consulted on the application and have commented that from a crime prevention perspective they do have concerns with regards to amenity and request that moving forward that a degree of sensitivity is shown to ensure that the local community are not unduly disturbed when patrons leave the premises during the hours of darkness. Officers note that it is material that in June 2022 Sussex Police commented on a licensing application 22/00893/LAPRE2 for the premises which would have been significantly beyond what is restricted by the planning permission. This included proposals to increase the retail sale of alcohol to 0000 Sunday to Thursday and 0100 Friday and Saturday, and the opening hours to 0030 Sunday to Thursday and 0130 Friday and Saturday. Sussex Police raised no objections to that licensing application, subject to amendments and additional conditions. The above licensing application was withdrawn.
- 8.13 Sussex Police Designing Out Crime Officer commented that their comments remain extant and referred details of the planning application for the Sussex Police Licensing Officer. Sussex Police Licensing have commented that they have no objection. They comment that, "We are aware of some complaints and allegations from local residents in relation to this pub. However we have reviewed our records subsequently, and we have no current issues with the pub."**
- 8.14 As a result of complaints, the Council's Environmental Protection Team has been involved with this site and has subsequently liaised with the Brewery, Management and Agents to bring about improvements with noise control.

8.15 Condition 4 of permission 98/00156/FUL currently allows for the following:

Opening Hours:

0830-Midnight Monday to Saturday  
0900-Midnight on Sundays

Last Orders: Taken before 2300

Building vacated by customers and public by midnight

8.16 The proposal seeks to vary condition 4 to allow for last orders to be taken before 2330 on Fridays, Saturdays and Bank Holiday Mondays. The opening hours and when the building would need to be vacated would remain the same as approved. Whilst there is no requirement for any planning restrictions to be consistent with the premises license, this would bring the time of last orders to be in accordance with the license.

8.17 The Noise management plan includes dispersal measures which include:

- Reducing the volume of recorded music to background levels during the last 30 minutes;
- Using volume levels, type of music played and lighting levels to encourage the gradual dispersal of patrons during the last part of trading and the drinking up period;
- Reducing the music tempo and volume of music being played within the premises to background levels from 30 minutes before bar closure time
- Notices at exits
- Staff measures to encourage drink-up and progress to the exit, displaying taxi numbers, removing opened bottles and glasses from anyone attempting to carry them, and encouraging customers not to assemble outside the venue.

8.18 CDC's Senior Environmental Health Officer has commented that adherence to the dispersal procedures detailed in the Noise Management Plan, shall mitigate the potential for disturbance and that regularising the current hours, through planning, will not be detrimental to amenity. They also comment that they have witnessed this in action and that it will avoid public nuisance and provide adequate amenity after 11pm.

**8.18a CDC's Senior Environmental Health Officer highlights that it should be noted that the Duke and Rye public house is located on a busy route into the centre of Chichester. Buses, taxis and private vehicles regularly drive by until the early hours. Two other licensed premises are located along the route (Wetherspoons and the Chichester Inn) and pedestrians regularly walk along West Street including during evenings.**

8.19 Taking the above into consideration and given the specialist comment, it is considered that amending condition 4 to alter the time that last orders can be taken would be acceptable with regard to the impact upon amenity.

- 8.20 The second element of the application relates to varying condition 16. This condition dates from the 1998 application and refers to music not being audible from the public highway. The wording of such a condition is open to question in terms of precision and the Council's Senior Environmental Health Officer has commented that they no longer recommend inaudibility conditions for Licensing or Planning purposes.
- 8.21 The application premises is in a location where there are residential properties, including residential boarding at the Prebendal School. As highlighted in the consultation section of this report, many objections have been received with regard to impact from noise.
- 8.22 The application is accompanied by a Noise Management Plan, to be referred to in a varied condition 16. Subject to an appropriate worded condition, this would meet tests of being precise, enforceable and reasonable.
- 8.23 The Noise Management Plan has been formulated through discussion and monitoring exercises with the Council and having liaised with the Brewery, Management and Agents to bring about improvements with noise control. The main controls of the Noise Management Plan are:
- Music noise levels are physically limited to no more than 80dB LAeq,1min at front of house. Bass frequencies are limited to not exceed 80dB Leq at all octave bands.
  - Amplified live music shall not take place unless a full noise impact assessment has been conducted to determine the level of mitigation required.
  - The speakers on site are noted and positioned to offer a diffuse sound throughout the venue.
  - Monitoring shall take place by staff to access indicative sound levels, at agreed locations and a log kept of the monitoring results.
  - Dispersal procedure in place.
- 
- Doors and windows closed when music played.
  - Music to be turned down to no more than background levels at 11pm, even though the Premises Licence permits beyond this on certain days.
  - Staff training
  - Broken stain glass panes of glass were identified and repaired to mitigate noise breakout
- 8.23a Comments have been received raising concerns about live music. CDC Environmental Protection considers that live unamplified music shall be acceptable for the limited frequency and duration anticipated. Live unamplified music may include carol singing or an unamplified singer with an unamplified instrument (specifically stated in the NMP not to include a traditional drum set). It is acknowledged that in the instance of unamplified singing, the music noise level may exceed 80dB LAeq but this genre of music does not have a high bass content and would not be considered to be able to cause a detriment to amenity at sensitive neighbouring receptors. Patrons inside the pub currently talk and sing and cheer over 80dB LAeq and it has been witnessed this does not cause a noise issue externally.**

**8.23b If permitted, the wording of condition 3 would prevent live amplified music, as it includes a section which states that notwithstanding the details within the Noise Management Plan, the premises shall not undertake amplified live music at any time.**

**8.23c Objection comments raised during the consultation stated that the Noise Impact Assessment is not reflective of a busy night. CDC Environment Health Officer comments that the number of patrons inside the pub would have minimal bearing on the assessment of the Music Noise Levels. The Music Noise levels were played around the limited level for the duration of the survey. If the pub had been particularly busy with patrons, there may well have been a decrease in the internal music noise level that was realised due to the patrons absorbing sound and providing a less reverberant space.**

8.24 The Council's Environmental Health department has undertaken a monitoring exercise to assess the effectiveness of the Noise Management Plan. The music was restricted to no more than 80dB. They commented that "...they stood outside neighbouring properties, including outside the Prebendal School. Music was audible, but not considered to be at a volume to cause unreasonable levels internally with windows open for ventilation. The bass levels were described as subdued. A level of 48.8dBA was measured outside the prebendal school. To put this in context, a bus passing, in the street, gave rise to a measurement of 68.8dBA as measured from the pavement."

8.25 They monitored from Tower Street to the rear, commenting: "A massive improvement was witnessed since our monitoring in August the previous year, at the same location. Pre-11pm levels were 41.8dB and the bass had reduced by up to 15dB. (Hugely significant in acoustic terms. 3dB is a halving of sound energy, with 10dB offering a subjective halving of volume to the human ear)." The comments continue; "As per the Noise Management Plan the music noise levels were turned down to background sound levels internally at 11pm. Levels, front of house, went down to around 72dB LAeq. The corresponding measurement at Tower Street after 11pm dropped below 40dBA and a further reduction was witnessed with the bass." They comment that the music was subjectively barely audible externally at Tower Street.

**8.25a Further additional monitoring has been undertaken by the Council. Comments set out that noise monitoring took place at the Duke and Rye between 22:00 and 23:30 on Saturday night, during the busy Goodwood Revival weekend (Saturday 9 September), summarised as follows:**

**"The monitoring was unannounced to begin with, no issues identified. An exercise was then carried out with the knowledge of the pub where two fully calibrated sound meters were used to check compliance with the music noise levels that have been set. The NMP was being adhered to. All staff were fully briefed and monitoring had taken place.**

**The music was audible in the street during the monitoring exercise, so not compliant with Condition 16 (Ref: 98/00156/FUL). At no time however was the music noise considered to be unreasonable. A noise nuisance was not witnessed and the music noise levels were limited to a level that avoided a significant adverse noise impact and mitigated impact to a practicable minimum. The NMP was fully adhered to and monitoring notes were up to date.**

**Subjective monitoring was also conducted by representatives from the Council on Saturday 12th August 2023 between 22:45 to 23:30; Saturday 26th August 2023 at 22:30 and Saturday 9th September 2023 at 21:15. The subjective unannounced monitoring did not suggest that the NMP was not being adhered and noise levels were not considered unreasonable.”**

8.26 The Council’s Environmental Health Department has concluded that the proposed Noise Management Plan would avoid an adverse noise impact and keep noise to a practicable minimum and supports the application. It is therefore concluded that subject to the appropriate wording to secure compliance with the Noise Management Plan, and to restrict the premises from amplified live music pending further monitoring and a fresh application in accordance with the Noise Management Plan, that the proposed variations of conditions 4 and 16 would not give rise to an unacceptable impact on neighbouring amenity and would therefore comply with Local Plan Policies and Paragraphs 135, 174-180 and 185-191 of the National Planning Policy Framework.

iii) Impact upon heritage assets

8.27 Section 72 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990, requires that the Local Authority give special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. Section 66 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990, which states that "In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

**8.27a Paragraph 200 of the NPPF states that: In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance.**

**8.27b A Heritage Statement has been submitted during the course of the application. This is considered to meet the above. In considering this, it is also a material consideration that planning permission has been granted under application CC/98/00156/FUL. A S73 application if permitted would grant permission with alternative conditions.**

**8.27c Planning 201 of the NPPF states that: Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise.**

**8.27d The Heritage Statement was requested during the course of the application. The application was originally on the agenda for the July 2023 planning committee and as part of that report officers had considered the proposal and the impact on the significance of the heritage assets of the site itself and those set out in paragraph 8.30 of this report. The submitted Heritage Statement has been considered, however does not change the findings of officers as set out below.**

8.28 Paragraph 497 203 of the NPPF states: In determining applications, local planning authorities should take account of: a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and c) the desirability of new development making a positive contribution to local character and distinctiveness.

Paragraph 497 203 states: 'When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.'

8.29 Policy 47 of the Chichester Local Plan states that permission will only be granted where it can be demonstrated that the proposal conserves or enhances the special interest and settings of designated and non-designated heritage assets.

8.30 The site is located within the Chichester Conservation Area. The application building is a Grade II Listed Building. There are listed buildings surrounding the application site, including, but not limited to, the Grade I Cathedral, Grade I Bell Tower of the Cathedral located to the south/south West of the site.

8.31 The site is located within the city centre, with the Chichester Conservation Area Character Appraisal identifies West Street as being mixed, with the Cathedral, County Hall and the Prebendal School all influencing the character of this part of the city. Concerns have been raised regarding the impact to the character of the conservation area and setting of listed buildings.

8.32 The Conservation Area Character Appraisal recognises the Cathedral and its associated buildings and spaces as being within the most notable 'quiet' areas, and that there is a sense of peace and tranquillity throughout the Cathedral precinct. The application building is an established food and drink licensed premises is located on the northern side of West Street, which opposite the cathedral have commercial use classes, including another Public House opposite the Cathedral at The Dolphin and Anchor.

8.33 The Council's Principal Historic Buildings Advisor has concluded that the application would cause no harm to the character and appearance of the conservation area. In coming to that conclusion, they have commented that part of the Chichester Conservation Area is busy, has a relatively high level of traffic and has several venues nearby that operate within the night-time economy. They advise that a somewhat higher level of noise and activity is to be expected in our town centres and is part of their character as urban meeting points. They also give significant weight to the findings of the Council's Environmental Protection Team

8.34 Given the above, it is considered that the proposed variation of conditions would not result in harm to the character of the conservation area of the setting of listed buildings. **The proposal is considered to conserve the character and setting of heritage assets.**

iv) Other Matters

~~8.35 Some consultation comments have raised that this planning application should not have been made valid in the absence of a Noise Assessment and Heritage Statement. This application is to vary conditions of an existing planning permission and as such the validation requirements differ to those of a full application. The Council's Local Validation List sets out that where the application is accompanied by information that purports to cover the relevant issues it will likely be accepted as valid. Furthermore, discussions took place with the Council's Environmental Protection Team prior to the submission of the application to detail what would be required with the application. Therefore, the application is considered to be valid with the information submitted.~~

**8.35a A Noise Impact Assessment and a Heritage Statement have been provided during the course of the application. Updates to the Noise Impact Assessment were submitted following the original submission and a further period of consultation took place. The application is considered to be valid.**

**8.35b Comments have been received stating that it is misleading for the Noise Impact Assessment to state that the Duke and Rye Venue has been in place operating as a pub since 1998. The Council considers that the use of the building as a public house is lawful. As set out in the Planning History section of this report, planning permission was granted for the "Change of use to A3 (food and drink) licensed premises." At the time of that decision a Public House would be considered as an A3 use and therefore that statement is not misleading. Amendments to the Use Class Order in 2005 substituted Class A3 (Food and Drink) with Class A3 (Restaurants and Cafes), Class A4 (Drinking Establishments) and Class A5 (Hot food takeaways). Further changes to Use Classes took place in September 2020, which revoked Class A. This does not alter that the site can be lawfully used as a Public House, which now falls as a 'sui generis' use.**

**8.35c Comments have raised that breach management is not addressed within the Noise Management Plan. If permitted the measures within the NMP would be secured by conditions, together with the other conditions detailed in this report.**

**8.35d Concerns have been raised that the proposal would allow a night club. This application is not for a change of use to a night club; planning permission would be required for use as a night club. Furthermore the supporting information sets out that the premises is not operating as a club and the internally measured sound pressure levels are comfortably below those experienced in other licenced premises and club venues. CDC Environmental Health set out that the music noise levels have been set to a very conservative level, in acceptance with the venue. The venue cannot be run as a club, as the limited music noise levels do not allow.**

- 8.36 Comments have also been raised concerns with regard to the potential impact on the listed application building itself due to vibration. The current application seeks to vary conditions, and the 1998 planning application already authorises the playing of music, and therefore these concerns are outside of the scope of the current application. The proposed variation and the Noise Management Plan would not lead to any additional amplified music. The proposed stipulation that internal music shall not exceed 80dB LAeq,1min and 80dB Leq,1min, at any frequency, at front of house, has in fact lead to a reduction in music noise levels that have been previously witnessed.
- 8.37 The Council's Environmental Protection Team has provided guidance to officers on this, stating that a restriction of 80dBA front of house, across all frequencies, is extremely modest for a licenced premises. They advise that they would be extremely surprised if music of this volume would lead to structural damage. They comment, *"I make reference to BS7385-2:1993 "Evaluation and Measurement for Vibration in Buildings". BS7385: Part 2 states that some data suggests that the probability of structural damage tends to be towards zero at vibration levels at 12.5mm/s peak particle velocity (PPV). This is not inconsistent with a review of case history in the UK. With consideration to BS7385-2 and having witnessed measured vibration levels from construction sites and vibration witnessed in the Duke and Rye with music played through the limiter, I would suggest that vibration levels that would cause structural damage are not being realised."*
- 8.38 The Council's Principal Historic Buildings Advisor withdrew their request for further information following clarification that it was outside of the scope of the application and after the above clarification from Environmental Protection, commenting that: *"Our environmental health officers have issued an important clarification on the level of vibration within the premises. I have also clarified the position with regards to Historic England guidance. The allowed level of sound is very unlikely to cause harm to the structure of the church. This is clarified in the British Standard guidance as well as in relevant case history."*
- 8.39 The benefits to the night-time economy have been raised by CDC's Economic Development Team, and this is a material consideration in favour of the application.

### Conclusion

- 8.40 Based on the above it is considered the principle of the proposed variation of conditions is acceptable. The objections to the scheme are noted and have been considered, however, the specialist consultee comments conclude that an adverse noise impact would be avoided. In addition, for the reasons given, the proposal is not considered to result in harm to the character of the conservation area or setting of listed buildings. There is no conflict with the NPPF, the proposal complies with development plan policies, and there are no material considerations that would justify refusing the application. Therefore, the application is recommended for approval. The conditions include the varied conditions as well as the other conditions from the original approval.



## Human Rights

8.41 In reaching this conclusion the Human Rights of the applicants and nearby occupiers have been taken into account when reaching this recommendation and it is concluded that the recommendation to permit is justified and proportionate.

### **RECOMMENDATION**

**PERMIT** subject to the following conditions and informatives:-

1) The use permitted under planning permission CC/98/00156/FUL shall not be carried out other than between the hours of 0830 hours and midnight Monday to Saturday and 0900 hours and midnight on Sunday with last orders being taken before 2330 hours on Fridays, Saturdays and Bank Holiday Mondays, and before 2300 hours on all other days. The building shall be vacated by all customers and public by midnight.

Reason: In the interests of amenity.

2) The playing of music shall not take place other than between the hours of 1000 and 2300 on Sundays to Thursdays; between 1000 and 2330 on Fridays and Saturdays and between 1000 and 2300 on Bank Holiday Mondays.

Reason: To protect the character of the conservation area and the amenities of residents.

3) The use must take place in complete accordance with all the measures detailed within the submitted Noise Management Plan accompanying this application, including the mitigation and dispersal measures. The volume of internal music noise levels shall not exceed 80dB LAeq, 1 min or exceed 80dB Leq, 1 min at any octave band bass frequency at front of house.

Notwithstanding the details within the Noise Management Plan, the premises shall not undertake amplified live music at any time.

Reason: To protect the character of the conservation area and the amenities of residents.

4) All conditions on planning permission reference CC/98/00156/FUL still apply, except for conditions number 4 and 16 which shall not apply. Conditions numbered 1, 2 and 3 above shall apply in place of conditions 4 and 16.

Reason: In the interests of amenity.

## INFORMATIVES

1) The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

For further information on this application please contact Martin Mew on 01243 534734

To view the application use the following link - <https://publicaccess.chichester.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=RR9GKIERJHY00>