

Alcohol and Entertainment Licensing Sub-Committee

Date and Time: Wednesday 5th April 2017 at 9.30am
Venue: Committee Room 1, Chichester District Council, East Pallant House, East Pallant,
Chichester, West Sussex

Application for VARIATION of a PREMISES LICENCE

The Foundry
1 Southgate
Chichester
West Sussex
PO19 8DH

1. RECOMMENDATIONS

- 1.1 That the Sub-Committee considers and determines an application made by the Spirit Pub Company (Lease) Ltd group for a Premises Licence variation.
- 1.2 If the determination is to grant a varied Premises Licence, to give consideration as to whether it is appropriate to attach conditions to ensure the Licensing Objectives are met.
- 1.3 The Sub-Committee is to give reasons for its decision.

2. REASONS FOR HEARING

- 2.1 The Premises Licence application submitted by the Spirit Pub Company (Lease) Ltd group has been the subject of two relevant representations. The representations were received from two Responsible Authorities under the Licensing Act 2003 (the 'Act') namely Sussex Police and Environment Management Team within Housing and Environment Services at Chichester District Council. However, the applicant has agreed in principle with Sussex Police through successful mediation that certain conditions be added to the Premises Licence if the Sub-Committee are minded to accept these. The representation made by Environment Management Team remains unresolved.

3. BACKGROUND

Included in this report are the following attachments:

- 3.1 Copy of the Alcohol and Entertainment Licensing Sub-Committee Protocol and Procedure.
- 3.2 A plan depicting the local area and application site. (**Attachment A**).

- 3.3 A copy of the Premises Licence application (17/00196/LAPRE2). **(Attachment B)**
- 3.4 Copy of original relevant representations and where applicable successful mediation. **(Attachment C)**
- 3.5 Copy of the existing Premises Licence (16/01560/LAPRE1) for 'The Foundry', Chichester. **(Attachment D)**

4 SUMMARY OF THE PREMISES LICENCE VARIATION APPLICATION

- 4.1 A copy of the application to vary the existing Premises Licence is reproduced in full at Attachment B.
- 4.2 The Spirit Pub Company (Lease) Ltd group submitted a valid application on 6th February 2017. As part of the application process statutory public notices were displayed at the premises during the representation period, which ran until 7th March 2017, and a suitable advert was published in the Observer newspaper series on Thursday 9th February 2017.
- 4.3 The application seeks to change the layout of the premises in accordance with the submitted plan illustrated at Attachment B. The main change, as described by the applicant, is *“the addition of a bar servery to the car park area”*. In effect part of the existing car park area at the rear of the premises is now proposed by the applicant to be incorporated into the existing garden area.
- 4.4 If successful, the application also seeks to remove Condition 9 under Annex 3 of the current Premises Licence which states the following:

“Customers will not be provided with a means of access to the outside beer garden, or the outside bar, other than via the main premises building. There will be no direct means of access/egress to or from the beer garden from the adjacent public car park accept in an emergency.”

- 4.5 The opening times and licensable activities authorised by the current Premises Licence are unaltered as a result of this application. However, below is a summary of the existing licensable activities permitted on the current Premises Licence and whether the activity is authorised to take place indoors, outdoors, or both.

Proposed Licensable Activity	Standard days and timings
<p style="text-align: center;">J 'Supply of alcohol' (consumption 'on' & 'off' the premises)</p>	<p style="text-align: center;">Indoors and Outdoors Friday & Saturday 0800 – 0230 Sunday 0800 – 0000 Monday to Thursday 0800 – 0030</p> <p style="text-align: center;">There are no Non-Standard Timings or Seasonal Variations permitted</p>

<p style="text-align: center;">L Hours premises are open to the public</p>	<p style="text-align: center;">Friday and Saturday 0800 – 0230 Sunday 0800 – 0000 Monday to Thursday 0800 - 0030</p> <p style="text-align: center;">There are no Non-Standard Timings or Seasonal Variations permitted</p>
<p style="text-align: center;">I 'Provision of late night refreshment'</p>	<p style="text-align: center;">Indoors Friday & Saturday 2300 – 0200 Sunday 2300 – 0000 Monday to Thursday 2300 – 0030</p> <p style="text-align: center;">There are no Non-Standard Timings or Seasonal Variations permitted</p>
<p style="text-align: center;">F 'Recorded Music'</p>	<p style="text-align: center;">Indoors Friday & Saturday 0900 – 0200 Sunday 0900 - 2300 Monday to Thursday 0900 - 2330</p> <p style="text-align: center;">There are no Non-Standard Timings or Seasonal Variations permitted</p>
<p style="text-align: center;">E 'Live Music'</p>	<p style="text-align: center;">Indoors Friday & Saturday 0900 – 0200 Sunday 0900 - 2300 Monday to Thursday 0900 - 2330</p> <p style="text-align: center;">There are no Non-Standard Timings or Seasonal Variations permitted</p>
<p style="text-align: center;">B 'Films'</p>	<p style="text-align: center;">Indoors Friday & Saturday 0900 – 0200 Sunday 0900 - 2300 Monday to Thursday 0900 - 0200</p> <p style="text-align: center;">There are no Non-Standard Timings or Seasonal Variations permitted</p>

4.6 The applicant provided no additional information in their Operating Schedule as to how they intend to promote the Licensing Objectives referring to the existing conditions applied to the current Premises Licence as being sufficient. These are shown at Attachment D.

4.7 The application is not seeking to vary the Designated Premises Supervisor ('DPS') which will remain as Mr Austin Whelan, a Personal Licence holder with the London Borough of Croydon and who has been at the premises since February 2016.

5 THE PROCESS AND PROMOTION OF LICENSING OBJECTIVES

5.1 The legislation provides clear focus on the promotion of four licensing objectives which must be addressed when licensing functions are undertaken. The licensing objectives are:

- The prevention of crime and disorder,
- Public safety,
- The prevention of public nuisance, and
- The protection of children from harm.

5.2 In carrying out its licensing functions, the Licensing Authority must also have regard to its current Statement of Licensing Policy 2016 – 2021 and Guidance published by the Home Office (March 2015) along with the relevant matters raised in the representation(s).

6 RELEVANT REPRESENTATION(S)

6.1 A representation is "relevant" if it relates to the likely effect of the grant of the Licence on the promotion of at least one or more of the licensing objectives. The relevant representations received in respect of this application and where applicable, the outcome of successful mediation, are reproduced in full at Attachment C. It is important to highlight the concerns of Sussex Police were resolved, in principle, following successful mediation with the applicant and their requests being incorporated into appropriate conditions on the Licence if granted.

6.4 It is worthy of note that the current Home Office guidance (March 2015) at Chapter 9 paragraph 9.4 states there is no requirement for a representor (any person or Responsible Authority) to "*produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.*"

6.5 As referred to above Sussex Police entered into successful mediation with the applicant and subject to certain conditions being applied to the varied Premises Licence, if granted, their concerns were addressed. Their representation is included in full at Attachment C along with the outcome of successful mediation which in principle centred around the following two conditions being accepted by the applicant:

On Friday and Saturday customers shall not be admitted or re-admitted to the premises later than 01.30hrs each day (premises includes external drinking areas)

and

A documented risk assessment must be written and agreed with Sussex Police, which identifies the activities undertaken at the premises and the controls necessary to promote the Licensing Objectives. This will include, but not limited to, the need for additional SIA door supervisors and use of Polycarbonate drinking

vessels on occasions when the premises intends to utilise the external bar servery after 00.00 hours. It will also include written emendations demonstrating what considerations have been made for any additional special events which may arise during the year. This document shall be immediately available for inspection by the Police and the Licensing Authority, upon request.

6.6 The Environment Management Team of Chichester District Council who are responsible for exercising Environmental Health functions and recognised as the Responsible Authority for the control of public nuisance also submitted a relevant representation. This was subject to mediation but unfortunately on this occasion not successfully resolved. Details of their representation are again included at Attachment C but in summary referred to the following points of concern in relation to the 'prevention of public nuisance' Licensing Objective.

- The use of the extended premises will cause noise disturbance to persons working in the vicinity.
- The use of the extended premises will cause cigarette smoke to infiltrate areas where persons are working in the vicinity.
- The use of refuse bins adjacent to neighbouring property will cause malodours to infiltrate areas where persons are working in the vicinity.
- The late evening and night time use of the extended premises will result in noise nuisance to occupants of nearby residential properties.

6.7 All those that made relevant representation(s) were sent the Notice of Hearing, along with the applicant, inviting them to attend or nominate another person to address the Sub-Committee on their behalf.

7 CONSIDERATION

7.1 In reaching its determination the Sub-Committee must take into consideration the four Licensing Objectives, the Council's Statement of Licensing Policy, the current Home Office Guidance and written and/or oral evidence during the hearing

7.2 It is very important to note that these are the only matters to be addressed by the Licensing Authority when considering this application. The Licensing Objectives are the only grounds on which representations can be made, and the only grounds on which the Licensing Authority will be able to refuse an application or impose appropriate conditions in addition to mandatory conditions and those proposed by the applicant in their Operating Schedule.

7.3 Human Rights considerations must be taken into account fully in balancing licensing issues, in particular, article 1 of the first protocol and articles 6 and 8. Article 1 relates to the protection of property and the peaceful enjoyment of possessions and property (holding a licence would be considered a possession). Article 8 relates to the right to respect for private and family life, home and correspondence. Article 6 relates to the right to a fair trial. These are however qualified rights and can be deprived of "in the public interest". Interference is permissible if what is done: -

- Has its basis in law;
- Is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim,

- Is proportionate to the aims being pursued; and,
- Is related to the prevention of crime or, the protection of public order or health or the protection of the rights and freedoms of others.

7.4 The Sub-Committee must consider each application on its own merits, and in accordance with the principles of natural justice, as well as the provisions of the Licensing Act 2003. All relevant factors must be taken into account, and all irrelevant factors must be disregarded.

7.5 All applications before the Sub-Committee must be considered against the backdrop of anti-discriminatory legislation, such as the Race Relations Act 1976 as amended 2000, and the Sex Discrimination Act 1975, and also in accordance with the Council's stated policy on Equal Opportunities.

7.6 In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications and this is re-emphasised by the Licensing Act 2003 itself. In giving "due regard" to these possible implications members will consider and weigh up all the information available and representations made, including those from Persons and the Responsible Authorities.

7.7 The Sub-Committee are required to give reasons for their decision.

8. OPTIONS OPEN TO THE SUB-COMMITTEE

8.1 When considering this application for a Premises Licence the following options are available to the Sub-Committee:

- a. To grant the Premises Licence variation, as requested,
- b. To grant the Premises Licence variation, as requested, with additional conditions appropriate to the promotion of the specific Licensing Objectives on which relevant representations have been received,
- c. Reject the whole or part of the Premises Licence variation application.

8.2 The Sub-Committee may also:

- d. Grant the Premises Licence variation but exclude certain licensable activities from the licence,
- e. Grant different conditions to different parts of the premises or to different Licensable Activities.

9 BACKGROUND PAPERS

Licensing Act 2003

Home Office Guidance issued under section 182 of the Licensing Act 2003 (March 2015)

Chichester District Council's Statement of Licensing Policy 2016 - 2021

10 ATTACHMENTS

- Attachment A** Plan of the local area and application site
Attachment B A copy of the Premises Licence application (17/00196/LAPRE2)
Attachment C Copy of original relevant representations and mediation
Attachment D Copy of the existing Premises Licence (16/01560/LAPRE1)

Contact: Mr L Foord, Licensing Manager
lfoord@chichester.gov.uk
01243 534742