

# Public Document Pack

## **JOHN WARD**

Head of Finance and Governance Services

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A meeting of **Alcohol and Entertainment Licensing Sub-Committee** will be held in Committee Room 1, East Pallant House on **Wednesday 5 April 2017 at 9.30 am**

MEMBERS: Mr P Budge, Mr J Connor and Mr H Potter

## SUPPLEMENT TO AGENDA

(a) Attachment D - Environmental Health Mediation - Additional Information (Pages 1 - 9)

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**From:** Timothy Horne  
**Sent:** 27 March 2017 11:58  
**To:** 'Rachel Kelly'  
**Cc:** Alison Stevens; Licensing  
**Subject:** RE: 17/00196/LAPRE2 (LI) - Representation from Environmental Management - The Foundry, PO19 8DH

Dear Rachel,

Thank you for your email below, I would comment again as follows:

*1. Noise emissions*

*The application applied for is for the extension to the beer garden and licensing of the bar servery only. Therefore, concerns of use of deregulated entertainment in the areas currently permitted are not relevant to this application.*

The proposal seeks to extend the current outdoors area by demolishing the existing boundary and creating a new area to within 2.3m of Globe House.

I note your comments with regard to deregulated activities in respect of live music being applied in workplaces, and recorded amplified music in existing licensed areas. I note that the proposed beer garden is not included in the licensed area other than the servery.

It is difficult to contain sound outside which will affect the extended area, especially as the existing sound barrier provided by a wall and close boarded fence is to be dismantled. With regard to background music, whilst this is not a licensable activity it is something that is often associated with outdoor bars and something that can result in nuisance. I am not aware of a sound level that determines when it is above 'background' ambient noise. This will vary according to other sounds at different times of the day. Unfortunately when people are in conversation there is a tendency for sound output to be increased to a new 'background' level. I do not believe this type of mood music can be disregarded when it is so concomitant with licensable activity and potentially emitted closer to noise sensitive property.

Whilst I recognise that the existing area used as an outside bar immediately behind the pub has not given rise to complaints and has been managed well to date, it does not necessarily follow that an extended outside area, accommodating many more people and used under new opening hours, will not worsen the situation. I am aware that there are existing conditions in place to control the noise from licensable entertainments performed indoors but this does not mean you can expect patrons to talk and behave quietly when outdoors.

The offices and classrooms in Globe House are understood to be used mainly between midday until 7pm on Monday to Friday, and all day Saturday. The windows of this property are within 3.5m (10 feet) of the new outdoors area.

In summary, I accept that deregulated activities are unlikely to be provided in the new area as the plan does not accommodate this although other unamplified activity can be performed in the working space. For reasons outlined above I still believe there is likelihood of noise spreading into the new area and you suggest that it is unacceptable to control other noise sources like 'background' music although speakers can be much closer to neighbours. You have made no comment on noise from patrons talking loudly near to neighbour's windows or during the night when other ambient noise is very low.

*2. Cigarette smoke will not infiltrate the areas where persons are working. This has not been an issue raised to date, and smokers are permitted to use any part of the external areas. Furthermore, the new area screens the nearest properties from cigarette smoke.*

The outside area used will be significantly increased in size, be more appealing to patrons, and with a new open design so much closer to the neighbouring property ( 2.5 – 3.5m of open parts). As you know, patrons still have to go outside to smoke and it is practically impossible to avoid where the smoke drifts. I have not seen details of solid screens only open metal slats.

### *3. Waste disposal*

*I have reviewed the plan again and can see the bin store. Our client has confirmed that the bin store identified on the proposed licensing plan has always been in place. There is no proposal to change or relocate this, it has just been shown on the plan for indicative purposes. In light of this, unless there is evidence to the contrary, we don't feel that concerns of malodours are justified or appropriate, considering our client has operated in this way for some time without issue.*

You confirm that the plan identifies the unutilised strip of car park between the outside garden and the neighbouring property as a bin store with a gate. I would comment that there is already an existing bin compound provided to the right hand side of the car park entrance from the station yard. I see no evidence of the new area being used as a bin area. It appears that in recent times some redundant equipment – fat fryer and air conditioning units have been dumped in the last parking space in the north-west corner closest to the neighbour. I am surprised that these bits of equipment have not been taken away yet. They certainly do not constitute part of the day to day waste collections from the licensed premises. So for reasons previously given there is an increased probability that malodours and transfer noise will be caused close to neighbours if the bin store is relocated to the area identified.

### *4. We understand that no representations have been received from residents.*

Objections were raised on public nuisance grounds to the planning application. I note your comment on supervision, however, I hardly think that patrons will be admonished for laughing or talking loudly. Whilst I full recognise that the Licensing regime is separate from the planning side, it is rather pointless discussing matters further while any planning change of use is still undecided.

In conclusion, there are windows that overlook the area which are between 2.5 – 3.5m from the nearest seating areas. Noise is dependent on the numbers of patrons resorting to the area and their individual voice levels and behaviour. Bursts of sound may cause significant intrusion within the adjacent offices used for music and maths tuition. I believe that this will result in a change of behaviour necessitating the closure of windows at times to prevent noise disturbance and possibly at other times to prevent cigarette smoke drifting in.

'Background' music is often used to create a pleasant environment for patrons that masks other ambient sound like distant road and rail transport. Unfortunately there is little control possible over the level set and sometimes this creeps up to set the mood as more people gather outdoors. The imposition of shutting windows at times of noise intrusion and additionally to prevent ingress of cigarette smoke means that passive ventilation of rooms will be significantly restricted affecting the comfort of occupants to control internal room temperature.

I am not currently available for comment until next week so I would recommend that you refer additional proposals to my manager Alison Stevens [astevens@chichester.gov.uk](mailto:astevens@chichester.gov.uk)

Regards

## Timothy Horne

Principal Environmental Health Officer  
Health Protection and Environmental Management  
Chichester District Council

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**From:** Rachel Kelly [<mailto:Rachel.Kelly@TLTsolicitors.com>]

**Sent:** 21 March 2017 12:01

**To:** Timothy Horne

**Subject:** RE: 17/00196/LAPRE2 (LI) - Representation from Environmental Management - The Foundry, PO19 8DH

Dear Tim,

Further to my email below, I have discussed the below with our client.

With regard to the planning application, I wasn't aware of any objections other than yours. In light of your comments, I have asked for sight of any other objections in order for us to endeavour to mitigate the concerns raised. I understand our client is also considering adopting measures to address your points. However, as noted, the planning application and licensing applications are to be dealt with separately (although one cannot be utilised fully until the other is in place).

I have summarised the concerns you have raised, and put them into 3 categories: noise emissions, cigarette smoke and waste disposal. My comments are as follows:

### *1. Noise emissions*

The application applied for is for the extension to the beer garden and licensing of the bar servery only. Therefore, concerns of use of deregulated entertainment in the areas currently permitted are not relevant to this application. The position with regard to deregulated activities is as follows:

#### Live Music

If the area where the live music will be performed is shown as licensed on the licensed premises' plan then the site is permitted to provide live music between the hours of 08:00 and 23:00 (subject to other conditions). Conditions attached to the premises licence will be redundant during that period.

However the area where the live music will be performed is not shown as licensed on the licensed premises' plan. Although under the workplace exemption, live music can still be provided between the hours of 08:00 and 23:00 where the audience is less than 500 people, any conditions attached to the licence will still apply. Consequently, we could consider adding a condition to this effect as the area where live music could take place is not shown as licensed as only the bar servery is licensed and this is proposed to be a fixed structure.

Live unamplified music does not need a licence if performed between 08:00 and 23:00, for which there is no audience limit. However, as you have noted, and as confirmed by our client, there is no intention to utilise this.

#### Recorded Music

Recorded music can be provided in an area which is shown as licensed on the licensed premises' plan benefits from the same exemption as for the Live Music Act, above, with the same restrictions. This would include DJ's and disco's. However, as above, the only area licensed is the fixed bar servery, therefore no recorded music can be provided here. There is also no 'workplace' exemption.

In conclusion, no deregulated activities can be provided in the new area as the plan does not accommodate this. As per the licensing plan, the only area identified as licensed in the new area, is the fixed bar servery. Consequently, there is no possibility of a live band or DJ set being set up in this area, as there is simply not enough space. Furthermore, there is no intention to provide this. Our client simply wants to allow customers to purchase beverages from an external bar.

With regard to background music, this is not a licensable activity and measures should not be sought to attempt to manage this. There have been no noise complaints with regard to the operation of the external area, and as you have mentioned, the area has been managed well to date. The management of this external area will inevitably improve, not worsen in light of the addition of the bar servery and additional staff employed to monitor this area. Furthermore, there are currently conditions in place to manage the external area which will still take effect.

## *2. Cigarette smoke*

In order to address your concerns around this, there is a designated smoking area at the premises. Our client is happy to have a condition to this effect which will then resolve the issue of increased smoke infiltration if customers continue to be encouraged to use the designated smoking area.

## *3. Waste disposal*

I have reviewed the plan again and can see the bin store. Our client has confirmed that the bin store identified on the proposed licensing plan has always been in place. There is no proposal to change or relocate this, it has just been shown on the plan for indicative purposes. In light of this, unless there is evidence to the contrary, we don't feel that concerns of malodours are justified or appropriate, considering our client has operated in this way for some time without issue.

I would be grateful if you could please let me have your comments on the above. I trust we can resolve the issues above by way of an agreement.

If you have any queries, please do not hesitate to get in touch.

Kind regards,

Rachel

Rachel Kelly  
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for TLT LLP  
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**From:** Rachel Kelly  
**Sent:** 16 March 2017 15:16  
**To:** 'Timothy Horne'  
**Subject:** RE: 17/00196/LAPRE2 (LI) - Representation from Environmental Management - The Foundry, PO19 8DH

Dear Tim,

Thank you for your prompt response.

I will discuss the below with our client and will be in touch early next week.

Kind regards,

Rachel

Rachel Kelly  
Legal Assistant  
for TLT LLP  
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**From:** Timothy Horne [<mailto:THorne@chichester.gov.uk>]  
**Sent:** 15 March 2017 19:22  
**To:** Rachel Kelly  
**Subject:** RE: 17/00196/LAPRE2 (LI) - Representation from Environmental Management - The Foundry, PO19 8DH

Dear Rachel

Thank you for outlining the reasons why you disagree with the our representation. I will address these in turn, however, I think you should be aware that there is currently no planning permission for the change of use of the car-parking area into an outside bar and seating area. A planning application for such use was submitted and later withdrawn by Mr Hughes of Westgate Brewery, Westgate Street, Bury St Edmunds, Suffolk IP33 1QT. You must have been informed that there were objections raised against the planning proposal by people working adjacent to the area and a resident living 70 metres from the site, who all overlook the application site.

Turning to the specific reasons you outline, I would comment accordingly.

*1. The extension to the premises will not cause noise disturbance to persons working in the vicinity as the use of the beer garden tends to be outside of the ordinary working hours (i.e. evenings and weekends). Therefore, this argument is non-existent. The premises currently operates the existing beer garden without any complaint.*

The Foundry is a large pub situated on the northern side of the Chichester Railway Station. At the back yard adjoining the pub there is already an area with seating set aside for patrons going to smoke, drink and consume food outdoors. This outdoors area is currently separated from a car park with a low wall and close boarded fencing. The car park provides access for staff vehicles and deliveries and is enclosed on the western side by garages and a 2 storey property known as Globe House designated for office use in conjunction with music and maths tuition. There is a 2.5m high brick wall separating a car park and large office buildings which are set back from the northern boundary. The nearest residential properties are at Brampton Court, sheltered housing apartments, some 70m to the south-east of the proposed development which do not currently have a direct line of sight over the existing outdoors area.

The proposal seeks to extend the current outdoors area by demolishing the existing boundary and creating a new area within half of the existing pub car park to within 2.3m of Globe House. The plan is to provide a more permanent external bar area which can be enjoyed, weather permitting, during opening hours. These are Monday to Thursday 08.00 – 0.30 hrs, Friday/Saturday 08.00 – 2.30 hrs, and Sunday 08.00 – midnight. The plan shows that the area will be enclosed by a low wall to 0.6m and there will be open steel slats above up to 1.65m. Along the western edge of the new garden will be an area for the waste bins to be stored. Seating along the furthest edge shows that there will be approximately 2.5 – 3.5m separation distance between patrons and the 4 windows of Globe House that overlook the area.

The new area will bring patron derived noise and smoking approximately 11 metres closer to the neighbouring property and the new boundary detail is inferior in terms of noise containment due to

the open design of the slatted bars. I have concern over the proximity of the development in terms of the noise and smoking emissions generated by its use. With regard to noise emissions, there are several sources which need to be appropriately assessed as they are likely to have an adverse impact on persons living and working in the vicinity. These may include;

- amplified live and recorded music,
- un-amplified live music,
- patron noise in external areas
- other noise – e.g. commercial waste disposal, amongst others.

The current premises licence shows that the existing outdoors area is licensed for alcohol with only 'background' music. However, as a result of amendments to the *Licensing Act 2003* by *The Legislative Reform (Entertainment Licensing) Order 2014*, no premises licence is required for the following activities;

- Unamplified music between 08:00 hrs and 23:00 hrs on any day on any premises.
- Amplified music between 08:00 hrs and 23:00 hrs on premises authorised to sell alcohol for consumption on the premises, subject to a maximum audience of 500.

A beer garden and the like can be used for live and recorded music if shown on the plan of the Premises Licence.

To date, I am not aware of any outdoors performance of music or singing although there is provision for 'background' music through low powered speakers. There has been no recent record of any noise complaints regarding the use of the premises which has been well managed in recent times.

The offices and classrooms in Globe House are understood to be used mainly between midday until 7pm on Monday to Friday, and all day Saturday.

*2. Cigarette smoke will not infiltrate the areas where persons are working. This has not been an issued raised to date, and smokers are permitted to use any part of the external areas. Furthermore, the new area screens the nearest properties from cigarette smoke.*

The outside area used will be significantly increased in size, be more appealing to patrons, and with a new open design so much closer to the neighbouring property ( 2.5 – 3.5m of open parts). As you know, patrons still have to go outside to smoke and it is practically impossible to avoid where the smoke drifts. I have not seen details of solid screens only open metal slats.

*3. We are unsure as to where the bins you refer to are located. This is not identified on the plan and does not form part of the application. Additionally, we are unsure as to why this would cause a nuisance.*

The plan I have seen identifies the unutilised strip of car park between the outside garden and the neighbouring property as a bin store with a gate. I assume that waste will be transferred from the kitchen and bar areas to the bins stored in this area. In my experience it is inevitable that contamination of the bins is likely to occur over time and during warmer weather there is an increased probability that malodours will be caused. If the bins are right up to the adjacent building then bad odours will pervade the air around the window openings. In addition, deposits into the bins and movements on collections may cause noise impacts in the immediate vicinity.

*4. We understand that no representations have been received from residents. In our experience, constant supervision of a bar server tends to promote the objective of public nuisance as a result of the presence of a staff member, reminding customers of causing disturbance and dealing with them effectively.*

Objections were raised on public nuisance grounds to the planning application. I note your comment on supervision, however, I hardly think that patrons will be admonished for laughing or talking loudly.

Whilst I appreciate that the Licensing regime is separate from the planning side, it is rather pointless discussing matters further while any planning change of use is still undecided.

In conclusion, there are windows that overlook the area which are between 2.5 – 3.5m from the nearest seating areas. Noise is dependent on the numbers of patrons resorting to the area and their individual voice levels and behaviour. Bursts of sound may cause significant intrusion within the adjacent offices used for music and maths tuition. I believe that this will result in a change of behaviour necessitating the closure of windows at times to prevent noise disturbance and possibly at other times to prevent cigarette smoke drifting in.

As previously mentioned, there is nothing to prevent outdoors performance of music and song in the area licensed for alcohol and although this may not be the intention of the existing management, it cannot be ruled out in future. 'Background' music is often used to create a pleasant environment for patrons that masks other ambient sound like distant road and rail transport. Unfortunately there is little control possible over the level set and sometimes this creeps up to set the mood as more people gather outdoors.

The imposition of shutting windows at times of noise intrusion and additionally to prevent ingress of cigarette smoke means that passive ventilation of rooms will be significantly restricted affecting the comfort of occupants to control internal room temperature.

Should you wish to go ahead with a hearing to determine this licensing application then members of the committee will be open to consider all licensing conditions and hours of use.

Kind regards,

**Timothy Horne**

Principal Environmental Health Officer  
Health Protection and Environmental Management  
Chichester District Council

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**From:** Rachel Kelly [<mailto:Rachel.Kelly@TLTsolicitors.com>]

**Sent:** 15 March 2017 15:27

**To:** Timothy Horne

**Subject:** RE: 17/00196/LAPRE2 (LI) - Representation from Environmental Management - The Foundry, PO19 8DH

Dear Tim,

Thank you for your email below.

With respect, we do not agree with the concerns raised in your representation. Our reasons are set out below:

1. The extension to the premises will not cause noise disturbance to persons working in the vicinity as the use of the beer garden tends to be outside of the ordinary working hours (i.e. evenings and weekends). Therefore, this argument is non-existent. The premises currently operates the existing beer garden without any complaint.

2. Cigarette smoke will not infiltrate the areas where persons are working. This has not been an issue raised to date, and smokers are permitted to use any part of the external areas. Furthermore, the new area screens the nearest properties from cigarette smoke.

3. We are unsure as to where the bins you refer to are located. This is not identified on the plan and does not form part of the application. Additionally, we are unsure as to why this would cause a nuisance.

4. We understand that no representations have been received from residents. In our experience, constant supervision of a bar servery tends to promote the objective of public nuisance as a result of the presence of a staff member, reminding customers of causing disturbance and dealing with them effectively.

As you are aware, there are a number of conditions attached to the premises licence which further promote the licensing objective of public nuisance.

In light of the above, we would ask that you re-consider your representation.

I would be delighted to discuss this with you further.

Kind regards,

Rachel

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**From:** Timothy Horne  
**Sent:** 06 March 2017 14:45  
**To:** Licensing  
**Cc:** Tia Menecier  
**Subject:** 17/00196/LAPRE2 - 2nd Variation of Premises Licence 16/00142/LAPRED. The Foundry, 1 Southgate, Chichester, West Sussex PO19 8DH

Dear Sir or Madam

**Subject:** 17/00196/LAPRE2 - Application for Variation of Premises Licence under the Licensing Act 2003

**Premises:** The Foundry 1 Southgate Chichester West Sussex PO19 8DH

Having examined the above application and operating schedule, as the responsible authority for the control of public nuisance, I make the following representations with regard to the application as I consider the proposals will not meet the licensing objectives on the following grounds:

Prevention of public nuisance

1. The use of the extended premises will cause noise disturbance to persons working in the vicinity.

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

In light of the above, and given the design and potential use of the proposed outdoors area I do not see sufficient scope for amendment by mitigation measures before any hearing to determine this application.

Yours faithfully

**Timothy Horne**

Principal Environmental Health Officer  
Health Protection and Environmental Management  
Chichester District Council

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