



Lewes District Council

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Licensing Sub-Committee

Minutes of a meeting of the **Licensing Sub-Committee** held in the **Council Chamber, Lewes Town Hall, High Street, Lewes** on **Friday, 17 September 2010** at 10.35am

Present:

Councillor C J Butler (Chair on election)
Councillors M Cutress and L Hallett

Officers Present:

Mr G Clark, Licensing Officer
Ms Z Downton, Committee Officer
Mr R Harris, Senior Legal Assistant
Mr E Hele, Principal Environmental Health Officer
Ms S Lindsey, Assistant Licensing Officer
Mr S Teale, Senior Environmental Health Technician

Applicant's Representatives Attending:

Mr K Clark, Business Relationship Manager
Mr M Flaherty, Premises Manager

Representors Attending:

Ms A Parsons
Mr S Small

In Attendance:

Ms J Fletcher, Trainee Solicitor
Mr R Seepersad, Student Environmental Health Technician

Minutes

1 Election of Chair of the Sub-Committee

Resolved:

1.1 That Councillor Butler be elected Chair of the Sub-Committee for this meeting.

2 Application for the Variation to a Premises Licence, Lincolns, 179 High Street, Lewes

Those attending the hearing introduced themselves and the Chair read out

Action

the procedure under the Licensing Act 2003 to all parties present.

The Sub-Committee considered Report No 204/10 relating to an Application for the variation of a Premises Licence to be granted under Section 34 of the Licensing Act 2003 in respect of Lincolns, 179 High Street, Lewes.

The Senior Environmental Health Technician submitted an application for a late representation to be considered by the Sub-Committee. He offered his apologies to all parties for such a request and explained that the reason for this course of action was due to an administrative error, and as a consequence, the licensing objective relating to the potential for public nuisance at the front of the premises did not form part of negotiations with the Applicant prior to an earlier representation being withdrawn by the Environmental Health Department.

The Senior Legal Assistant sought responses from those present. On behalf of the Applicant, Mr K Clark expressed his concern over the lateness of the request, having been informed of the matter only the day before the hearing, and that any additional condition would need to be discussed with their legal adviser. He added that, as far as he was concerned, all negotiations had ceased and the conditions had been agreed by 17 August 2010. Mr K Clark confirmed that he and Mr Flaherty had not been aware that the use of the outside area at the front of the premises was an ongoing issue for the Environmental Health Department. Mr Small, who opposed the original application, had no objection to the late representation.

The Sub-Committee withdrew to discuss the matter and on its return confirmed that it would accept the late representation for consideration but added that it was hoped that the Sub-Committee would not be placed in that situation in the future. The Senior Environmental Health Technician was requested to present the proposed additional condition at the appropriate juncture in the hearing procedure.

The Licensing Officer presented the Report and highlighted the main points.

The Application related specifically to:

- The extension of opening hours on Friday and Saturday until 2am.
- The extension of the retail sale of alcohol on Friday and Saturday until 1.30am.
- The provision of recorded music on Friday and Saturday until 1.30am and late night refreshment on Friday and Saturday until 2am.
- The provision of facilities for dancing (indoors) on Monday to Thursday from 10am until 12.30am, on Friday and Saturday from 10am until 1.30am and on Sunday from 12pm until 12am.
- The provision of facilities of a similar description to that for making music and dancing (indoors) on Friday and Saturday until 1.30am.

- A further additional opening hour into the morning following every Friday, Saturday, Sunday and Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday weekend. A further additional opening hour into the morning following every Thursday, Friday, Saturday, Sunday and Monday for the Easter Bank Holiday weekend. An additional opening hour every Christmas Eve and every Boxing Day Eve. Also, from the end of permitted hours on New Year's Eve up to the start of permitted hours on the following day.

The Applicant had offered conditions to promote the four licensing objectives and further details were set out in section 1.5 of the Report. As a result of recommendations by the Environmental Health Department and following correspondence with Mr Klein, who resided in the vicinity of the premises, additional and modified conditions had been accepted by the Applicants and would replace those offered under the public nuisance objective at paragraph 1.5.5. The amendments to the objective were detailed in section 1.6 of the Report.

The premises was a town centre public house situated alongside Lewes Crown Court and on the busy High Street area surrounded by retail shops, offices and residential accommodation. In the vicinity there was a hotel, several restaurants, an off licence, coffee houses and a late night takeaway called Charcoal Grill. There were two other public houses close by, The White Hart Hotel and The Royal Oak, and there were several others within easy walking distance. During the day the area was busy with the public visiting the shops and other retail and business premises. During the evening and at weekends the High Street was busy with traffic and the public visiting the various restaurants, takeaways, off-licences and public houses in the vicinity. There was considerable pedestrian traffic and associated noise in the area until late in the evening and early morning up to the takeaway closing at 1.00am.

A joint representation had been received against the Application from 61C Limited, the tenants management company, on behalf of 7 residents who lived opposite the premises at 61C High Street, Lewes, which contained a number of flats at that address. A letter to that effect was set out at Appendix A of the Report.

A street plan, plan of the premises and photographs of the premises were included at pages 51-54 of the Report.

The following points were clarified by the Licensing Officer and the Applicant's representatives, in response to questions by the Sub-Committee:

- The provision of facilities of a similar description to that for making music and dancing (indoors) at paragraph 1.4.2 related to entertainment facilities such as karaoke.
- No dancing took place on the premises as early as 10am. The provision of facilities for dancing (indoors) from 10am was in accord with the permitted hours for the provision of recorded and live music

under the original licence.

- All staff undertook an hour long induction and received ongoing training, in relation to the condition under paragraph 1.5.4.

The Senior Legal Assistant read out a statement which had been received by Mr Phipps, a partner at TLT Solicitors who acted on behalf of Punch Taverns PLC (the Applicant and premises licence holder), in support of the Application. A copy of the statement is contained in the Minute Book.

Mr K Clark was then given the opportunity to make his statement on behalf of the Applicant. He explained that the premises, when known as the Rainbow, had had poor retail standards. Since its re-opening under the name Lincolns, following a total refurbishment in September 2009, the quality of facilities and profile of the premises had improved under the management of Mr Flaherty who, in his opinion, was community-focused and worked alongside the local authorities. He tabled additional photographs of the interior of the premises in order to illustrate the facilities on offer and a copy is contained in the Minute Book. Mr Flaherty's business plan had been adhered to and the result of which was an improved premises beyond recognition. Mr K Clark commented that no representations had been received from the Police in regards to the Application and no complaints had been received by members of the public in relation to the premises since September 2009. He respectfully requested that the Sub-Committee grant the application.

In response to questions by the Sub-Committee, Mr Flaherty explained that the premises had a regular clientele and his customers had indicated that they would like extended opening hours.

The Senior Legal Assistant drew attention to the last condition under the licensing objectives in relation to public nuisance at paragraph 1.6.2 and advised the Applicant that it would be beneficial to clarify the term 'excessive' as it was ambiguous and open to different interpretations. He suggested some amended wording in order to tighten the condition. Mr K Clark replied that he would have to take legal advice on the matter. Further details of the agreed wording to that condition are set out in the decision of the Sub-Committee at Resolution 2.1.

Mr Small, in opposition to the original Application, read out a statement on behalf of the residents of 61C High Street, a property consisting of flats situated immediately opposite the premises. Of concern to the residents in relation to the Application was the issue of late night noise. It was feared that the extended hours could yet again make the premises the last visit on the drinking-circuit in the town, thus the historical problems of noise nuisance and disorder associated with the premises, when it was known as the Rainbow, could return. Mr Small requested that the members of the Sub-Committee be mindful of the Council's duty, under its Statement of Licensing Policy, to prevent disorder and public nuisance and also to safeguard the rights of residents to peace and quiet in the early hours of the morning. He also asked that consideration be given to whether there would be any soundproofing measures at the front of the premises and the impact of the potential gathering of smokers using the front of the premises after

the roof courtyard at the rear had closed.

In response to the concerns of those residents, Mr Flaherty explained that soundproofing had been considered but that the front and back doors of the premises were lobbied and no windows were opened in order to reduce direct noise leakage. In his opinion, Lincolns was far removed from a 24-hour drinking establishment and he considered the style of the premises to be very different from other public houses in the locality. He added that there had been no formal complaints against the premises since its re-opening in September 2009.

The Sub-Committee then invited the Senior Environmental Health Technician to present his late representation. He explained that he was away during the negotiations with the Applicant and it had since come to his attention that the first condition under the licensing objective relating to the prevention of public nuisance had been struck out in his absence. Consequently, he was not satisfied that the agreed conditions were sufficient to control activity, and therefore control the potential for public nuisance, at the front of the premises. As Senior Environmental Health Technician for the Lewes area, he considered that he had superior knowledge of the locality and believed it was inevitable that later opening hours would significantly change the status of the area. As such, it was likely that any late night revellers would be attracted to the premises. He had no objection to the premises operating in the extended hours, however, the proposed condition was designed to discourage noisy groups congregating outside of the premises and was a pro-active approach to avoid public nuisance situations. A memo containing the proposed wording of the additional condition was tabled for the Sub-Committee's consideration and a copy is contained in the Minute Book.

The members of the Sub-Committee questioned why a closing time of 11pm had been stipulated in the condition. The Senior Environmental Health Technician explained that through his knowledge of the area, 11pm was when people in Lewes were generally dispersing and the proposed condition was in line with similar agreements at other premises locally. He re-iterated that it was a pro-active measure to prevent public nuisance. Mr Flaherty explained that the front area of the premises was already managed and as such all tables and chairs were normally cleared away by 9.30pm, although under the current licence the area could be used up until 12am.

The Sub-Committee withdrew to consider the conditions of the original Application and the Applicant sought legal advice during this time regarding the late representation and on the suggested amended wording to the condition under paragraph 1.6.2 relating to noise levels.

On the return of the Sub-Committee, Mr K Clark submitted an application for adjournment of the hearing, based on the lateness of the extra condition which they had not had sufficient time to consider and were unable to agree upon. In addition, it had come to his and Mr Flaherty's attention that an element within the condition under paragraph 1.6.2 relating to the courtyard hours of operation was untenable, in that the closure of the outside and roof courtyards at 9.30pm would force smokers to use the front of the premises after that time, which was undesirable. The Applicant had originally thought

that that particular condition related only to the roof courtyard and therefore disputed the closing times of the courtyard areas. The Principal Environmental Health Officer offered that there was room for negotiation with the Applicant on those matters.

In view of this, the Sub-Committee accepted Mr K Clark's request to adjourn the hearing in order that the Applicant and the Environmental Health Department could reach agreement on the conditions put forward to promote the licensing objectives and the Sub-Committee could therefore make a final decision on the Application.

The hearing was adjourned at 1.00pm and subsequently reconvened at 2.00pm in the Yarrow Room, Lewes Town Hall, Lewes.

The Sub-Committee was informed by the Principal Environmental Health Officer that, following negotiations during the recess, several revised conditions had been agreed between the Applicant and the Environmental Health Officers present. Those conditions were read out, further details of which are set out in the decision of the Sub-Committee at Resolution 2.1. In conclusion, Mr K Clark and Mr Small expressed their agreement with the revised conditions.

The Sub-Committee withdrew for the last time in order to make a final decision and on its return thanked all parties present for their patience and for being able to reconvene at short notice. The decision was delivered as follows:

Resolved:

2.1 "Having had regard to the terms of the application and all of the relevant evidence that has been put before us today, we have decided to deal with this application by granting it subject to the following amendments and additions to the Public Nuisance Conditions which are set out in paragraph 1.6.2 of the Council's Licensing Officer's Report and which have been agreed between the Applicant and Environmental Health today:-

1. The Condition which currently reads, 'Staff shall regularly monitor noise levels emanating from the premises during the provision of regulated entertainment. Where noise levels are considered to be excessive outside of the premises, the volume shall be adjusted to reduce noise to reasonable levels excessive' shall be amended to:-

'The Licence holder or his representative will assess the noise levels outside the premises at regular intervals during the provision of regulated entertainment. If the noise is found to be loud enough to be audible at the boundary of the premises at 61c High Street Lewes, (ie. words to songs are clearly audible or the bass beat or

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drums are dominant) then the noise level of the music will be reduced to an appropriate level). A written record shall be made of these assessments in a log book kept for that purpose and shall include the time and date of the checks, the person making them and the results including any remedial action.'

2. The Condition which reads, 'Access to and use of the outside courtyard area and roof courtyard area shall cease after 21.30 hours each day,' shall be deleted.

3. The following additional and agreed conditions will be imposed:-
'Access to and the use of the outside roof area shall cease at 21.30 hours daily.'

'All tables and chairs shall be removed from the front and rear of the premises from 00.00 hours daily.'

'Extra monitoring shall take place of the outside areas from 00.00 until close of premises daily.'

The reason for our decision is that we are of the view that there is insufficient evidence to satisfy us of the need to amend or impose further conditions other than those agreed by the Applicant or to refuse the application.

In reaching our decision we have taken into account the written representation from 61c Ltd and the submissions made at the hearing today. We have also taken into account the nature and location of the premises. We have considered the potential for public nuisance, crime and disorder and harm to children posed by the application and balanced this against the rights of local residents to peace and quiet.

We are of the view that there is no real or compelling evidence either in the written representation from 61c Ltd or in the submissions that we have heard today from Environmental Health and the objectors which could reasonably lead us to conclude that the Prevention of Public Nuisance objective is likely to be breached by the operation of these premises unless conditions beyond those which have been agreed are imposed.

We have taken into account the fact that there have been no complaints about noise and public nuisance at these premises in the past 12 months. We have also taken into account the fact that there have been no representations from the Police. We have carefully considered the opinions expressed by the Council's Environmental Health Officer especially in regard to his desire that no drinking should be permitted outside the front of the premises after 23.00 hrs each day. We recognise his desire to take a proactive approach to the prevention of public nuisance. We cannot, however impose additional conditions on the Applicant unless we are satisfied of the necessity to do so. As of today, we are not so satisfied and are pleased therefore that Environmental Health and the Applicants have been able to reach an agreement on this

matter.

A written notification of the decision will be despatched in due course.

Furthermore, we would like to remind those present that under Section 51(1) of the Licensing Act 2003, an interested party or responsible authority may apply to the Licensing Authority at any time for a licence to be reviewed.

In any event, there is a right of appeal under the provisions of section 181 and Schedule 5 of the Licensing Act 2003 against the decision of the Licensing Committee should you be aggrieved at the outcome. This right of appeal extends to the Applicant in the case of refusal or restrictions on the licence or the imposition of conditions to the licence. The right of appeal also extends to persons who have made representations either where the licence has been granted or, where they do not consider that relevant conditions have been set.

Full details of the right of appeal can be found within Schedule 5 of the Act while any appeal should be made within 21 days of notification of this decision.”

The meeting ended at 2.35pm

C Butler
Chair