

## **Decision of Licensing Sub Committee. Hearing 7 March 2022**

### **Application for a premises licence at The Paddock, The Old Motor Rd, The Old Racecourse, Lewes, BN7 1UR**

The hearing concerned a premises licence application at The Paddock, The Old Motor Rd, The Old Racecourse, Lewes, BN7 1UR made by The Old Racecourse Ltd. The application was for the sale by retail of alcohol on the premises on Friday and Saturday between 12.00 - 21.30hrs and on Sunday between 12.00 - 20.00hrs, between 1 April and 30 September. On the Sundays before a Bank Holiday Monday the licensable hours to be 12.00 - 21.30 hrs and on a Bank Holiday Monday between 12.00- 20.00hrs.

In discharging its functions, the Sub Committee considered the promotion of the relevant licensing objectives, the Council's own Licensing Policy, the Home Office Guidance and the rules of natural justice.

Those present at the hearing were asked if they had sight of the procedure for the hearing and whether anyone present had any issues about the procedure. No one present raised any concerns.

The Sub Committee also took into account the information contained within the Specialist Advisor's report, presented by Michael Davis. He added to the information provided that previously the Applicant had held seven events using Temporary Event Notices ("TENs") and informed the Sub Committee that there had been no formal complaints received by the Council's Environment Health Team in relation to those events.

The Sub Committee considered the application (as contained within the Report) and the oral representations made at the hearing by the Applicant's representative Paul Thornton.

Those were that the premises would be open between 1 April and 30 September, on the days outlined in the application, so that customers could have a drink whilst watching the sunset. It was explained that the Applicant intended to open the premises until the sunset which may be earlier than the times applied for.

Paul Thornton stated that it was expected that the premise customers would be discerning and well behaved.

It was explained that the premises are a one-acre field surrounded by robust fencing. The bar would be in a converted horsebox. Paul Thornton pointed out that toilets would be provided (portaloos) and also that rubbish bins would be provided. He explained that there would be no artificial lighting, apart from in the bar and that lighting would be powered by electric feed rather than by a generator, as was originally planned.

He pointed to the robust conditions in the application, including that, all cups used would be compostable and customers would not be allowed to use their own drinking vessels. All the compostable cups would be collected once the customers had finished with them. Taking away drinks would not be permitted (there would be no off sales). Customer would be able to buy wine in a bottle but there would be a refundable deposit on the bottle. No canned drinks would be allowed.

Paul Thornton pointed out that there would be a Challenge 25 condition and a condition that those under 18 years of age would not be allowed access to the premises, unless accompanied by an adult.

He reiterated that there would be no regulated entertainment, so there would be no recorded or live music.

Paul Thornton explained that the Designated Premises Supervisor had experience in the licensing trade and that there would be a condition that all staff would be trained. A refusal log would also be kept.

Further, he stated that there had previously been TENs, relating to the premises in 2021, and those had not resulted in any untoward incidents and no noise complaints had been received by the Council. He pointed out that Sussex Police had made no representations on the application and nor had they mediated or attempted to mediate any conditions with the Applicant. Further, no other Responsible Authority had objected to the licence application. He noted that the Fire Service had visited the premises, during the period when TENs had been used, and had made no objection.

In addition, he denied that there was an issue with access to the premises by the emergency services. He commented that there was no legal requirement for the Applicant to provide a defibrillator, but a first aid kit would be available.

He denied that the premises were situated solely in a residential area as there were other businesses (run by the Applicant). He stated that there were no residential properties directly in front of the paddock (the premises) so that local residents would not be overlooked by customers. On a supplementary plan provided, it was suggested that the nearest residential houses belonging to the principal objectors were approximately 200m from the premises.

He contended that the area was very popular with walkers and riders and the area was criss-crossed with numerous paths. He stated that the premises were not in a remote area and that there were already people everywhere. He stated that it was expected that the customers at the premises would be those using the countryside such as walkers.

He stated that there was no evidence that these premises would cause environmental damage.

Paul Thornton stated that the complaints of other premises holders in Lewes town were unfounded and that in any case "competition" was not a relevant matter for the Sub Committee to consider.

He stated that there would not be excessive noise because there would be no music, only people talking, and that would not cause a public nuisance.

He explained that there would be no light pollution as there were no lights, apart from behind the bar, and no intention to light the area.

In relation to the concerns about the peregrine falcons, he explained that the nesting site was 750m away from the premises and it was therefore unlikely that they would be disturbed.

He explained that the Applicant lived next door to the premises, and it would not be in her own interests to act to the detriment of the area. He contended that any impact on local residents would be negligible.

In relation to the exercise of horses, he explained that there were no gallops near to the premises and that, in any case, any exercise of horses would be finished by mid-day. He stated that he believed no accident had ever taken place in relation to the horses, caused by those present in the area.

Further, it was contended that not all the local residents were members of the Residents Association and suggested that not all the residents were opposed to the application. When asked whether any local residents had complained to the Applicant directly, about the events under the TENs, it was accepted that there had been one complaint. The Applicant stated that all efforts had been made to involve the local residents and listen to their concerns.

Paul Thornton contended that, in relation to any problems, for example, of anti-social behaviour or public nuisance arising in the wider area, it was not the responsibility of the licensee for what happened away from the premises.

In relation to the photographs, presented as supporting evidence by the representative of the Lewes Old Racecourse Residents Association, it was accepted that those showed burnt waste on the Applicant's land (but not the premises), but it was contended that the waste was not connected to the premises but was rubbish left by a previous tenant.

Paul Thornton pointed out that the Licensing Sub Committee should not take into account planning matters when considering licensing issues, as that is a separate regime and those concerns do not relate to a licensing objective.

He stated that the Applicant would not allow vehicles to drop off or pick-up customers from the premises, as was her right as the landowner. He stated that it was blatantly untrue that in the past there had been queues of taxis outside the premises – there may have been taxis in the area but those may have been for local residents.

Paul Thornton stated that during the events under the previous TENs there had been no anti-social behaviour at the premises. He pointed out that no Responsible Authority had objected and that the thirteen conditions offered by the Applicant were sufficient to address any concerns.

In answer to a question, the Applicant stated that when the premises were open there would be two staff present and that this would be adequate as it was a slow service (not many people arriving at the same time). In answer to a question, the Applicant stated that the most customers they had had was 70 and that they considered that this was manageable by two staff.

The Applicant stated, in answer to a question, that they intended to open on every Friday/Saturday/Sunday and where relevant on Bank Holiday Mondays in the period 1 April until 30 September, but that it was largely weather dependent.

Due regard by the Licensing Sub Committee was also given to the written representations of the Lewes Old Racecourse Residents Association, Friends of Lewes,

Maria Caulfield MP and two other individuals and the oral representations of Dr Dover who spoke at the hearing on behalf of the Residents Association. Those objections were in connection with the licensing objectives of prevention of crime and disorder, the prevention of public nuisance and public safety. The concerns included, but were not limited to; the impact of the premises on noise, litter, wildlife and natural habitat disturbance including disturbing peregrine falcons and skylarks, the excessive use of the private road by taxis, that the planning authority had indicated that the licensed premises would be unacceptable in principle as it would conflict with the local development plan, concerns that the premises were in a national park, that there was no mention of first aid facilities or fire safety, and that it would be unsafe for customers given the unlit routes. Additionally, those objections were that these licensed premises would be inappropriate in a peaceful location and be detrimental to the character of the area.

Dr Dover, as part of his representation, gave a presentation (PowerPoint slides, added following the representation as supplementary information). He commented that he felt it was unfair process that the Applicant's representative was allowed to make comments on his presentation before he had made his presentation. He was advised that, at this stage of the procedure, it was his opportunity to make his arguments.

He explained that no complaints had been made to the Council's Environmental Health section regarding the events under the TENs as it had been explained to the local residents that they had no part to play in the decision making regarding the TENs, as they were not a relevant Responsible Authority.

Dr Dover stated that it was important for the Sub Committee to understand the context of these premises as they were not the same as other premises – they are unique. He said that the premises are 1.5km from the main road which would lead to difficulties in accessing the premises and that there would be significant dangers for customers on unlit roads and paths.

In addition, there would be a threat of anti-social behaviour, following alcohol consumption, including but not limited to noise and litter.

He contended that the premises would cause a disturbance to local residents and fragile fauna, flora, bird and animal life in the area. He gave, as an example, gates being left open and sheep getting out. In addition, he gave as an example, the adverse impact of noise from the premises on horses in the area.

He was concerned that granting the application would cause a hygiene issue as there would only be provision of two portaloos on the premises for potentially 70 people.

He accepted that it was not impossible for the emergency services to access the premises but believed that it would be problematic given the location and the narrow road.

Dr Dover pointed out that drinking was a major societal problem in the UK and provided some national survey results to demonstrate the concerns.

Dr Dover also provided the Sub Committee with some photographs of partially burnt waste, including bottles and wine glasses, on the Applicant's land and suggested that the waste was a product of the previous events at the premises and that the practice of burning waste was not acceptable or responsible.

In addition, he expressed his frustration and confusion with the separate regimes of planning and licensing and pointed out that the Council had a duty to take into account that the premises are in a national park and he urged the Sub Committee to have regard to the principal purpose of a national park which is to conserve and enhance the natural beauty, wildlife and cultural heritage.

He accepted, upon being questioned, that he could not provide any specific examples of anti-social behaviour that had arisen from any event under the previous TENs. He accepted that he could not prove that the incident when the gate was left open and the sheep got out could be linked to events at the premises.

He explained that he passionately felt that the licence application should not be granted. He did not accept that the customers of the premises would be different to customers of other licensed premises and refuted the suggestion that they would somehow be more “discerning” and less likely to be anti-social. He stated that this was not the right location for a licensed premises.

In its deliberations the Sub Committee considered what decision would be appropriate and proportionate from the options outlined in para. 8.1 of the Report.

## **Decision**

To grant the premises licence applied for with the addition of the following conditions:

1. A maximum capacity on the premises of 40 customers, at any time. For the sake of clarity customers include those under 18 years. The number of customers to be recorded by the Designated Premises Supervisor and those records to be made available to an authorised Officer of the Council or the Police upon request, at any time.
2. The premises to be open for a maximum of 52 days in the period 1 April to 30 September.
3. No vehicular access to the premises (apart from emergency vehicles), access to be by foot or cycle.

## **Reasons for decision**

The Licensing Sub Committee took into account that the premises are in a national park and its duty (under section 11A Countryside Act 1949) to have regard to the purposes for which national parks are designated.

The Sub Committee also carefully considered the relevant representations received and appreciated the concerns raised.

The Sub Committee considered that they could not take account, in deciding a licensing application, any planning considerations and noted that it was aware that, at this time, no planning consent had been applied for by the Applicant. It was aware that the Applicant had been provided with pre-application advice which suggested planning consent may be denied. It was noted that the Officers had been in communication with the South Downs National Park Authority, prior to the hearing, and that the Planning Authority had made it

clear that they had not made a formal representation on the licence application, but they had highlighted, amongst other things, the need for the Applicant to obtain separate planning consent if they wished to operate on the site for more than 28 days per year.

The Sub Committee had concerns about the safe passage of customers, to and from the premises, given the location and noted that the Applicant had no intention of providing lighting in the immediate vicinity of the premises or along the routes to the premises. In all the circumstances, the Sub Committee accepted that it was not appropriate (or desirable) to require the Applicant to provide lighting along all the routes to and from the premises to address the concerns relating to public safety and that the Applicant's responsibilities were limited once customers had left the premises.

The Sub Committee carefully considered all the relevant objections received, including, in relation to the objection that the customers would disturb the peregrine falcons. However, it did not consider that it was more likely than not that a criminal offence would be committed. It further noted the concerns about offences, such as a public order offence, relating to urination and defecation in a public place but were content that the Applicant would be providing toilets which should address those concerns. Further, in relation to the concerns of littering, the Sub Committee took into account that litter bins would be provided, and the cups used would be compostable.

The Sub Committee noted that, although there had been previous events under TENs at the premises, no complaints had been made to the Council's Environmental Health team about matters such as noise. They noted that, on balance, no proof had been provided which demonstrated that during the previous events, under the TENs, there had been any public nuisance at the premises.

It also took into account that no representations had been received from any Responsible Authority, including the Police.

The Sub Committee decided to impose a limitation on customer numbers as per condition 1 (as above) as it considered this to be an appropriate number which the licence holder could reasonably monitor with regard to staffing levels. It decided to impose a limit on the number of events in the relevant period by condition 2 (as above) as it appreciated the concerns of local residents concerning public nuisance. Having no vehicular access was offered by the Applicant and the Sub Committee considered that should be made a condition of the licence for certainty.

On balance, the Sub Committee were satisfied that, with the additional conditions imposed upon the premises licence, as above, the granting of the licence would not undermine the promotion of the relevant licensing objectives.

The Licensing Act 2003 provides a right of appeal to the Magistrates' Court in respect of an application for a premises licence. An appeal must be commenced by notice of appeal being given by the appellant to the Magistrates' Court within a period of 21 days beginning on the date the appellant is notified in writing of the decision of the Licensing Sub Committee.

The decision will be provided in writing to all parties within five working days of the decision being made.