

**Minutes of a meeting of Mid Sussex District Council Liquor Licensing
Committee
held on Tuesday, 27th September, 2022
from 10.00 am - 12.11 pm**

Present: Councillors: C Laband (Chairman)
J Henwood
J Mockford

Officers in attendance: Paul Vickers, Solicitor
Jon Bryant, Senior Licensing Officer
Michael, Bateman, Team Leader, Food Safety & Health
Alison Hammond, Democratic Services Officer

Also in attendance: George Domleo, Solicitor for the Applicant
Jonathan Fernandes, Applicant
Soul McLawson, Applicant
John Comber, Interested Party
Tim Sebley, Interested Party
Alex Austin, Democratic Services Officer
Lucinda Joyce, Senior Democratic Services Officer

The Chairman introduced the panel and officers to the applicants and interested parties.

LS.1 TO RECEIVE APOLOGIES FOR ABSENCE.

None.

LS.2 TO RECEIVE DECLARATIONS OF INTERESTS FROM MEMBERS IN RESPECT OF ANY MATTER ON THE AGENDA.

None.

LS.3 APPLICATION TO VARY A PREMISES LICENCE - LICENSING ACT 2003.

The Chairman opened the meeting by reminding the attendees of the four licensing objectives of the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

Introduction and outline of the report

Jon Bryant, Senior Licensing Officer introduced the report for the Committee to determine an application to vary a Premises Licence at The Royal Oak, Poynings. An application, pursuant to Section 34 Licensing Act 2003 was received by Flint Bishop Solicitors on behalf of Poynings Property Limited; he noted that six members of the public, here known as Interested Parties had made representations on the grounds of a Prevention of Public Nuisance.

The Senior Licensing Officer advised the application was to vary the plan to operate an outside bar in the existing outside area which is part of licenced area and to amend the additional conditions currently attached to the licence. The Committee is asked to determine the application in accordance with the Licensing Act 2003, MSDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing

Act 2003, whilst having due regard to the applicant's submissions and relevant representations. The Premises Licence, PWA0304 for the Royal Oak is held by Poynings Property Limited. The pub has held a licence since a Premises Licence since the introduction of the Licensing Act 2003 and previously under the previous Act, the Licensing Act 1964. The 1964 Act Licence was transferred to the existing licensing regime. The Senior Licensing Officer noted that the current licensable activities and additional non-mandatory conditions were listed in the report. He highlighted that an application was submitted in April 2022 but was subsequently withdrawn and any references to that application should be disregarded.

The application before the Committee was to amend the current plan of the licensed premises to incorporate the addition of sale of alcohol from an external bar and requested that the sale of alcohol from the outside bar is permitted daily until 22:00 hours. The applicant also requested the removal of two conditions: *No drinks in open containers (e.g., glasses) and opened bottles are to be taken from the premises including the garden; and any person who appears under the age of 18 and who is attempting to buy alcohol shall be required to produce 'Proof of Age' before such a sale is made.* A replacement condition requested was *Customers will not be permitted to remove from the premises any drinks supplied by the premises (alcoholic or otherwise) in open containers unless to an external area set aside for consumption.* He noted that the condition regarding proof of age is now a mandatory condition attached to the licence.

The Senior Licensing Officer advised no representations had been received from any of the Responsible Authorities and six representations had been received from interested parties which remained unresolved. The application had been advertised on the site and in the Mid Sussex Times. Before outlining the representations, he advised the Committee that a number of issues were raised by the interested parties, but these were not relevant to the application and should be disregarded. The full representations from the interest parties were listed in the report: Mr Sebley made his representations on the grounds of a public nuisance and was concerned with the potential for increased public nuisance through the intensified use of the outside area. He suggested a compromise that the outside bar should only be open between 11am – 6pm Saturday and Sundays and closed on weekdays; this was later withdrawn when he made his representation to the Committee. Mr Comber made extensive representations and disputed that some were considered not to be relevant; he advised the Committee to determine what parts were relevant. Ms Nichols made representations on the Grounds of the Prevention of a Public Nuisance and considered the potential intensification of the use of the outside area could cause increased public nuisance through noise. Mr Salanson made representations on the grounds of prevention of a public nuisance in relation to the potential intensified usage of the Royal Oak beer garden. Mr and Mrs Johnstone made representations on the grounds of prevention of a public nuisance and were concerned with the potential for public nuisance through the potential increased usage of the outside area. Mrs and Mrs Hampshire made representations on the same basis as Mr & Mrs Johnstone. He noted that Mrs Hampshire had thought her representation had been in accurately summarised in the report and the Live Music Act 2012 removed the requirement to license the provision of entertainment facilities. Only Mr Sebley and Mr Comber were able to attend the hearing, all representations to be considered were listed in the report and attendees could not add to their original representation.

The Committee were asked to determine the application in accordance with the Licensing Act 2003, Licensing Act 2003 (LA03), MSDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations. The

Committee could modify the conditions of the licence or reject the whole or part of the variation.

He reminded the Committee of S182 guidance paragraphs 9.3, 9.4 and 9.5: representations are relevant if they are about the likely effect of the grant of the application on the promotion of the licensing objectives; representations can support or in objection to the application. The Local Authority had to decide if representations were frivolous or vexatious. He reiterated that the Committee was not there to review the current licence and each application was determined on a case-by-case basis. The final decision made by the Committee could be subject to appeal in the Magistrates Court by any party to the proceedings.

Questions to the Senior Licensing Officer

In response to a Member's question the Senior Licensing Officer advised that the plan separates the areas of the licensed premises, such as drinking, play area and the car park. Paul Vickers, Solicitor to the Committee noted the labels given to specific areas was not important as they can change.

George Domleo, Solicitor for the Applicant

Mr Domleo introduced his clients from the Royal Oak and noted that Heineken is the third largest brewery in world. Poynings Property Limited are the landlord and there is a lease agreement in place with Mr Fernandes and Mr McLawson. The lessees have operated the pub for 2 years, he detailed their experience in the pub, hotel and holiday park industries. The pub, selling real ale and good food has been in existence since the 1880s and is a country pub located in a national park. Poynings Property Limited took over the pub in 2015 and invested £400,000 to retain its position as a local community hub, noting that the internal bar severity is small. Ongoing investment is required to keep pace with the local community need. An outside bar would prevent queues as the inside bar area is small and prevent bar staff carrying drinks a long way to patrons outside. Patrons with children in garden have to leave them unattended to get drinks. Post the pandemic people still want to sit outside and an outside bar will allow this. The outside bar, with British weather may only be used six months of the year; with Temporary Event Notices (TENs) the outside bar has been used for 25 days. He noted the applicants are aware that local residents don't want a noise nuisance, no responsible authority had objected to the application to vary the licence and they are experts in their relative fields. He advised the additional area outside will reduce pressure inside and allow for social distancing. The pub has 45 team members in the Summer; there are two staff outside at all times plus staff to collect glasses, there is always someone there to monitor people. He advised *"the applicants are aware of objections and their anxiety to the application which they say will lead to intensification of the area. He disputed this claim as the area is already in use. These representations are more suited to a review of the licence which this is not"*. The outside area will be used as and when, and they want the flexibility to permit this use. He continued *"They are a responsible operator and a 10 pm cut off is appropriate and proportionate, they will still promote the Licensing Objectives; if there the residents raise any issues in the future, the local authority can take recourse using the laws available. They want to continue to invest (in the pub) to be an asset to the local residents"*.

In response to a Member's question the Senior Licensing Officer advised any matters relating the marquee, planning, infrastructure or live music were not relevant to the application to vary the Premises Licence. The licensed plan is detailed in the pack, there are no queries on the plan, and this has not changed since 2003.

Members' Questions to Mr George Domleo

The Senior Licensing Officer had no questions for Mr Domleo.

A Member asked how much the outside area is used in the Winter and if they had equipment to keep people warm whilst outside. Mr McLawson advised there is minimal use of the area in the Winter, and it was more for use in the Summer months. He confirmed the outside area was not currently being used and they had no plans to use it in the winter months if their application was successful. In response to further questioning from the Chairman he confirmed they had portable patio heaters that could be lit when requested.

Tim Sebley, resident - Interested Party Representation

Mr Sebley asked whether the Members had read the representations and the Members confirmed they had read the representations. He advised he had not had any problems with pub to date, there had been no issues with the previous owners, and he was sympathetic to residents. This was a complicated matter and other matters were interconnected with the Licensing Objectives. It was a balance of the pub making money and the provision of facilities for the locals and people from outside the area. He highlighted other residential properties on Poynings Road who can hear any noise from the pub garden. He noted issues with planning and the infrastructure, but these comments were not relevant to the application. He advised that pub does not provide local residents with details of events in advance; they did not know about the events that were held with a TEN. Residents not warned about TENs applications, he claimed they sold alcohol from the outside bar when they had not applied for a TENs, and he contacted the Licensing Team about this. He closed by advising that he formally withdrew his compromise suggestion of a revised condition relating to the hours the outside bar could be used.

John Comber, resident - Interested Party Representation

Mr Comber made several references to Premises Licences, the current licensed area and disputed the area that was indicated on the plan supplied by the applicant was not the area licenced to sell alcohol. The Chairman advised the application in front of the Committee was to consider the permission of external area only.

The Solicitor to the Committee advised that the licensed premises is the whole area marked on plan; it was a separate issue on how licensed areas were previously defined in old act. A variation under section 34 is the most appropriate and is the purpose of the hearing.

Mr Comber continued that his main concern was the disorderly behaviour when people drink outside around a bar. He recounted three events in the Summer when he was unable to enjoy his garden due to noise from the pub garden; the noise was also intrusive when he was inside the house with his wife who was trying to work. He requested a condition on the licence regarding noise nuisance, disputing the relevance of the Live Music Act 2012.

The Solicitor reiterated that the entirety of the area is the licensed premises. The applicants currently only use the inside area to sell alcohol; the variation is to use the outside bar for the sale of alcohol. Objections must be relevant to the Licensing Objectives and correct procedure; the Council had accepted the application, and interested parties had made representations under section 4, sub-section 2. Any licensing decisions made must relate to the application and the use of the outside bar. He highlighted the four Licensing Objectives and asked Mr Comber to focus his comments on those objectives and not procedural matters.

There were no questions regarding Mr Comber's representation.

Members' Questions

A Member asked the applicants where alcohol is served and consumed when using the marquee, and how do patrons know what they can do. Mr Fernandes advised the plan shows the licensed area, people can take alcohol from the inside bar to the garden.

Mr Comber noted it was a delicate matter, he understood that in creating the sale of drinks from the garden, the pub would attract more people. He noted other matters that were not relevant to the application and advised there had not been a problem with the previous owners.

The Chairman asked the Senior Licensing Officer if the Licensing or Environmental Protection Teams had received any complaints on the Licensing Objectives in the last two years. The Senior Licensing Officer advised that two complaints had been received. One after the premises reopened following the Covid lockdown complaining of odour, noise and use of the field adjacent to the car park for drinking. He noted that he visited the premises and spoke to the current DPS at the time, highlighting that it was not Mr McLawson and some complaints were not substantiated. He noted that the Business and Planning Act 2020 removed conditions on off-sales, and sale of alcohol in sealed containers was not any issue at that time. The complaint regarding noise had been dealt with by the Environmental Protection Team. In May 2022 a complaint was received after a wedding was held in the outside area, this resulted in the previous application being withdrawn; the Environmental Protection Team investigated. He reminded the Members that music outside is not regulated under the Live Music Act, but repeated complaints could be a statutory nuisance and could result in live music becoming a regulated entertainment under s177A Licensing Act 2003 (as inserted by s1 Live Music Act 2012).

George Domleo - summed up for the Applicants

He reiterated that the application was simply to sell alcohol from an outside bar; Mr Fernandes and Mr McLawson also lived locally. The application would allow the pub to be more flexible to use the outside bar in the Summer and Winter months when the weather was good. He reminded the Committee that no responsible authority had objected; he drew attention to section 9.43 of the Home Office Guidance issued under s182 Licensing Act 2003, the decision should be evidence based, appropriate and proportionate. He closed by noting that the pub is an asset to the local community.

A Member commented that compromise was important as the interested parties and the pub are in the same community, it was important to find a way forward.

The Solicitor advised that the Members would retire to deliberate and asked the other attendees to the meeting to remain in the Council Chamber. The Members left the Chamber at 11.14 am.

The Members returned to the Chamber at 12.10 pm.

The Chairman advised that decision of the panel was to grant the application to vary the Premises Licence with the following conditions:

Sunday – Thursday 11.00 to 20.00
Friday and Saturday 11.00 to 22.00
Bank Holidays - Treat Sunday as a Saturday

The Chairman also made the recommendation that the Committee would like more engagement between the pub and local residents, all complaints are discussed and logged, and then the Licensing Team are advised how the complaint was resolved. As matter of courtesy the pub should notify residents of forthcoming events and in was in the interests of all parties for the pub to succeed. He noted that a What's App group is beneficial for communications with local residents and to receive complaints.

In Response to a query from the Senior Licensing Officer, the chairman confirmed the following amendments to the conditions. The removal of:

- no drinks in open containers (e.g., glasses) and opened bottles are to be taken from the premises including the garden; and
- any person who appears under the age of 18 and who is attempting to buy alcohol shall be required to produce 'Proof of Age' before such a sale is made.
- a replacement condition was approved - Customers will not be permitted to remove from the premises any drinks supplied by the premises (alcoholic or otherwise) in open containers unless to an external area set aside for consumption.

The Solicitor confirmed the decision of the Committee would be supplied in writing to the applicants and interested parties. The Chairman thanked all parties for attending the meeting.

RESOLVED

The application to vary a premises licence was approved with the following conditions:

That the Royal Oak be permitted to use the outside bar to sell alcoholic drinks on Sundays to Thursdays between 1100hrs and 2000hrs and on Fridays and Saturdays between 1100hrs and 2200hrs, but on Bank Holiday weekends, Sunday will be treated as a Saturday.

That the conditions:

- no drinks in open containers (e.g., glasses) and opened bottles are to be taken from the premises including the garden; and
- any person who appears under the age of 18 and who is attempting to buy alcohol shall be required to produce 'Proof of Age' before such a sale is made.

Be removed and a replacement condition made:

- Customers will not be permitted to remove from the premises any drinks supplied by the premises (alcoholic or otherwise) in open containers unless to an external area set aside for consumption.

The meeting finished at 12.11 pm

Chairman