

**Minutes of a meeting of Mid Sussex District Council  
Liquor Licensing Committee  
held on Tuesday, 12th October, 2021 from 10.14 am - 12.33 pm**

**Present:** Councillors: J Dabell (Chairman)  
J Henwood  
S Smith

**Officers in attendance:** Franca Currall, Solicitor  
Jon Bryant, Senior Licensing Officer  
Michael Bateman, Team Leader for Environmental Health  
Adam Dracott, Team Leader for Environmental Health  
Protection Team  
Alison Hammond, Democratic Services Officer

**Also in attendance:** Mr T Earley, Applicant  
Miss C Kacy, Applicant  
Mr P Lloyd, Interested Party  
Ms P Berry, Interested Party

**In attendance for Training / Observing:** Zak Moallim, Solicitor  
Sonya Bameeur, Solicitor  
Shakeelah Nayiga, Paralegal  
Nick Bennett, Senior Environmental Health Officer  
Fiona Spears, Environmental Health Enforcement Officer  
Jane Cooper, Senior Environmental Health Officer  
Cllr Paul Brown

**LS.1 ROLL CALL AND VIRTUAL MEETING EXPLANATION.**

The Chairman welcomed everyone to the meeting and introduced each member of the Panel to the participants.

Franca Currall, Solicitor explained the virtual meeting procedure. She advised that no decision will be given at the end of this meeting. The decision will be made within 5 working days of the meeting. A letter will be sent to all the participants and any other parties who made written representations but did not attend the meeting. The letter will set out the Members decision with reasons for it and will also contain details of how to make an appeal against that decision.

**LS.2 TO RECEIVE APOLOGIES FOR ABSENCE.**

None as all Members were present.

**LS.3 TO RECEIVE DECLARATION OF INTERESTS FROM MEMBERS IN RESPECT OF ANY MATTER ON THE AGENDA.**

None.

**LS.4 TO CONFIRM THE MINUTE OF THE PREVIOUS MEETING HELD ON 7 SEPTEMBER 2021.**

The minutes of the meeting held on 7 September 2021 were agreed as a correct record and were electronically signed by the Chairman.

The Solicitor advised that the purpose of the Panel was to check if the application met the four Licensing Objectives. The Panel should determine whether the applicants could uphold the Licensing Objectives and what conditions should be applied to the Premises Licence if it was approved.

The participants of the meeting introduced themselves. Miss Kacy advised she had sent further information to the Senior Licensing Officer; it had not been included in the agenda pack.

## **LS.5 APPLICATION OF A NEW PREMISES LICENCE.**

### Introduction and outline of the report

Jon Bryant, Senior Licensing Officer introduced the report. An application (section 17 of Licensing Act 2003) has been made by The Fox Eating and Drinking House. Representations were received from the two Responsible Authorities and the freeholder of the premises objecting on the grounds of Prevention of Crime and Disorder, Prevention of Public Nuisance, and the promotion of Public Safety. In addition a number of representations have been received in support of the application. The Panel were advised that a Premises Licence has already been issued for the premises. This application is for the issue of an additional Premises Licence and is not a consideration of the current licence. The Panel were 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 Senior Licensing Officer confirmed to the Panel that Mr Earley is the current Leaseholder of the premises and has 13 years remaining on a 20-year lease. Mr Paul Lloyd is the freeholder of the property, he is also the Premises Licence Holder of the current premises licence which is still valid. Due to differences with Mr Earley, Mr Lloyd resigned as the Designated Premises Supervisor (DPS) and no replacement has been appointed. The Panel were advised that no sales of alcohol can take place without a nominated DPS; Mr Earley and Miss Kacy are applying for a separate Premises Licence in their own names. He highlighted that the application had been correctly advertised on the premises and in the Mid Sussex Times. The application seeks to supply alcohol on and off the premises.

The Panel were advised that a number of representations had been received from two responsible authorities, The Licensing Authority and the Environmental Protection Team. These were detailed in the report. A further representation was received from the freeholder and current Premises Licence Holder, Mr Paul Lloyd. The representations raised points relevant to the licensing objectives of Prevention of Crime and Disorder, Prevention of Public Nuisance, and the promotion of Public Safety. The application has generated numerous local interest in the village and surrounding area, 75 emails were received in support of the application. He reiterated that all representations must be relevant to the Licensing Objectives, only eight supporting representations had been accepted as being relevant. It was noted that the content of some emails as irrelevant for the purposes of the Licensing Act 2003 and those comments should be disregarded. The Police have agreed conditions if the Panel decide to grant the licence. These were detailed in the report, and further conditions put forward by the applicants to reduce any public nuisance from music.

The Senior Licensing Officer listed the grounds on which the two Responsible Authorities objected to the application. The Licensing authority objected on the grounds of the Prevention of Crime and Disorder, Public Safety and the Prevention of Public Nuisance. A number of incidents were listed in their objection and the action had been taken by the Licensing Team. The report advised that the Environmental Protection Team objected on the grounds of Public Safety; the report should have stated that they objected on the grounds of the Prevention of Public Nuisance. Mr Paul Lloyd, an Interested Party has objected on the grounds of the Prevention of Crime and Disorder and the Prevention of Public Nuisance, he is the freeholder and current Premises Licence holder. Mr Lloyd had submitted a short video showing out of hours drinking at the premises. Ms Berry, an Interested Party and local resident had sent a representation in support of the application. The Officer outlined the other relevant representations, they were not in attendance at the meeting: Ms Martin advised she had not seen any public nuisance, and her garden over looks onto the premises. Mr Martin also lives adjacent to the premises and has never experienced any anti-social behaviour. Mr Howard was responsible for a live event at the premises, he had monitored the output levels to keep them to a reasonable level, 85db limit. He had also run other events there and the noise levels had been acceptable. Mr and Mrs Bannister, one of the closet houses to the establishment had experienced some loud music in the Summer. They did not consider the running of premises caused a public nuisance. Ms Kashdan, who lives across Finches Fields had not experienced any issues of noise during licensing hours or at closing time. Ms Berry, who lives opposite had said the live music ended at a considerate time and was not a nuisance, advance warning was given for up-coming music events. Ms Abbott said she had observed well behaved groups of young adults and their age was verified by the staff, she had seen people refused drinks. Ms Burrows had commented that she was not aware of any crime and disorder at the pub, she has friends who live close by who would have mentioned if there had been any issues.

The Panel were 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 Panel could: grant the licence subject to conditions, modified as the Panel considered appropriate; exclude from the scope of the licence any licensable activities to which the application relates; refuse to specify a person in the licence as the premises supervisor or reject the application. The Licensing Act 2003 required relevant representations to relate to the effect of granting the licence on the promotion of the Licensing Objectives, and an objector must establish that such a consequence is a likely effect of a grant (more probable than not).

The Officer confirmed joint application could be made and applications could be made for premises that already have a premises licence and any party to the proceedings can appeal in a Magistrates Court. He outlined the background papers and highlighted the proposed conditions if the application was approved. He confirmed his role was an administrative function only and any questions should be referred to Mr Bateman, Team Leader for Environmental Health.

The Chairman thanked the officer for his comprehensive report. He invited the joint applicants to address the Panel and advised they should ensure they comments referenced the four Licensing Objectives.

Mr Earley, the Joint Applicant addressed the Committee

He advised he had been involved in the hospitality industry for over 35 years in the UK and overseas, primarily as a chef for 18 years and as the licensee of a pub for 6 years. He loves his job and has organised and catered for large scale events, was the DPS for the village fete and could manage aggressive / intoxicated people, completed a variety of courses. He advised the representations did not give a good impression of him, he could be "hot headed" and gets frustrated as people don't see what he is trying to achieve. The Fox is a restaurant and not a late-night venue, they have hosted afternoon children's parties to make money. He takes his job very seriously and has done his utmost to uphold Licensing Objectives. He advised if he knew where the complainants lived, he could angle the sound of the bands away from their properties. They had not broken any Covid rules, the business had been adapted as the laws changed, they had a one-way system in the premises. They tried to survive and keep people safe. He confirmed an event in the summer, all clientele were in a safe environment, "we could not have done any more than we did". He confirmed he had been in regular contact with the Senior Licensing Officer, had visits from the Police and the Licensing Team. Ms Kacy had also completed additional training courses and they had learnt from their mistakes, adapting and changing.

He mentioned the egg allergy, "an unfortunate accident" citing human error between front and back (room) staff. There was now additional documentation in place and staff talk to the clientele when booking over the phone or when "walk in bookings" to determine any allergies or intolerances. If it is a severe allergy, he talks to the client himself about the danger as they have a small kitchen. The Panel were provided with details of Mr Earley dealing with and ejecting intoxicated clientele; he could "talk people down and was good at communicating with people". He confirmed he was hot headed, could snap and apologised as he had been sarcastic to the Environmental Health Team. Noise complaints had increase by 66% since the pandemic. They had bands playing outside in a safe environment in the afternoons not late at night and monitored sound levels. Half the pub had been changed to a shop to serve the village but was limited to 20 people. He noted the breakdown of his friendship with Mr Lloyd, cited the last two years had been tricky and any staff that broke laws were dismissed.

The Chairman advised the Panel would give the application a fair hearing and make references to the Licensing Objectives. They would listen to relevant representations and take them into account.

#### Questions from the Members to Mr Earley

A Member noted the changes Mr Earley had made following the allergy incident and enquired how they managed hygiene, disposal of empty bottles and waste to prevent disruption to the neighbours. He advised no bottles are put out late at night, just plastic sacks of food waste. The bottles are kept at bar and emptied into commercial bins between 10 am and noon. In the recent hot weather, the food bins had been smelly, they are cleaned with chemicals and jet washed once they have been emptied on a Wednesday or Thursday.

A Member expressed concern over the food allergy incident and asked what steps had been taken to prevent another incident. He advised that he was aware there are more allergies, not just nut allergies. Once a client advises they have an allergy or intolerance they complete a form giving full details and level of severity which goes from the front staff to the back staff and is followed until the client leaves. The form has the 12 main allergies, others can be added, and they can note if it is a severe

allergy. He advised most people with severe allergies carry EpiPens. They have a good process of checking invoices, make their own bread and ice-cream and try to buy local produce.

In response to the Chairman expressing concern that previous events have overrun and confirmation that timings would be adhered to, Mr Earley confirmed they would no longer have bands as it is too much to do. He lives in the flat above the premises and his teenage boys live with him part-time. We noted they have cctv, and the Police have requested want more cameras which they will have access to, the old licence was granted on grandfather rights.

The Chairman advised Mr Earley to make notes as he would be able to sum up and respond to the representations made.

#### Miss Kacy, Joint Applicant addressed the Committee

Miss Kacy noted that Mr Earley had made a good representation for their application. All allergen safety measures were now in place. She had attended additional training courses, including Covid Awareness and reiterated that she knew the rules and regulations; they had learnt from the egg allergy incident. There would be no music outside, no amplified music inside, just acoustic inside - piano and harpist. More advanced measures were now in place including an incident / accident book, a register to refusals of sales, Challenge 25 signs are displayed - specific ID is required, and staff training manuals have been updated. Nothing had yet happened, but incidents would be reported immediately to the Police. She noted she was now trained to ISO 2001, an implementation of procedures to run businesses smoothly.

#### Questions from the Members to Miss Kacy

A Member asked which training course had been most beneficial and would assist her going forwards. She advised that she has allergies, including peanuts and the food allergens course had been most beneficial, along with Covid Awareness and hygiene courses.

She noted all key staff had received training on allergy awareness but as they were temporarily closed, they had limited staff.

#### Interested Party - Representation by Michael Bateman for the Licensing Team

Michael Bateman, Team Leader for Food, Safety & Health advised the Licensing Authority had considered the application and objected on the grounds of the applicants' ability to up-hold the Licensing Objectives: Prevention of Crime and Disorder, Public Safety and the Prevention of Public Nuisance. There had been repeated interventions at the establishment, by the team in the past five years, with frequent liaising with Mr Earley and Mr Lloyd, the Police, Environmental Protection Team and West Sussex County Council Trading Standards for failure to comply with legislation. He confirmed that despite providing advice to Mr Earley they had to issue written warnings as they had failed to comply in July 2017, January 2020 and May 2021. In November 2018 Mr Earley confirmed he had permitted a party to continue beyond their licensed hours, and in May 2021 a music event without a Temporary Event Notice (TENS). He highlighted the repeated contraventions despite many chances to comply and cited a successful prosecution by West Sussex County Council for food safety charges. Officers from Mid Sussex and West Sussex have reported that Mr Earley has been difficult to engage with and has been verbally aggressive. The Licensing Act 2003 guidance advises that good communication

between the licence holder and the local authority is important. When upholding Public Safety. In January Mr Lloyd advised the Licensing Authority that he had no confidence in Mr Earley being able to uphold the Licensing Objectives and removed him as the Designated Premises Supervisor (DPS). An application was made by Mr Earley in August 2021 to transfer the licence to himself from Mr Lloyd, the application was refused as it was discovered that Mr Lloyd had not given consent. And had no knowledge of the application. This an application for a new licence, Mr Lloyd can appoint a DPS if he wishes to do so. The Local Authority has evidence of non-compliance, and on the balance of probability the Local Authority could be not confident that the applicants would uphold the Licensing Objectives and object to the application.

There were no questions from the Panel.

#### Interested Party - Representation by Adam Dracott for the Environmental Protection Team

Adam Dracott, Team Leader for Environmental Protection Team advised that the Council wants to support local businesses. The Team aim to work with businesses to uphold the law and ensure the public are not unreasonably affected by noise and odours. Despite their efforts they have received complaints about noise at the premises. They have objected to the application as they could be not confident that the applicants would uphold the Licensing Objective of Public Nuisance. There have been eight noise complaints over two years; the expectations of applicants has been made clear. In November 2018 there was a complaint about noise, music and shouting after 01:00, the applicants were advised that future applications for TENS might be refused if the disturbances continue. Further complaints of noise after midnight were received in July 2019, in November 2019 and on a Sunday in December 2019 occurring after their licensing hours. A TENS application for Christmas Eve was refused, however one was permitted for a New Years Eve party until 02:00. Complaints were received that shouting/swearing was clearly audible at 0:15 on Christmas Eve and music was audible inside nearby properties at 03:20 on New Year's Eve. At a meeting it was made clear that noise from music and customers needed better management. In May 2021 further complaints were received of noise from music outside the pub, no TENS application had been received. The Team were concerned some unregulated events were happening. Three TENS applications were applied for and Ms Kacy was written to and asked to monitor / adjust the noise to prevent a public nuisance. They were advised that the events would be monitored for noise by officers. Loud music was audible up to 65ms away, the musicians faced the houses – and two complaints received. They were given advice how to mitigate potential noise nuisance at the other events. At a subsequent event with a tribute band, further complaints were received even though the musicians had been faced away from the houses. The team spoke to them again and advised the band should be inside. The Team monitored the final event with guitars, drums and singers, loud music played in the car park, and the band had faced the houses. This conflicted with what Mr Earley had advised would happen, the noise could be heard as far as Cost Cutters approximately 350ms away. He advised that despite being given promises by the applicant to not cause a public nuisance from noise these promises have not been kept. The Environmental Protection Team has made a representation as they have no confidence that further incidents of Public Nuisance will not occur.

In response to a Member's question on communication between the applicants and the Environmental Protection Team he confirmed communication with Mr Earley has

been difficult. At times he had had to advise Mr Early could only deal with him to protect his staff from abuse, communications with Mr Early have been disturbing.

The Chairman asked if no further music events, as advised by Mr Early would make a big difference to environmental issues at The Fox. The Officer advised it would help the disturbance to the local residents if the team confidence that no music would be played. He expressed concerned given the history of The Fox.

#### Interested Party - Representation by Mr Paul Lloyd

Mr Lloyd, freeholder of The Fox and Premises Licence holder advised he objected to the application. He was a former policeman and had run pubs since 1995 in London, he bought The Fox in 2004. He had always followed local authority advice for past 6 or 7 years whilst dealing with Mr Earley. He engaged a solicitor for anything relating to licensing matters and Mr Earley. He liaised with The Senior Licensing Officer and then resigned as DPS on 16 August 2021 as he had no confidence in Mr Earley continuing to be the DPS, solicitors letter sent was sent to him on 18 August. The applicants posted inaccurate false statements regarding his resignation as DPS on social media resulting in disinformation. He advised he received abusive social media posts, some posts thought the pub was closing which he denied. He noted domestic disturbances at the premises since 2016 involving the applicants. He noted the Licensing Act 2003 and the Licensing Objectives and the expectation of licence holders to behave in a fit and proper way. Mr Earley had sent threatening text messages and he did not believe Mr Earley was suitable to be a DPS. Previous discussions with the applicant regarding the food waste bins in the recent hot weather had resulted in heated confrontations. His objection was not personal, but he did not believe the applicants to be fit and proper people to hold a licence and uphold the Licensing Objectives. He apologised for raising personal issues.

The Chairman reminded the attendees at the meeting that the Panel were considering the application in relation to the Licensing Objectives and the running of the premises.

There were no questions for Mr Lloyd.

#### Interested Party - Representation by Ms Poppy Lewis

Ms Lewis, a local resident advised that she supported the application. She is a customer of The Fox eating there occasionally and lives close by. She has not experienced crime and disorder, noise levels are bearable and have not been an issue. The Fox advertise music events in advance. In relation to public safety she had not heard of any issues and young people do work for them in the kitchens. In response to a Member's questions she advised events are advertised on a placard outside the premises and posted on social media.

#### Summing up by Mr Earley

Mr Earley acknowledged he had fallen out with Mr Lloyd and would not repeat what had been said. Regarding the unlicensed event he cited confusion with the constant changing laws due to the pandemic and thought the use car parks to space out clientele included holding events. They had not circumvented the Council's usual procedure deliberately; it was an oversight. They had held the charity event in the afternoon due to the previous complaint for an event in the evening. They had relocated the band and monitored the noise level. He apologised for being rude to Council officers and thought he was approachable but gets frustrated, if no guidance

is given how he could change things. He thanked Ms Lewis for her comments. Noise is inevitable as it is a pub and he would try to keep clients quieter; signs are everywhere at the premises. With regard to Christmas Eve people were coming in from the club and after attending midnight mass. He disputed that The Fox was the cause of some of the noise complaints as the dates did not match. He was too old to stay up very late. He thought he had carried out the Licensing Objectives to the law, this was his livelihood. He would take any comments on board, he was disappointed the relationship with Mr Lloyd had broken down; he wanted to make a living and asked for help.

The Chairman advised that running of a pub is difficult, but requirements of the Licensing Objectives were very clear and need to be met.

The Senior Licensing Officer advised the Panel that live or recorded music played between 08:00 and 23:00 on a premises, which has a premises licence to sell alcohol and is open to sell alcohol is not regarded as a regulated activity.

#### Further Questions to the Mr Earley

A Member asked Mr Earley how he controls poor behaviour. Mr Earley advised he has a good relationship with the young people in the area. There had been some incidents during lockdown where they would buy take-away food from The Fox and it eat it in their cars with music on outside the pub. He said "I am good at controlling them. ...I have only barred 2 people in my career". He gave details of a time he intervened with a fight and refused entry to someone who had been barred. He is able to talk them down; he can control a crowd and has the respect of his clientele. He does not get aggressive with his clientele.

Mr Lloyd advised he had no personal animosity to the applicant and Mr Earley sometimes had difficulty taking on board comments in order to comply with the Licensing Act 2003.

Mr Earley disagreed and said no reason had been given when Mr Lloyd resigned as DPS. He would have compensated complainants with a free meal if they had been identified to him. He would prefer people to complain to him and not the authorities.

The Chairman recognised that people have different strengths, but the Panel must consider the Licensing Objectives.

#### Summing up by Miss Kacy

Miss Kacy commented that their suggestions to Mr Lloyd for an alternative DPS had been refused. She reiterated that there would be no amplified music outside, just acoustic music inside. Miss Kacy confirmed they advertised events on social media and on placards outside the premises.

The Team Leader for Food, Safety & Health noted it was for Mr Lloyd to determine a suitable replacement DPS and the Licensing Team had no control over his decision.

Mr Lloyd disputed being given alternative names for the DPS by the applicants and he did volunteer himself to be DPS.

Mr Earley claimed stipulations were attached to Mr Lloyd being reinstated as the DPS which were was not feasible.



The Chairman confirmed the Members and Officers had no further comments or questions. He thanked everyone for their representations. The Licensing Objectives would inform the Panel when reaching a decision.

The Solicitor advised the public participants that the panel would retire to a private virtual room to deliberate and make a decision today. If the decision took longer they would be advised. To meet legislation the applicant would receive the decision and any reasons within five working days and copies would be sent to all interested parties. Interested Parties would have 21 days to appeal to Brighton Magistrates Court from receipt of the letter.

As there were no further questions the public meeting finished at 12.15 pm so that the Committee could deliberate.

## **RESOLVED**

The application for a Premises Licence was refused as the Panel considered that it did not have confidence in the Applicants ability to uphold the licensing objectives.

The meeting finished at 12.33 pm

Chairman