

PRELIMINARY REPRESENTATIONS IN RELATION TO AN APPLICATION FOR THE VARIATION OF THE PREMISES LICENCE OF THE ROYAL OAK IN POYNINGS MADE ON 19 JULY 2022

Section 36(6)(b) of the Licensing Act 2003

1. This application for the variation of the pub's licence must be rejected since it would vary substantially the premises to which the licence relates.
2. The note at the end of the application form states:

“This application cannot be used to vary the licence so as to vary substantially the premises to which it relates. If you wish to make that type of change to the premises licence, you should make a new premises licence application under section 17 of the Licensing Act 2003.”

The note accurately summarises the effect of section 36(6)(b) of the Licensing Act 2003.

3. The existing licence does not authorise the sale by retail of alcohol in the outside areas of the pub. This is clear from the licence plan. The licence only authorises the sale by retail of alcohol in the red-lined area on the ground floor of the Royal Oak building. The key to that plan indicates that that area is an area used for the supply of alcohol. “The supply of alcohol” has the technical meaning given by section 14 of the Act and means “the sale by retail of alcohol”. The sale takes place “where the alcohol is appropriated to the contract” (see section 190). That happens inside the Royal Oak building. There is no other red-lined area shown on the plan. The other areas shown on the plan are described as drinking areas, children's play area and car park and are not red-lined. They are not therefore currently licensed “for the supply by retail of alcohol”. The outdoor bar if licensed would be an addition to the premises licensed “for the supply by retail of alcohol”. That's why the applicant asks for the outdoor bar “to be **included** in the licensed area”.

4. The outdoor bar is in the middle of the pub's beer garden in an area some distance from the Royal Oak building and separated from it by the access road to the car park. The danger to customers and staff using the road on foot at busy times (which was identified by the pub's manager in his previous application for licensing the outdoor bar) means that the outdoor bar will in practice be run as a separate entity. When open it will serve considerably more customers than the indoor bar. The variation if allowed would mean in effect that we will have 2 pubs in Poynings one inside the Royal Oak building (perfectly acceptable) and one outside (more problematic because of the need to prevent public nuisance by noise). This addition to the licensed area would constitute a **substantial** variation of the premises to which the licence relates. For that reason your authority has no power to vary the licence in response to this application and any purported variation would be subject to challenge in the courts.

FURTHER REPRESENTATIONS IN RELATION TO AN APPLICATION FOR THE VARIATION OF THE PREMISES LICENCE OF THE ROYAL OAK IN POYNINGS MADE ON 19 JULY 2022

Duty to promote statutory objectives

1. Your authority is under a duty by virtue of section 4 of the Licensing Act 2003 to carry out its functions under the Act with a view to **promoting** the licensing objectives set out in subsection (2). If your authority licences the use of the outdoor bar as proposed by the applicant, this would undermine rather than promote the statutory objectives and increase the negative impacts those objectives are designed to control.
2. Section 6 of the Human Rights Act 1998 is also engaged in relation to your authority's licensing function (see the reminder in paragraph 1.10 of the Secretary of State's guidance under section 108). It is unlawful for a public authority to act in a way which is incompatible with a convention right. A licensing authority should not licence activities which are likely to infringe protected human rights. Conditions should be framed in a way which ensures that protected rights are not infringed.

The prevention of public nuisance

Noise nuisance

3. Public address systems and amplified music played outside in this location will cause a public nuisance. The use of such systems in the outside areas of the pub has caused significant problems in the past. It is likely to do so in the future unless this subject is properly addressed by licence conditions. Villagers were outraged by the pub's previous application to licence the outside bar because the use of such systems in the manner proposed would obviously cause noise nuisance.
4. The present application is silent on the subject of amplified live music. However, it is proposed that the outdoor bar should be **included** in the licensed area. But that licensed area authorises on-sales as well as off-

sales. That is unnecessary for the bar since the rest of the garden and patio area are not to be included in the licensed area. In order to serve those areas an off-sales licence is sufficient. The licensed area should be confined to the footprint of the outdoor bar since the proposal is to serve from that bar. An on-sale licence for the outdoor bar could be exploited to take advantage of the live music exemption conferred by paragraph 12A of Schedule 1 to the licensing Act 2003. In the particular circumstances, this would undermine, rather than promote, the prevention of public nuisance statutory objective.

5. We note that the pub's manager stated on Facebook that "There is no amplified music system installed anywhere in the garden including the new bar". This does not go far enough to reassure us. In order to avoid a repetition of the noise nuisances which have occurred in the past, we want a condition in the licence which prevents the use by anyone of any public address system or music amplification system in any of the pub's outdoor areas. That can certainly be achieved by an appropriately worded licence condition. The inclusion of such a condition is possible if the licensed area is confined as it should be to the footprint of the outside bar and it is made clear that, unlike the existing licensed area inside the Royal Oak building, the licence authorises off-sales only (see paragraph 16.44 of the Secretary of State's guidance under section 108). There is ample justification for such a condition in this particular case (see paragraphs 6 to 11 below).

6. The guidance headed "Beer Gardens and Children's Play Areas" in Appendix 9 of your authority's statement of licensing policy under the Licensing Act 2003 is relevant:

"Premises that have beer gardens and children's play areas may cause noise nuisance if residential premises are nearby. This problem will be exacerbated in the summer months.

Tips to control noise from beer gardens and children's play areas:

1. Music should not be played in these areas.

2. Doors leading onto the beer garden/play area should be kept closed, in order to contain the noise.
3. Management should control customer's behaviour in order to ensure it does not give rise to noise nuisance.
4. Access to these areas should be restricted, particularly at night, to ensure noise is controlled."

7. The pub is very close to residential premises. There are no doors to outdoor areas at all so there is no means to contain noise. We know from discussions with other villagers that intrusive amplified sound from events held in the pub's beer garden causes not only annoyance in the immediate vicinity but also causes annoyance to those living as far as 1/3 mile away. Problems of noise nuisance from weddings and other special events hosted by the pub go back a number of years. For example, we have an email from a neighbour complaining to your environmental health department about noise at such an event sent on 18 April 2017 at 10:45:40 BST. A clearly worded and readily enforceable condition is obviously preferable to relying on public nuisance complaints procedures. They cause a great deal of unnecessary work for enforcement staff. They also impose considerable additional burdens on villagers whose lives are plagued by intrusive noise. The noise should be prohibited in the first place.
8. We attach a copy of our previous representations as an example to show just how miserable our lives are made by such events held by the pub(see Annex).
9. Section 6 of the Human Rights Act 1998 is engaged in connection with your authority's licensing functions. This is important in relation to article 8 – right to respect for a person's private and family life and his home and also in relation to article 1 of the first protocol – right to the peaceful enjoyment of a person's possessions. This protects villagers whose homes and property are affected by intrusive noise (or offensive

odours arising from the activities carried on by the pub see paragraph 19 below).

10. Our experience is that there is intrusive noise (including vibrations) when there is a wedding or other special event which is catered for by the pub and amplified music is played or public address systems are used. This needs to be prohibited to prevent such noise nuisances in the future.

Public safety etc

11. The applicant's previous application for a licence for the outdoor bar was based on the need to deal with the danger to customers and members of staff crossing the access road particularly at busy times. The danger identified by the pub's manager is the result of the sheer number of vehicles passing and repassing at those times.

12. But licensing the outdoor bar will not eliminate the danger. There will still be customers on the road when vehicles are using it. They may need to cross the road to access the pub's toilets. Staff may still have to cross the road to deliver food from the kitchens ordered for consumption in the food area of the garden. Then there are the customers who are drinking in the pub building itself. They will need to cross the road when they arrive or leave the pub. And the same goes for all customers retrieving their parked cars when leaving. Residents of our courtyard development also use the road on foot so they are at risk. So also are visitors and others using the public right of way over the access road (public nuisance!).

13. The remaining danger to pedestrians using the access road needs to be addressed in the licence so that the public is safe. A major cause of the danger is excess traffic generated by the use of the field adjacent to the pub's main car park as an overspill car park. The overspill car park practically doubles the number of customers travelling to the pub by car. Most of those customers will be served from the outdoor bar. If the outdoor bar is successful in generating more customers there will be

more people using the field to park and the traffic on the access road will increase which in turn will increase the danger to pedestrians using the access road. Any further expansion of the pub's outdoor bar will have huge implications in relation to all of the statutory objectives. Only a small portion of the field is used at present.

14. The public safety issues are not confined to the access road. The way the overflow car park is used poses an even greater risk, as we observed at the event described in the Annex. At the beginning of that event, there was a sudden surge of traffic entering the field through the narrow gate. At the same time customers, with their children, were leaving through the same gate after parking their cars in the field. There were also numbers of over-excited children running about all over the place whilst cars were still entering the field and manoeuvring to park. Later there was considerable noise nuisance from children playing unsupervised in the field.

15. The use of the field as an overspill car park has never been authorised by the South Downs National Parks Authority - the applicant has never applied for planning permission for such use. That means that any crime and disorder issues, public safety concerns, public nuisance issues, and child safety issues have never been addressed by the authority and properly regulated.

16. The use of the field as an overflow car park also infringes our convention right to privacy. There is no adequate screening and a large number of customers served by the outdoor bar will use the field for parking. Our main bedroom and principal sitting room are overlooked by customers parking in the field so there is a problem of overlooking which needs to be taken into account.

17. There are also public safety concerns as a result of excess traffic on the access road backing up and obstructing the main road leading to the pub. We understand that a fire engine crew ran into difficulties when

they were trying to attend a fire with a fire engine at one of the houses opposite the pub because of backed up pub traffic.

18. For all of the above reasons the licence should prohibit the use of the field as a car park. All of the statutory objectives are in play (not just public safety).

Offensive odours

19. There are offensive cooking odours which permeate the whole area surrounding the pub when food is being cooked. The preparation of meals for customers who will be served with drinks from the outdoor bar is likely to be a major contributory cause of the odour problems in the future. This will be made considerably worse if, as seems likely, the pub intensifies its use of its outdoor areas.

20. Offensive cooking odours which invade our property make use of our outdoor areas unpleasant at times. But we know that the problem is much more serious for the occupants of the cottages in our courtyard development. They are particularly badly affected by offensive cooking odours. Their enjoyment of their properties is adversely affected in a way which amounts to a public nuisance and also infringes convention rights. Some years ago your environmental health department looked into these cooking odour problems but the problem has not been solved and the smells continue to offend. This is not just a problem which affects villagers. Visitors to the area will be offended as well. A suitably worded condition is needed to address this problem directly. The condition needs to be designed so as to eliminate the all-pervading offensive smells which originate from the preparation of food for customers served from the outdoor bar.

Prevention of crime and disorder

21. The proposed new “drinks in open containers condition” should limit the external areas set aside for consumption to those currently set aside for consumption. They should be individually specified as such on the

amended licence plan or otherwise described with sufficient particularity that they can be readily identified. It should not be possible for the pub to add areas such as the field to the consumption areas without a licence variation which ensures that the statutory objectives are not circumvented.

The amended licence plan

22. There has been a lot of unnecessary discussion about what constitutes the licensed premises mainly as a result of the legally inaccurate original guidance under section 182 in relation to beer gardens and the need or otherwise to licence them or show them on licence plans (Guidance can never overrule the wording of legislation and must be ignored if it conflicts with the law).

23. It is important that each licensed area is clearly identified and it should be indicated that the outdoor bar is only licensed for off-sales and that the internal area of the Royal Oak building is licensed for on-sales as well as off-sales.

Consequential amendments to existing regulated entertainment condition

24. Consequential amendments are needed to the existing licence condition prohibiting regulated entertainment to take account of deregulation legislation and any variation of the licence made as a result of this application. It should apply differently in relation to the different licensed areas. It also should be applied to all outdoor areas of the pub.

ANNEX

Extracts from our previous representations

“Yesterday (Saturday 21 May 2022) illustrates just how intrusive amplified music is and the devastating effect of playing such music in the open air when there is an event on at the pub and the outdoor bar is open. My wife was trying that day to put the finishing touches to a document which she was preparing and which needed to be submitted to an extremely tight deadline which could not be extended. She was working inside with noise reducing ear plugs towards the end of our garden and as far away as possible from the source of the amplified sound in the pub’s beer garden. She was so distracted by the music and other noise coming from the pub and their customers’ over-excited children noisily playing in the field that she hardly achieved anything, despite trying with great determination to meet her looming deadline. We both were left drained and utterly exhausted after having to endure the noise and disturbance from the event next door. It began around midday and continued until around 9.45 in the evening. At one point in the evening I had to ring up the pub to formally complain when someone (who I thought was intoxicated) was screeching tunelessly at the top of her voice into the amplified sound system. It is intolerable to have to put up with this sort of disturbance. I was surprised therefore when there was initially some kickback from the assistant manager I spoke to on the phone when I described what was happening. Reluctantly he accepted that he needed to go and investigate the disturbance. It should not be necessary to complain to ensure that noise from licensed premises does not become a public nuisance. There should not be any intrusive sound at the perimeter of my property and, as the land falls away rapidly in my garden and the bulk of my house is interposed, there should be not be any sound at all in my back garden. However, that is never the case when the pub is catering for weddings or special events.”

“... noise nuisance is not confined to the immediate vicinity of the pub but extends widely to different parts of the village depending on the time of the day and other factors which affect how sound travels. The outdoor bar is obviously intended mainly for use when the pub is hosting wedding celebrations or other special events which have such a negative impact on the amenities of the village.”

“Our garden is a delightful place in which to sit during the summer months but whenever the pub is holding one of its special events delight turns to misery. We have to retreat indoors and distract ourselves by watching tv or something else to lessen the adverse impact of noise from the pub. Even with all doors and windows shut it is impossible to ignore it. It is during the summer months when we want to be outside enjoying our garden that the pub chooses to inflict this unacceptable intrusion into our lives. It is not just we who are affected, other villagers complain as well. Visitors to this wonderful village will go away appalled by the vulgarity of what is going on in the pub.”

“Our house is closest to the pub and before we bought it we considered carefully the downsides as well as the upsides of living here so close to a pub. The publican at that time was acutely aware of the problems which noise from the pub could cause given its proximity to residential property in the village. He told us he had a “no music policy” and assured us that he had no intention of changing it. The pub is now managed by different people and their operating schedule shows their complete disregard for the interests of their neighbours and the many visitors to our rural village who are seeking the peace and quiet of the country whilst appreciating its beauty. The pub’s building and our home and neighbouring properties are in a unique conservation area within an area of outstanding natural beauty in the South Downs National Park. The courts have recognised that people have a right to expect quiet in rural areas and the threshold of what constitutes public nuisance is much lower there than in more built up areas. When the pub hosts wedding celebrations and other special events, that threshold is crossed and the noise constitutes a public nuisance. This affects not only residents but also visitors to the area.”

ADDITIONAL REPRESENTATIONS IN RELATION TO AN APPLICATION FOR THE VARIATION OF THE PREMISES LICENCE OF THE ROYAL OAK IN POYNINGS MADE ON 19 JULY 2022

Duty to promote statutory objectives – the prevention of public nuisance

Given the closeness of the Royal Oak pub to residential premises and its lack, in its outdoor areas, of doors or windows to contain noise, there should be provision which translates **the whole** of your authority's guidance on "Beer Gardens and Children's Play Areas" in Appendix 9 of your authority's statement of licensing policy under the Licensing Act 2003.

The whole of the guidance needs to be turned into an enforceable condition of the licence. It certainly should not be limited to the use of public address systems and amplified music, although it is particularly important that they are covered as well.

Noise nuisance of any kind from the pub's outdoor areas must be prevented.

Your authority is under a positive duty to do all you can through the licence conditions to achieve the statutory objective in section 4(2)(c) (the prevention of public nuisance).

This is particularly important now that, as a result of Covid, there is an increased demand for safe outdoor eating and drinking spaces.

It is however equally important to ensure that outdoor areas used to satisfy this demand are properly regulated through readily enforceable licence conditions to prevent any noise nuisance. They have a particular propensity to cause such nuisance where premises are licensed to sell alcohol.

Customers' children have been using the field adjoining the pub's car park as a children's play area when the field is in use as an overflow car park. That results in noise nuisance and, since they are not supervised by their parents, the risk of harm to the children. This is an additional reason for a condition preventing the use of the field as an overflow car park.