

Runnymede Borough Council

LICENSING COMMITTEE

15 November 2016 at 4pm

Members of the Committee present: Councillors Mrs J Gracey (Chairman), D W Parr (Vice-Chairman), J Broadhead, Mrs D V Clarke, R J Edis, Mrs E Gill and N M King.

Members of the Committee absent: Mrs M T Harnden, Mrs Y P Lay and P S Sohi.

325. FIRE PRECAUTIONS

The Chairman read out the fire precautions.

326. MINUTES

The Minutes of the meeting of the Committee held on 2 June 2016 and the Minutes of the Licensing Sub-Committee (Hearing under the Licensing Act 2003), on 22 August 2016 were confirmed and signed as correct records, the latter set was also adopted by the Committee and attached at Appendix 'A'.

Officers confirmed that a response to issues arising from the last meeting of the Sub-Committee was being finalised by the Corporate Head of Law and Governance.

327. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Mrs M T Harnden.

328. FEES AND CHARGES 2017/18

The Committee's approval was sought for the proposed fees and charges for 2017/18.

Officers confirmed that as all the fees under the Licensing Act 2003 were set by statute there was no scope to recover the building deficit of the service, which Members were concerned to note was currently approximately £55,000 and not covering the cost of providing the service. Officers had taken part in a survey by the Local Government Association, who had put the case for local fee setting to the Government. However, there had been no progress with this. Officers gave the example of a Temporary Event Notice; still set at £21 since 2003, but costing approximately £60 to process now. It was confirmed that a small part of the deficit was also attributable to the De-Regulation Act, which, amongst other things, had removed the need for Personal Licence Holders to renew.

Officers agreed to re-word the report on Fees and Charges for 2017 to reflect the financial position with regard to fee setting and the Council's continued inability to cover costs as a result. This would mean the deletion of section 2.2 and re-phrasing sections 2.1 and 4.3.

RESOLVED that –

The proposed fees and charges for 2017/18 be approved, to be effective from the dates within the Appendix, or as soon as practical thereafter.

Chairman

(The meeting ended at 4.11pm)

Runnymede Borough Council

LICENSING SUB-COMMITTEE
(Hearing under the Licensing Act 2003)

22 August 2016 at 11am

Members of the
Sub- Committee Present: Councillors Mrs E Gill, Mrs M T Harnden and Mrs Y P Lay

Councillor J Broadhead also attended the meeting as an observer.

ELECTION OF CHAIRMAN

Councillor Mrs Y P Lay was elected as Chairman for the meeting.

FIRE PRECAUTIONS

The Chairman advised those present of the procedures to be followed in the event of fire or other emergency.

DECLARATIONS OF INTEREST

Councillor Mrs M T Harnden declared a non-pecuniary interest. She had discovered recently that her husband was distantly related to one of those making representations on the application but they had never met or spoken and the resident was not present at the meeting. The Legal advice that she could participate in the meeting was noted.

PROCEDURE FOR THE CONDUCT OF BUSINESS

The Chairman asked those present to note the procedure for the conduct of business.

LICENSING ACT 2003 – APPLICATION FOR A PREMISES LICENCE

The Sub-Committee received and considered an application for a Premises Licence from The White Brasserie Company in respect of the Barley Mow, Barley Mow Road, Englefield Green, Surrey. TW20 0NX, in the Englefield Green West ward.

The applicant, Mr Paul Van Zijl from The White Brasserie, appeared in person and was represented by Mr Craig Baylis of Berwin, Leighton, Paisner.

Also present were:
Mr Robert W Smith, Senior Licensing Officer
Mr Andrew Atkinson, Solicitor
Miss Clare Pinnock, Democratic Services

Those persons present making representations and/or speaking on their behalf were:

Mr P Mayhew
Mrs K Cochrane
Mrs C Lewis
Mr and Mrs A Power
Mr and Mrs R J Millwood
Mrs B Telford
Mr M Waldron

Mr Smith was invited to present his report to the meeting.

Mr Smith confirmed that the application was for a premises licence under Section 17 of the Licensing Act 2003 to enable licensable activity in the form of the supply of alcohol for on and off sales from 10:00 to Midnight, Monday to Saturday and 10:00 to 23:30 on Sundays with opening hours 08:00 to 00:30 Monday to Saturday and 09:00 to 00:00 on Sundays. Seasonal variations for the premises to be open with licensable activities from the start time on New Year's Eve to the finish time on New Year's Day and non-standard timings had also been applied for with the Premises Licence Holder reserving the right to open the premises to the public at any time for non-licensable activities.

It was noted that the application did not include any music after 11pm whereas the existing licence authorised live music until 2am on New Year's Day.

Mr Smith advised that the premises had been the subject of a review in 2007 but that this fresh application must be treated on its individual merits. Members noted that the applicant had recently obtained planning permission for an extension to the rear of the premises and that building works were currently in progress.

Mr Smith reported that none of the Responsible Authorities had submitted any representations. However, 19 representations from local residents had been received. The majority of representations expressed concern about the potential for noise nuisance and problems caused by vehicles parking on The Green. An addendum was noted which had been received a few days before the Hearing which set out a number of suggested conditions. The applicant had been supplied with these in advance of the meeting as required.

One representation referred to the Lease of the Green to the Council by the Commissioners of Crown Lands granted in 1954. The Council was obliged to ensure control over persons and animals and prevent them from causing injury to the Green or to neighbouring properties or annoyance to the residents or others. The legal advice was that whilst this was the case it was the responsibility of the Crown Estate to enforce the obligations under the lease and that the Barley Mow was outside of the land covered by the lease. The Council had no enforcement powers, however every effort was made by Officers to try and prevent cars from parking on the Green's verges and any misuse of the Green.

Mr Smith directed Members to the relevant statutory and local guidance with particular regard to the need for appropriateness, consistency and proportionality of any conditions that might be attached should the application be granted. The Members were also advised that matters relating to parking whilst of concern could not be addressed by the Licensing objectives.

Since the application had been submitted Members were advised that the premises had been transferred to the current applicants.

The applicants had accepted a late notice to attend and speak at the Hearing from one of the residents that had submitted his original representation by the required deadline under the Licensing Hearing Regulations.

Mr Baylis was invited to present the case for The White Brasserie Company and answer any questions that Members, Mr Smith or those making representations might have.

Mr Baylis advised that The White Brasserie Company had 11 licensed premises including the Queen's Head in Weybridge and The Sun Inn Chobham, where the emphasis was on dining and which could be described as 'gastro pubs.'

Mr Baylis highlighted that the applicants did not seek to extend the hours of operation and assured those present that the only music in the premises would be discreet background music.

The Company had invested approximately £1m into refurbishing the Barley Mow, aiming to re-open in November 2016.

Mr Baylis expressed sympathy with the residents regarding parking but confirmed that this was not a matter that the Licensing Sub-Committee could consider, noting that a parking plan had been accepted by the Planning Committee when they were granted planning permission. Whilst the applicants could encourage patrons to be considerate it was not something they could enforce.

Mr Baylis reviewed all the suggested conditions set out in the addendum which can be summarised as, subject to the decision of the Sub-Committee, accepting points 1 (as a given), 2 – 4 inappropriate as not applied for, 5/6 agreed, 7 difficult to enforce but area would be clear, 8 could request but not force patrons to comply, 9 agreed, 10 unenforceable, 11 and 12 accepted, 13 and 14 not accepted as too restrictive, 15 and 16 agreed, 17 and 18 unlawful as parking not a licensing consideration, 19 agreed, 20 – 22 for the Committee to decide, 23 not accepted and 24 agreed. However, Mr Baylis cautioned that any conditions put on the licence, if granted, had to be both appropriate and proportionate. In the absence of any representations from responsible authorities or evidence Mr Baylis invited the Council's Solicitor to guide the Sub-Committee as to which conditions it would be appropriate to include.

During his submission, Mr Baylis announced that the applicant wished to withdraw the application for Late Night Refreshment that was included in the original application and that the front and rear of the premises would be cleared by 22:30. These concessions were accepted.

Mr Mayhew was then invited to ask questions prior to his formal submission on behalf of those making representations.

Mr Mayhew queried Mr Baylis' assertion that the applicants were not responsible for activities such as smoking in the garden for example, because the plan showed the outside areas to be within the area for licensable activity. There followed some discussion about the plan that had been submitted with the application and where on and off sales could take place and what conditions could be applied thereto and what the actual area covered by the premises licence included.

Mr Smith confirmed that it was not uncommon for the grounds outside to be licenced as it provided more flexibility to Premises Licence Holder. However, Mr Baylis maintained that the building alone was the premises licence as no licensable activity would be taking place in the garden, thus no conditions relating to it were necessary.

Mr Baylis amended the plan in a handwritten submission to clarify that licensable activity would only take place within the building itself. However, the perimeter of the premises included the garden to the rear of the premises and the outside area in front of the premises. The amended plan was accepted by the Sub-Committee although the residents wished to record their concern that the outside of the premises was not covered by the premises licence in respect of licensable activity.

Mr Mayhew was invited to make his formal submission to the meeting.

Mr Mayhew was content with the concessions offered in response to some of the suggested conditions. The basis of the residents' concerns was the extension of the business from being a small local pub with a relatively modest foot fall to a much larger operation of up to 100 covers which might attract many more customers and travelling by car. Mr Van Zijl briefly corrected that the maximum number of covers was 80.

Mr Mayhew stressed that they had no fundamental objection to the company as they welcomed a high quality business which would also add to the visual amenity of the area. However, there appeared to be a lack of consideration to the residents as the premises was surrounded by residential properties, 8 of which were physically adjoining the Barley Mow and its garden. Residents were concerned about the potential for noise nuisance and commented that as the previous review had been regarding noise from a small play area in the pub's garden the issue this time with a number of customers drinking in the garden was likely to be more significant. Residents were still concerned about where cars would be parking, including staff cars and considered that a request for a traffic management plan was not unreasonable. Residents also wanted the hours of

operation to be re-considered, including on New Year's Eve, referring to a desire for 'normal pub hours' i.e. closing at 23:00 hours; it was thought that the facility to apply for a Temporary Event Notice was sufficient.

Mr Smith confirmed that since 2005 the concept of 'normal pub hours' did not exist anymore with many premises applying for variations to hours and extended hours.

Mr Mayhew referred to the de-regulation of live and amplified music, hence the need to place a condition concerning this on the licence to prevent noise nuisance. Mr Baylis again confirmed that there would be no live or amplified music and none 'blaring' out into the garden as there would also be no speakers outside.

Mr Mayhew expressed disappointment that no comments had been received from the other responsible authorities. However, the Sub-Committee felt that the lack of concern from those parties made it difficult to justify agreeing to all of the suggested conditions.

Members were reminded that each application had to be considered on a case by case basis and that the financial viability of the business was not within the remit of the Sub-Committee to take into consideration.

Mrs Cochrane addressed the meeting briefly to re-iterate the concerns raised in her husband's representation regarding noise, parking and litter.

The Chairman clarified that the Sub-Committee's remit was only to address the licensing objectives and whether the applicant could comply with licensing requirements or if some restrictions were deemed necessary having taken the objectors' views into account.

Mr Van Zijl was keen for the premises in its new form to be accepted by the residents and wanted to ensure that the Barley Mow made a positive contribution to life in Englefield Green.

With regard to promoting the four licensing objectives Mr Baylis directed the Sub-Committee to the relevant pages of the application, which were duly noted. Mr Smith added that in relation to protection of children from harm it was now a mandatory condition that a Premises Licence Holder had an age verification policy to prevent the sale or supply of alcohol to children.

All parties were invited to make a closing submission. In doing so Mr Mayhew re-stated his concern about the hours and the ambit of the licence and Mr Baylis stressed the need for flexibility with hours and that excessive and aspirational conditions placed on a licence in the absence of evidence would be open to legal challenge. He added that he was unaware of any of the White Brasserie's premises ever being subject to a review and that where minor issues had arisen they had been swiftly and successfully resolved.

Mr Van Zijl confirmed that he was more than happy to meet regularly with residents if they had any concerns and encouraged them to come to the Barley Mow when it re-opened, subject to their licence being granted. There was a genuine desire not to bring any problems to Englefield Green but to enhance the area with a top quality and mainly dining focussed establishment.

The Chairman confirmed with all the parties that they had nothing further to add as a formal closing submission.

Those present were advised that they were welcome to wait to hear the decision of the meeting and that a decision notice would be issued within 5 working days of the hearing.

The meeting adjourned at 12.10 pm with the press and public being duly excluded and re-convened with those making representations re-admitted at 12.54 pm.

The Sub-Committee confirmed that the licence would be granted and for the hours as applied for but with some additional conditions attached to the licence as set out in the resolution below.

Although Mr Baylis had accepted a number of conditions on behalf of the applicant, the Sub-Committee agreed that it was inappropriate to include some of them and these had been excluded. The Chairman confirmed that if problems arose the residents would be in a position to ask for the licence to be reviewed. The right of appeal to the Magistrates Court within 21 days of the notification of the decision was noted.

After consideration of the application, the representations made and hearing the evidence as presented at the meeting it was:

RESOLVED that –

the application for a premises licence submitted by The White Brasserie Company in respect of The Barley Mow in Englefield Green and according to the updated plan as accepted at the meeting, noting the withdrawal of the application for Late Night Refreshment, be granted for the hours as applied for and with the following additional conditions: as outlined in the addendum-

- 1. The existing premises licence will be surrendered**
- 2. No amplified music shall be played in the areas external to the premises at any time**
- 3. No speakers shall be placed in the areas external to the premises at any time**
- 4. When amplified music (excepting background Music) is played inside the premises, all doors and windows will remain closed except for egress/ingress**
- 5 & 6. All external areas to be clear of patrons and persons (excluding staff) after 22:30 hours each day excepting those persons using the external area to the front of the premises to smoke**
- 8. Appropriate signs shall be displayed requiring patrons who smoke after 22:30 hours to do so only in the designated external area to the front of the premises**
- 9. A sign shall be displayed at each exit used by the public, as well as on the boundary of the premises to the front of the property, requesting patrons to leave quietly**
- 12. A contact number for the manager on duty and the Designated Premises Supervisor (DPS) shall be provided to any local residents who request it. When those contact numbers or personnel change, updated contact numbers for the Duty Manager and DPS shall be provided to those residents who have requested them, as soon as is practicable**
- 19. The DPS and/or a nominated senior representative of the Premises Licence Holder shall, where invited, attend meetings with the local residents and/or associations(s) on up to 4 occasions in any one calendar year. These meetings should concern themselves with any issues concerning the operation of the premises**
- 24. A Challenge 25 policy will be enforced, where any person reasonably looking under the age of 25 shall be asked to prove their age when attempting to purchase alcohol; signs to this effect will be displayed at the premises. The only acceptable forms of identity will be those photographic identification documents recognised in the Home Office guidance; including passports, photo-card driving licence or proof of age card bearing a PASS hologram.**

(The meeting finished at 12.59 pm)

Chairman