

LICENSING SUB-COMMITTEE**FRIDAY 19 JUNE 2009****Present: Councillor Tompsett (Chairman), Councillors Mrs Cobbold and Crawford****APPLICATION TO VARY A PREMISES' LICENCE – THE OAK, 33 HIGH STREET, RUSTHALL**

LSC01/09 The Licensing Sub-Committee proceeded to hear the case following the adopted procedure rules. The application was summarised by the Licensing Officer, who advised that 42 written representations had been received from interested parties expressing concern regarding the application to vary the premises' licence, whilst 29 written representations had been received from interested parties supporting the application.

A representation had been received from Planning Services, which objected to the application because the proposed extended hours would be likely to create additional noise and other disturbance, causing significant harm to the living conditions of the occupiers of the private residential uses in close proximity to the premises and all routes away from the premises.

The Environmental Protection Team had submitted an objection to the application for a variation to the licence because of concerns regarding the potential for noise disturbance to local residents. However, further to agreement with the applicant to the following amendments to the times and the addition of several conditions being made to the licence, this objection had now been withdrawn:

Sale or Supply of Alcohol:

Monday to Thursday inclusive 10:00 - 23.30
Friday and Saturday 10:00 – 00:00
Sunday 10:00 – 22:30

Opening Hours:

Monday to Thursday inclusive 07:00 – 00:00
Friday and Saturday 07:00 – 00:30
Sunday 10:00 – 23:00

Provision for making music:

Friday and Saturday 19:00 – 23:00
Sunday 12:00 – 22:00

Conditions:

1. Staff shall be adequately trained and instructed on noise control to prevent incidents of noise nuisance.
2. Regulated events including any type of live or amplified music shall be limited to one per calendar week with the exception of seasonal variations.
3. Live or amplified events shall finish no later than 23.00 hours with the exception of seasonal variations.
4. Due Diligence Log will be completed whenever regulated entertainment takes place.
5. During regulated entertainment there will be a minimum of one noise patrol every 30 minutes with observations and actions noted in the due diligence log. These shall be made available to authorised officers of the Local Authority upon request.
6. Music shall be inaudible at the façade of the nearest noise sensitive premises.

7. A notice shall be displayed at doors to the garden and at all exits asking that customers respect local residents at all times when using the garden and leaving the premises.
8. Ensure that all doors and windows remain closed during regulated entertainment.
9. Garden to close at 22:00 hours for drinking purposes.
10. Garden to remain open only for the purpose of smoking until the following times:
 - Monday to Thursday – 23:00
 - Friday & Saturday – 23:30
 - Sunday 22:00No drinks shall be taken outside after this time and staff shall monitor customers outside to ensure that disturbance to residents is minimised.
11. Customers not complying with reasonable requests of staff in respect of noise nuisance or swearing will be barred from using the premises.
12. Staff to request customers leaving at close of premises to respect residents and leave the pub and area quietly. Staff to pro-actively monitor and ensure that they do so.

The Barrister representing the applicants, Mr Foster, was then invited to address the Sub-Committee. He advised that Mr and Mrs Tarling had been operating the premises for the last 16 months as a family pub, with their daughter appointed as the Designated Premises Supervisor, and had made vast improvements to the Oak Public House. He claimed that the premises were now well managed, with a respectable clientele who were well behaved. Mr Foster stated that the applicants had applied for the extended hours to allow them the flexibility to remain open if necessary. He explained that the existing earlier closing time was sometimes restrictive and was affecting the customers' enjoyment, many of whom had expressed a desire for the premises to open later (i.e on darts evenings). In addition, Mr Foster claimed that the later hours would allow for incremental dispersal.

Mr Foster maintained that the application had been amended significantly due to discussions with the Environmental Protection Team and was now entirely reasonable and proportionate. He considered that the increase in hours was relatively minor and the conditions stringent.

The Sub-Committee was informed that those who had written in supporting the application actually lived nearest to the premises. Mr Foster explained that a meeting with the residents had been organised to discuss any concerns, however no residents had attended. It was noted that discussions had subsequently taken place with the Environmental Protection Team and Mr Foster advised that the applicants had been very accommodating by reducing the hours requested and agreeing to a number of conditions. In addition, he added that the applicants had adopted a noise management plan and had blocked up a ventilation duct to reduce the noise even further. It was noted that the premises operated a 'one strike' rule, banning patrons if they did not behave.

In response to a question regarding measures put in place by the applicants to reduce noise emanating from the premises, Mr Foster advised that installing double glazing to the premises was not necessary as all live and amplified music would cease at 23.00 hours and would be limited to one per calendar week, with the exception of seasonal variations. In addition, conditions agreed by the Environmental Protection Team would ensure that music would be inaudible at the façade of the nearest noise sensitive premises, and all doors and windows shut during regulated entertainment.

Mr Tarling advised the Sub-Committee that some of the music speakers had now been disconnected in the premises and the curtains replaced with a thicker material, which had enhanced the sound proofing. He also stated that he was contemplating implementing a 'no entry' on the side door which fronted Edward Street.

A comment was made regarding the late notice given of the residents' meeting with the applicants. Mr Tarling explained that it was the only day of the week available, however he had put his contact number on the leaflet sent to residents and invited anyone to contact him with any concerns. The leaflet had been circulated to the streets surrounding the premises.

One of the interested parties who had objected to the application expressed concern at the earlier opening time requested by the applicants. However, she was advised that the Sub-Committee could not regulate this as no licensable activity was taking place at that time.

Another interested party asked the applicants to address the issue of their patrons congregating on the steps outside the premises, smoking and drinking, which could intimidate passers-by.

Mr Tarling gave assurance that no patrons were allowed to congregate outside the entrance on to Edward Street, and he maintained that the steps fronting the High Street were only used by a few customers, who did not obstruct the pathway.

The Sub-Committee Members questioned the applicants on a variety of issues. In response Mr Foster stated that the applicants had requested the extra hours to enable them to cater for a range of customers. It was considered that a temporary event notice would be too restrictive and the applicants wanted more flexibility. Reference was made to an incident involving fighting outside the premises and Mr Tarling explained that those involved in the fight had come from Rusthall Working Men's Club.

In response to a question asked about the ventilation duct being blocked up to prevent noise nuisance, Mr Tarling reassured the Sub-Committee that there was still sufficient ventilation for his customers' comfort and powerful fans were also situated around the premises.

Mr Walker, an interested party who had made a representation, was then invited to address the Sub-Committee. He agreed that the management of the premises had improved since the current owners had taken over. However, he claimed that there had been several incidents of crime and disorder involving the police being called. He also challenged the comment made by Mr Foster that the residents nearest the premises had not objected to the application. Mr Walker advised that the area was densely populated and noise emanating from the premises was a nuisance. He considered that if patrons were allowed to drink for longer, then they would get noisier and become more of a nuisance. In addition, the longer hours could attract customers from other licensed premises that closed at an earlier time. He also objected to the disturbance caused by live and recorded music on a Sunday.

The Sub-Committee was informed of the problems associated with patrons congregating on the steps outside the premises, fronting the High Street. Mr Walker expressed concern at the noise generated by patrons gathering on these steps late at night, smoking and drinking.

Mr Walker was also concerned that the current landlords could move on and any new landlords might not be as responsible in their management of the premises. He was advised that other mechanisms were in place should this occur and the licence could be called in for review at any time.

Mrs Blackburn, an interested party who had made a representation on behalf of the Rusthall Residents' Association, welcomed the conditions and the revised opening hours that had been agreed with the Environmental Protection Team.

However, she emphasised that it was a village location, that was densely populated, and residents should be able to enjoy peace and quiet. She added that the High Street was already badly congested with vehicles and the later opening hours requested would increase the problem.

Mrs Blackburn stated that there had been an incident involving the police since Mr and Mrs Tarling took over the running of the premises and she questioned why patrons congregated on the outside steps to smoke and drink when there was a garden to the rear of the premises.

In response to Mrs Blackburn's comment regarding the incident involving the police, Miss Tarling explained that a Community Officer had been called to a domestic situation that had taken place further along the road and had no connection with the premises.

Mr Foster explained that patrons had to go outside to the steps at the entrance fronting the High Street if they wanted to smoke when the garden had closed. He reassured the Sub-Committee that they did not block the pavement. After consulting with Mr Tarling, Mr Foster agreed that no music would be played on a Sunday, which would alleviate one of Mr Walker's concerns.

The Chairman invited the supporters of the application to address the meeting. Mrs Schiele advised the Sub-Committee that she had lived opposite The Oak Public House for 30 years and she explained the improvements Mr and Mrs Tarling had made to the premises due to their effective and responsible management. She stated that sufficient measures had been made to ensure that noise from the premises could not be heard outside and disturb residents.

Mrs Higgs, an interested party who had made a written representation in favour of the application, supported the comments made by Mrs Schiele and suggested that any noise heard could be coming from a neighbouring property and not The Oak Public House.

Miss Tarling stated that the premises were often wrongly accused of incidents that occurred in other locations, such as the Rusthall Working Men's Club.

The Assistant Planning Officer presented his case to the Sub-Committee. He recognised that the amended hours and conditions agreed with the Environmental Protection Team would reduce the problems associated with noise nuisance later at night; however he maintained that the amended proposal would still have an adverse impact on the residents and his comments within his report included in the agenda remained unchanged.

All parties were invited to give final statements to the Sub-Committee.

RESOLVED – That the application to vary a premises' licence in respect of the Oak Public House, 33 High Street, Rusthall be determined as shown at Appendix 1 attached.

APPLICATION TO VARY A PREMISES' LICENCE – THE FARMERS' MARKET, CIVIC WAY, TUNBRIDGE WELLS

LSC02/09 The Licensing Sub-Committee proceeded to hear the case following the adopted procedure rules. The application was summarised by the Licensing Officer.

The applicant was not present to give evidence, however consideration was given to the paperwork, which provided the Sub-Committee with details of the application and what actions the applicant intended to take in order to promote the four licensing objectives. Although there were no objections received, the matter was brought to the Licensing Sub-Committee for determination, as the Council owned the premises.

RESOLVED – That the application to vary a premises' licence in respect of the Farmers' Market, Civic Way, Tunbridge Wells be determined as shown at Appendix 2 attached.

Also in Attendance:

Licensing Officer:

Trevor Richardson

Assistant Planning Officer:

Sam Finnis

Legal Adviser:

Samantha Clarke

Committee Clerk:

Wendy Newton-May

Applicants:

Vince and Karen Tarling

Stephen Foster (Barrister representing the applicants)

Designated Premises Supervisor:

Jessica Tarling

Supporters for the application:

Yvonne Schiele

Christobell Higgs

Objectors to the application:

Michael Fallon

Cherry Fallon

Jennifer Blackburn (Rusthall Village Association)

Charles Walker

Observer:

Councillor Edwards

**LICENSING SUB-COMMITTEE
FRIDAY 19 JUNE 2009**

**APPLICATION TO VARY A PREMISES' LICENCE
THE OAK, 33 HIGH STREET, RUSTHALL**

LICENSING SUB-COMMITTEE DECISION REASONINGS

**NAME AND ADDRESS
OF PREMISES:**

The Oak Public House, 33 High Street, Rusthall

**NAME OF PREMISES
LICENCE HOLDER:**

Greene King Brewing and Retailing Ltd

**REASON FOR
HEARING:**

Written representations against the application had been received from interested parties, Planning Services and the Environmental Protection Team.

It was noted at the meeting that Environmental Protection Team had withdrawn their objections as several conditions and amendments to the variation applied for had been agreed with the applicant, as follows:

Sale or Supply of Alcohol:

Monday to Thursday inclusive 10:00 - 23.30
Friday and Saturday 10:00 – 00:00
Sunday 10:00 – 22:30

Opening Hours:

Monday to Thursday inclusive 07:00 – 00:00
Friday and Saturday 07:00 – 00:30
Sunday 10:00 – 23:00

Provision for making music:

Friday and Saturday 19:00 – 23:00
Sunday 12:00 – 22:00

Conditions:

1. Staff shall be adequately trained and instructed on noise control to prevent incidents of noise nuisance.
2. Regulated events including any type of live or amplified music shall be limited to one per calendar week with the exception of seasonal variations.
3. Live or amplified events shall finish no later than 23.00 hours with the exception of seasonal variations.

4. Due Diligence Log will be completed whenever regulated entertainment takes place.
 5. During regulated entertainment there will be a minimum of one noise patrol every 30 minutes with observations and actions noted in the due diligence log. These shall be made available to authorised officers of the Local Authority upon request.
 6. Music shall be inaudible at the façade of the nearest noise sensitive premises.
 7. A notice shall be displayed at doors to the garden and at all exits asking that customers respect local residents at all times when using the garden and leaving the premises.
 8. Ensure that all doors and windows remain closed during regulated entertainment.
 9. Garden to close at 22:00 hours for drinking purposes.
 10. Garden to remain open only for the purpose of smoking until the following times:
 - Monday to Thursday – 23:00
 - Friday & Saturday – 23:30
 - Sunday 22:00
- No drinks shall be taken outside after this time and staff shall monitor customers outside to ensure that disturbance to residents is minimised.
11. Customers not complying with reasonable requests of staff in respect of noise nuisance or swearing will be barred from using the premises.
 12. Staff to request customers leaving at close of premises to respect residents and leave the pub and area quietly. Staff to pro-actively monitor and ensure that they do so.

DELIBERATION:

The four licensing objectives were considered by the Sub-Committee:

1. Prevention of Crime and Disorder

The Sub-Committee considered the concerns of the interested parties that had been made regarding this objective, although it was noted that there was no evidence that the incidents referred to could be associated with the premises. It was noted that the applicant had indicated on the application form that they would have strong management controls in place and ensure effective training for all staff to ensure no under age drinking, no drunkenness on premises or in public, no use of drugs and no violent and antisocial behaviour.

Further, it was noted that the premises operated a 'one strike and you're out' policy. In effect this was a zero tolerance policy with regard to patrons that were considered undesirable/trouble makers and likely to cause public nuisance and crime and disorder.

It was also noted that the police had not made a representation in this regard.

The Sub-Committee was mindful that it could not condition for what might happen in relation to the crime and disorder objective or consider speculative statements made by the interested parties, but must focus on the facts and evidence provided.

2. Public Safety

Representations had been received regarding this objective, predominantly relating to the steep flights of steps from the premises where customers congregated to drink and smoke, stating that this was not a safe environment for this purpose and could result in an accident.

The Sub-Committee was mindful of this when considering possible conditions to be applied to the licence over and above what had been agreed.

3. The Prevention of Public Nuisance

The Sub-Committee considered the concerns of the interested parties that had been made in writing and at the meeting regarding noise and disturbance late at night.

The Sub-Committee also took account of the intentions of the applicant in his application form to ensure that this objective was promoted, i.e keeping capacity levels to 100, training of staff, adopting best practice guides and codes of practice, use of proof of age schemes, provision of litter bins and security measures.

In addition, the Sub-Committee considered that the reduced opening hours and conditions agreed with the applicant and Environmental Protection would address many of the residents' concerns in this regard.

The only area which the Sub-Committee considered had not been sufficiently addressed by the conditions agreed with Environmental Health were problems associated with the steps fronting the High Street. Namely, the congregation of people drinking and smoking, thereby generating noise and possible intimidation to residents and passers by, as indicated in their representations.

It was further noted that the licensee indicated that he was happy to agree that no live or amplified music would take place on a Sunday. This would further address concerns raised by interested parties.

4. Prevention of Harm to Children

One representation had been received regarding this objective, which expressed concern that the patrons who smoked and drank on the steps fronting the High Street were in full view of the public, including children. In addition it was suggested that, in some cases, customers' children were left outside sitting on the steps.

The Sub-Committee considered that this concern was not address by any of the agreed conditions.

The Sub-Committee noted that several representations had been made regarding parking outside the premises and other highway issues, however this was not a matter for the Sub-Committee to consider.

A concern had also been expressed regarding the possibility of a change in the premises management in the future. However the Sub-Committee was mindful that any future concerns could be addressed by way of a review of the premises' licence.

DECISION MADE:

As per notice on page 11.

Additional notes made by the Sub-Committee to those present at the hearing -

- Interested Parties and Responsible Authorities were reminded that they may apply for a review of this licence "after a reasonable interval" pursuant to section 51 of the Licensing Act 2003.
- Entitlements to appeal for parties aggrieved by the decisions of the Licensing Authority are set out in Schedule 5 to the 2003 Act.
- In the case of a Premised Licence, an appeal has to be commenced by the giving of a notice of appeal by the appellant to the justices' chief executive for the magistrates' court within a period of 21 days beginning on the day on which the appellant was notified by the licensing authority of the decision to be appealed against.

DECISION NOTICE

DECISION MADE:

The variation to the premises' licence be granted further to the amendments and conditions agreed with the Environmental Health Team:

Sale or Supply of Alcohol:

Monday to Thursday inclusive 10:00 - 23.30
 Friday and Saturday 10:00 – 00:00
 Sunday 10:00 – 22:30

Opening Hours:

Monday to Thursday inclusive 07:00 – 00:00
 Friday and Saturday 07:00 – 00:30
 Sunday 10:00 – 23:00

Provision for making music:

Friday and Saturday 19:00 – 23:00
 Sunday 12:00 – 22:00

Conditions:

1. Staff shall be adequately trained and instructed on noise control to prevent incidents of noise nuisance.
2. Regulated events including any type of live or amplified music shall be limited to one per calendar week with the exception of seasonal variations.
3. Live or amplified events shall finish no later than 23.00 hours with the exception of seasonal variations.
4. Due Diligence Log will be completed whenever regulated entertainment takes place.
5. During regulated entertainment there will be a minimum of one noise patrol every 30 minutes with observations and actions noted in the due diligence log. These shall be made available to authorised officers of the Local Authority upon request.
6. Music shall be inaudible at the façade of the nearest noise sensitive premises.
7. A notice shall be displayed at doors to the garden and at all exits asking that customers respect local residents at all times when using the garden and leaving the premises.
8. Ensure that all doors and windows remain closed during regulated entertainment.
9. Garden to close at 22:00 hours for drinking purposes.
10. Garden to remain open only for the purpose of smoking until the following times:
 - Monday to Thursday – 23:00
 - Friday & Saturday – 23:30
 - Sunday 22:00

No drinks shall be taken outside after this time and staff shall monitor customers outside to ensure that disturbance to residents is minimised.

11. Customers not complying with reasonable requests of staff in respect of noise nuisance or swearing will be barred from using the premises.

12. Staff to request customers leaving at close of premises to respect residents and leave the pub and area quietly. Staff to pro-actively monitor and ensure that they do so.

and further to the imposition of two additional conditions imposed by the Licensing Sub-Committee and agreed with the applicant at the meeting:

13. No drinks to be taken outside of the premises for on-sale consumption, other than in the premises' garden and at the agreed times;

14. No live or amplified music shall take place on a Sunday.

**LICENSING SUB-COMMITTEE
FRIDAY 19 JUNE 2009**

**APPLICATION TO VARY A PREMISES' LICENCE
FARMERS' MARKET, CIVIC WAY, TUNBRIDGE WELLS**

LICENSING SUB-COMMITTEE DECISION

**NAME AND ADDRESS
OF PREMISES:**

Farmers' Market, Civic Way, Tunbridge Wells

**NAME OF PREMISES
LICENCE HOLDER:**

Barbara Simmons, Farmers' Market Manager

**REASON FOR
HEARING:**

No objections had been received for this application, however it was considered by the Licensing Sub-Committee because the Council owned the premises.

DELIBERATION:

The Sub-Committee considered the steps that the applicant intended to take to promote the four licensing objectives, which were set out in the application form and were reassured that they were sufficient to ensure a safe environment for the sale and tasting of alcohol and the enjoyment of music, dancing and singing.

DECISION MADE:

The application for the variation of the premises' licence for the Farmers' Market be approved as follows:

Live and Recorded Music, Performance of Dance, Provision for Facilities for Making Music, Provision of Facilities for Dancing, Supply of Alcohol:

Monday to Sunday – 09.00 to 21.00 hours

Additional notes made by the Sub-Committee to those present at the hearing -

- Interested Parties and Responsible Authorities were reminded that they may apply for a review of this licence "after a reasonable interval" pursuant to section 51 of the Licensing Act 2003.
- Entitlements to appeal for parties aggrieved by the decisions of the Licensing Authority are set out in Schedule 5 to the 2003 Act.
- In the case of a Premised Licence, an appeal has to be commenced by the giving of a notice of appeal by the appellant to the justices' chief executive for the magistrates' court within a period of 21 days beginning on the day on which the appellant was notified by the licensing authority of the decision to be appealed against.

