

## **Licensing Sub-Committee**

Minutes of a Meeting of the Licensing Sub-Committee held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **5<sup>th</sup> September 2011**

### **Present:**

Cllr. Goddard (Chairman);

Cllrs. Chilton, Marriott

### **Also Present:**

Cllrs. Hodgkinson, Shorter.

Licensing Manager, Environmental Control Officer, Environmental Control Officer, Environmental Health Manager (Environmental Protection), Legal Advisor, Member Services & Scrutiny Support Officer.

Mr J Craig OBE – Applicant.

Mr J Phillips – Applicant's Representative.

Mr R Phillips – Licence Holder.

Mr S Thomas – Licence Holder's Representative.

Mr G Beach – Designated Premises Supervisor.

Mr S Rivington, Dr J Shaw – Interested Parties.

## **122 Election of Chairman**

### **Resolved:**

**That Councillor Goddard be elected as Chairman for this Meeting of the Licensing Sub-Committee.**

## **123 Minutes**

### **Resolved:**

**That the Minutes of the Meeting of this Sub-Committee held on the 6<sup>th</sup> June 2011 be approved and confirmed as a correct record.**

## **124 Richard Phillips Restaurant at Chapel Down, Chapel Down Vineyard, Smallhythe Road, Smallhythe, Tenterden, Kent, TN30 7NG – Review of the Premises Licence**

The Chairman opened the meeting and welcomed all those present. Members confirmed that they had read the papers relating to the application. The Chairman explained the procedure to be followed at the meeting.

The Licensing Manager then gave a brief summary of his report. The premises were situated just off Smallhythe Road in a small hamlet, in an area of Outstanding Natural Beauty, within the Chapel Down Winery. There were two premises licences in existence for the Winery. English Wines Group Plc had a licence for the ground floor of the building (the Winery) and the outside area. This licence had not been reviewed and was not up for consideration.

Kentish Dining Rooms Ltd had a premises licence for the first floor of the building (the restaurant) and the outside area. It was this premises licence for Richard Phillips Restaurant that was being reviewed and specifically it was events held outside the building in a marquee which had given rise to the review. The premises licence for the Richard Phillips Restaurant was applied for in April 2008. Following no representations from interested parties or responsible authorities, the premises licence was granted on 16<sup>th</sup> May 2008.

The premises licence, as contained in Appendix H of the Report, permitted the following activities:

<b>Alcohol Sales (on and off the premises)</b>		<b>Regulated Entertainment (indoors and outdoors)</b>		<b>Late Night Refreshment (indoors and outdoors)</b>	
Sun	08:00 - 02:00	Sun	08:00 - 01:00	Sun	23:00 - 02:00
Mon	08:00 - 02:00	Mon	08:00 - 01:00	Mon	23:00 - 02:00
Tues	08:00 - 02:00	Tues	08:00 - 01:00	Tues	23:00 - 02:00
Wed	08:00 - 02:00	Wed	08:00 - 01:00	Wed	23:00 - 02:00
Thurs	08:00 - 02:00	Thurs	08:00 - 01:00	Thurs	23:00 - 02:00
Fri	08:00 - 02:00	Fri	08:00 - 01:00	Fri	23:00 - 02:00
Sat	08:00 - 02:00	Sat	08:00 - 01:00	Sat	23:00 - 02:00

There was an extension until 02:00 on New Year's Eve for regulated entertainment (music, dancing, etc) and no live or recorded music was permitted outside after midnight.

Complaints of loud music were initially received by the Licensing Authority in October 2010, when it was stated by a neighbour of the premises that weddings had started in 2008, but they were generally 'low key' events with music played at low level and finishing in the afternoon. However in 2010 it was felt that the events had been weekly, generally with very loud music and with the volume turned up at 23.00. The complainant stated he had not been notified of events and the music was audible inside his property. When asked why he had not alerted the Council earlier he stated that he was now concerned as it was so frequent/loud.

The application for a review of the premises licence held by Kentish Dining Rooms Ltd was correctly submitted by Hallett & Co, acting on behalf of Mr Craig, on 15<sup>th</sup> July 2011 and was contained in Appendix A of the Report. Mr Craig had provided the following information in support of the application:

- The application for a review of the premises licence was based upon the need to resolve ongoing problems associated with excessive noise emitted from events held in a marquee.
- The problems arose in the summer of 2010 and the noise had affected Mr Craig during the daytime and evening. The noise took the form of amplified music and speech from events held in the marquee, from the people attending the event and from people leaving the event.
- Mr Craig had engaged the services of an acoustic consultant, Matthew Lawrence (MRL Acoustics) and had enclosed both his summary findings and the detailed technical report.
- Mr Craig stated that the licence holders had failed to ensure that live music events were of low level amplification and that staff failed to regularly monitor noise levels at events to prevent public nuisance, despite these being conditions attached to the premises licence. He stated that the level of control over noise generation was evidently inadequate and the conditions of the licence needed considerable modification to ensure the relevant licensing objectives were upheld.
- Mr Craig believed that a marquee without adequate sound proofing and situated in close proximity to residents premises was clearly going to create a public nuisance.

In addition to Mr Craig, 14 other residents from Smallhythe, from 10 houses had submitted representations in support of the application for review, these were contained at Appendix B of the Report. The concerns of the residents living in the vicinity of the premises were that they had experienced noise nuisance from music played at the premises, particularly the bass/low frequency sound, and from the voices of those attending events and some had raised concerns about the noise from people leaving the premises. A map showing the location of the residents that had made representations was included at Appendix C of the Report.

In addition to the residents who had supported the review hearing, the Environmental Control Officer had submitted a representation based upon the prevention of public nuisance licensing objective. Her representation, which was contained at Appendix D to the Report, contained a summary of the Council's Environmental Protection

Team's involvement with the premises, following noise complaints first received in October 2010. Following further complaints received during 2011 and observations by Officers and the apparent failure of the premises licence holders or their staff to resolve the noise issues, the Environmental Protection Team had reviewed the case and a Noise Abatement Notice was issued on 27<sup>th</sup> July 2011, a copy of the Notice was contained at Appendix I of the Report.

A number of additional documents had been sent to all parties following the publication of the agenda papers. The documents were posted on 26<sup>th</sup> August 2011 and 1<sup>st</sup> September 2011, all parties confirmed that they had received the documents. A conciliation meeting was held on Friday 2<sup>nd</sup> September 2011 which had been attended by Mr Craig, Mr R Phillips, Mr G Beach, Mr R Phillip's Business Partners and legal representative. The discussion held at the meeting had been beneficial to all parties and some common ground had been reached. Further discussions had taken place earlier that morning which had further assisted with resolving a number of issues between the Applicant and the Licence Holder.

Mr J Phillips, the Applicant's Representative, apologised to the Sub-Committee for the delay in starting the Hearing. The Licence Holder, Applicant and respective representatives had felt that it would be worthwhile to try to resolve matters prior to the start of the Hearing. He was pleased to say that they had come to an agreement, however whilst both parties were in agreement they were aware that the Sub-Committee would not be bound by this.

Principally the reason for the Review was due to the number of wedding events taking place in the marquee in close proximity to the boundary of Spots House. When events had taken place involving live music the disruption caused had been intolerable. During 2011 there had been 19 wedding events. A Noise Abatement Notice had been served on the premises which resulted in a degree of control over the noise from the events. A recent planning application for the use of the premises had been refused by the Planning Committee and the Development Control Manager had been instructed to take enforcement action to secure the cessation of the use of the land for weddings, functions and events, and to determine the precise requirements and timing of the action to be taken.

A number of draft conditions had been agreed by both parties These conditions were summarised to the Sub-Committee as follows:

#### General Conditions

- No regulated entertainment to take place other than in the first floor of the premises.
- No amplified speech within the marquee.
- Stage canopy around the marquee to remain in place.
- Sound attenuation within the marquee to be maintained.
- Marquee to close at 21:00 on any day.
- Window locks to be in place and closed when regulated entertainment takes place, save for access and egress.

## Wedding Conditions

- Only DJ/recorded music to be permitted using the house PA system, including noise limiter, set at a level to be agreed with the Environmental Control Officer.
- Noise limiter to be set by Environmental Control Officer that cannot be bypassed without permission.
- No regulated entertainment after 23:00
- Restaurant to close at 23:30 with all patrons to leave the premises at this time.
- The access door of the restaurant to be monitored and to be used for access and egress only.
- The noise limiter to be linked to the door, to ensure that if the door was left open for a period of time then the level of the music would be reduced accordingly.
- No intoxicating liquor to be consumed within the grounds, save for the restaurant and patio after 21:00.
- No more than 12 wedding events to take place between 1<sup>st</sup> May and 31<sup>st</sup> August 2012, thereafter no more than 10 wedding events to take place between 1<sup>st</sup> May and 31<sup>st</sup> August in any year, with a further 5 wedding events outside this period in any year.
- No more than two events to take place on three consecutive days.
- Music ancillary to wedding events to be played for a maximum of 1 hour on any day.
- All doors and openings to be closed when the marquee is being used, save for access and egress.
- Events held in outside areas, including the marquee, shall be pre-booked and entrance by ticket or invitation only.
- The Designated Premises Supervisor or his nominated representative will monitor, no less than hourly, the noise levels at locations agreed with the Environmental Control Officer.
- A written record of all monitoring must be made available to the Local Authority upon request.
- Any wedding event where regulated entertainment takes place will have a wind down period where there is a reduction in volume.
- A noise management plan, based upon Mr Saunders report on 5<sup>th</sup> August 2011 and to include car parking arrangements, should be agreed with the Environmental Control Officer and implemented before the first wedding event of 2012.
- The Designated Premises Supervisor shall ensure that clear notices are displayed in the marquee and restaurant requesting patrons to leave quietly, where a DJ is employed he shall make an announcement to this effect.
- There shall be no disposal of bottles or refuse between the hours of 21:00 and 09:00.

Mr J Phillips further advised that the Licence Holder had agreed to make a financial contribution to the Applicant for the expense that he had incurred by applying for a Review of the Premises Licence. Whilst he accepted that the proposed conditions may not meet all of the concerns raised by local residents and the Environmental Control Officer, the Applicant would be content with the outcome should these conditions be imposed by the Sub-Committee.

In response to questions from the Sub-Committee Mr J Phillips advised that the issues surrounding car parking would be dealt with through the noise management plan as there were concerns regarding patrons parking close to the boundary of Spots House and the level of noise created when they left late in the evening. This area would be designated for those patrons who would be leaving their vehicles overnight and so would limit the noise from vehicles in this area. Whilst noise mitigation measures for the staircase (providing access to the first floor restaurant) had been suggested by Mr Saunders, the Applicant was not concerned about this, however Mr S Thomas would address the matter later. He considered that the proposed conditions were both acceptable and reasonable.

The Environmental Control Officer advised the Sub-Committee that she had not become involved until after the 2010 wedding season had taken place. She advised Members that issuing a Noise Abatement Notice was unusual; in fact it was an extreme measure. She had extensively measured noise levels at the premises. A noise limiter could be linked to the restaurant access door however this would depend on the item that was purchased, she confirmed that she would be willing to give advice on this prior to purchase. She also confirmed that she would agree locations for noise testing with the Designated Premises Supervisor. Environmental Protection would continue to periodically monitor the noise levels at the premises in accordance with the Noise Abatement Notice. In respect of the noise management plan the Environmental Control Officer felt that the acoustic damping to the staircase should be included. She requested clarification on the definition of a wedding event for the purpose of the proposed draft conditions.

In response to questions from the Sub-Committee the Environmental Control Officer advised that the situation at Chapel Down could have been handled in a more appropriate manner by the Licence Holder. She had met with the Wedding Organiser prior to the last wedding event held at the premises which resulted in no noise complaints being received.

The Environmental Health Manager (Environmental Protection) further advised that the Noise Abatement Notice applied to the whole of the venue.

Mr S Rivington, an Interested Party, queried why live music could not be played within the restaurant area if a limiter was used. He had experience in this area and was aware of another venue where live bands played and a noise limiter was also used.

The Environmental Health Manager (Environmental Protection) advised that the majority of performers did not like to play live if they were restricted by a noise limiter.

Mr J Phillips felt that the definition of wedding event should include civil partnerships. Whilst they were sympathetic to live musicians the site was a sensitive one and it was felt that recorded music controlled by a limiter would be more appropriate.

Mr S Thomas, the Licence Holder's Representative, felt that paragraph 18 of Mr G Beach's supporting statement summarised the situation that the Licence Holder was in "We all at Chapel Down are concerned about issues that have inadvertently arisen partly due to the fact that we were not able to install everything that we would have liked to have done as quickly as possible. We were placed in the invidious position of letting down people who had an important day booked with us, trying to put in place measures that were the best we could at the time and did feel very thwarted that we could not get the lining installed as quickly as we would have liked."

A number of events that had been held at the premises had not caused any problems, these included cream and steam days, charity events and live bands. It was important to remember that it was only wedding events that had resulted in complaints from neighbours. The herb garden and pagoda provided a romantic setting in which to get married.

There were a number of conditions put forward that related only to wedding events as these were the events that had caused problems relating to noise. The Licence Holder wished to be a good neighbour and so had agreed to a number of compromises to the premises licence. The wedding business was critical to the survival of the restaurant and was supported by Locate in Kent, Visit Kent and the Chief Executive of Chapel Down. The business supported local tourism and employed local people.

Mr S Thomas advised that the events that had taken place on 19<sup>th</sup> and 21<sup>st</sup> August 2011 that had resulted in further complaints regarding noise being put forward were wedding events. The issue surrounding noise had come about due to contractual arrangements between the Bride and Groom and the bands that had been booked for the events. The bands were relocated to the restaurant area however this had still created issues relating to noise. He confirmed that live bands would not be able to be booked for wedding events in the future, this would be made clear to any couples wishing to get married at the premises.

The marquee would cease to be used after 21:00, after this time guests would be escorted to the restaurant area. The Licence Holder was aware that if these issues were not resolved then he would be in breach of the Noise Abatement Notice. Due to a number of commitments the Licence Holder felt that he was unable to spend a significant amount of time at the premises and had taken the decision to bring in a new Designated Premises Supervisor.

In his opinion the definition of wedding event should include civil partnerships, however the renewal of vows was considered to be a private party event. Weddings had taken place at the premises since 2008 however issues relating to noise had not arisen until 2010. Remedial action had been undertaken and the addition of the proposed conditions would meet the public nuisance licensing objective.

Mr S Thomas advised the Sub-Committee that the proposed conditions were agreeable to both the Licence Holder and the Applicant.

In response to questions from the Sub-Committee Mr S Thomas advised that no more than 150 guests would be able to attend a wedding event, this would be monitored by a guest list provided by the Bride and Groom. Whilst there was an opinion that music played during a wedding was ancillary to the event they had wanted to avoid any confusion and so were willing to condition the playing of music during a wedding and limit it to one hour per day. A dedicated mobile telephone would be given to the Designated Premises Supervisor, or in his absence his representative, to ensure that local residents were able to contact the restaurant should any issues arise.

The last wedding held at the premises had been a much quieter affair, and it was fair to say that some of the problems from other events could have been avoided. The proposed noise management plan would identify where patrons could park, the methods of ensuring that patrons were moved from the marquee to the restaurant with limited disturbance and to ensure that patrons left the premises at the close of the event without disturbing local residents.

The Environmental Control Officer felt that noise damping to the staircase leading to the restaurant should be considered as part of the noise management plan. She also felt that the resurfacing of the car park should be considered. Whilst these were areas outside of the Licence Holder's control, she felt that these were longer term measures that could be addressed.

Mr S Thomas advised that whilst the Licence Holder would be prepared to discuss these points with the Landlord they were not within his power to undertake. It was noted however that noise from the staircase had not been an issue for any of the local residents. Once inside the restaurant patrons would not be permitted to go down the staircase unless they were leaving the premises. There would be no consumption of alcohol in the grounds after 21:00.

Dr J Shaw, an Interested Party, addressed the Sub-Committee. She was concerned about the poor management record of events held at the venue. She was also concerned that the wedding venue business was expanding rapidly. She requested clarification of whether the conditions relating to wedding events also applied to stag parties? She felt that only one type of event had been focused upon.

In response to Dr Shaw's question the Licensing Manager replied that the proposals were that no regulated entertainment would be permitted outside the restaurant. This was agreed by Mr S Thomas, with the exception of music ancillary to a wedding ceremony being permitted in the Herb Garden for no longer than 1 hour in any one day, to remove the ambiguity about whether this would constitute regulated entertainment.

All parties agreed to a 45 minute break to enable Mr S Thomas to finalise and print a list of the proposed conditions for the Sub-Committee to consider.



Upon recommencement all parties were handed a copy of the proposed conditions as put forward and agreed by both the Applicant and the Licence Holder.

Mr J Phillips confirmed that the proposed conditions would be in addition to the conditions currently attached to the premises licence.

Dr J Shaw advised that the proposed conditions were comprehensive however it was important to have a good management regime on the site.

Mr R Phillips, the Licence Holder, advised that going forward 'terms and conditions' would be explained fully to prospective Bride and Grooms and these would be set out prior to the confirmation of bookings. All couples that had booked the venue for 2012 had been contacted and advised of the Review. Once a decision had been made individual meetings would be held with couples to explain the implications and if couples felt that they were unable to hold their event at the premises they would get a full refund of their deposit.

The Environmental Control Officer advised that in her opinion the noise management plan would need to be 'signed off' prior to the start of the 2012 wedding season.

In conclusion Mr S Thomas advised that the purpose of a Review was to consider actions that could be taken and to ensure that any actions were necessary and proportionate. He asked that the Sub-Committee imposed the proposed conditions before them as they would safeguard local residents from the problems that had been experienced during 2011. It had been an unpleasant experience for Mr R Phillips and he did not wish to relive or prolong the experience. Mr G Beach, as the new Designated Premises Supervisor, was keen to take the premises forward and ensure that the situation did not reoccur. He invited the Sub-Committee to take the view that the concerns raised by Mr J Craig could be adequately addressed by the proposed conditions.

Mr J Phillips concluded by advising that any conditions imposed by the Sub-Committee should be necessary and proportionate. The Applicant had faced a nightmare that was entirely of the Licence Holders making. He was confident that the proposed conditions would resolve the problems that had occurred during 2011.

The Licensing Manager then summed up the nature of the application and the issues for the Sub-Committee to consider.

The Sub-Committee then retired to make their decision.

On return the Legal Advisor read out the decision.

**Resolved:**

**That the review of the premises licence be granted and the following additional conditions be applied to the licence:**

## **General**

- 1. No regulated entertainment other than in the first floor restaurant.**
- 2. No amplified speech will take place in the marquee.**
- 3. A stage canopy shall remain installed within the marquee**
- 4. Sound attenuating lining currently installed in the marquee to be maintained and kept in place;**
- 5. The Marquee to close by 21.00 hours on any given day**
- 6. Window locks to remain fitted to all windows in the restaurant which shall remain closed whenever regulated entertainment is taking place.**

**In respect of weddings (which shall be defined to include the traditional bride and groom wedding and also civil partnership celebrations) to be held at the premises:**

- 1. Only DJ based entertainment and/or recorded music will be permitted in the restaurant for weddings, using a house PA system, including a noise limiter. Dance floor levels to be agreed with the Local Authority following measurements of the “transfer function” to Spots House.**
- 2. The Noise Limiter shall be set at a level agreed with the Council Environmental Health Officer (EHO) and shall not thereafter be capable of being altered or bypassed without his/her agreement**
- 3. There will be no regulated entertainment in the restaurant after 23.00 hours**
- 4. The Restaurant will close by 23.30 and customers required to leave by that time.**
- 5. The access door to the restaurant to be monitored at all times during music events so that the door to the restaurant remains closed save for access and egress.**
- 6. The premises licence holder will fit a noise limiter that links to the opening of the door.**
- 7. Save for the restaurant, no intoxicating liquor to be consumed within the grounds of the premises after 21.00 hours.**
- 8. No more than 12 wedding events to be held between 1st May and 31st August 2012 Thereafter no more than 10 wedding events will be held between these dates in any given year and outside that period there will be no more than 5 weddings.**

9. In relation to the preceding condition, there shall be no more than 2 such events in 3 consecutive days.
10. Only music ancillary to a wedding ceremony can be played in the Herb Garden and in any event for no longer than 1 hour in any one day.
11. Whenever the marquee is in use all doors, windows and panels to the marquee to remain closed except for access and egress to the marquee.
12. All events in outside areas which shall include any marquee or similar structure shall be pre booked with entrance being permitted to organisers, their bona fide guests and ticket or invitation holders only.
13. The DPS or his nominated representative shall check periodically (no less than hourly) that noise levels are acceptable at locations and levels agreed with the EHO, all such measurements to be taken within the boundary of the Chapel Down site. A written record shall be kept of all such monitoring and made available to the licensing authority upon request.
14. During any regulated entertainment there will be a wind down period of at least 30 minutes when the music played is reduced in volume so as to be discernibly quieter.
15. The Noise management plan regarding guests departing as set out in Mr Saunders' report of 5th August 2011 be implemented by the week commencing 16<sup>th</sup> April 2012 also to include proposals to minimise any disturbance relating to parking with the agreement of the EHO such agreement not to be unreasonably withheld.
16. The DPS shall ensure prominent and clear display of notices at all exits in the marquee and restaurant requesting customers leave quietly – and where a DJ is employed he will be requested to remind patrons of this.
17. There will be no disposal of bottles and/or rubbish between 21.00 hours and 09.00 the following morning.
18. The Licence Holder will negotiate with the Landlord the implementation of noise attenuation measures as agreed with the EHO to the external steps and landing to the restaurant and implement those measures within two months of receiving permission.

**The Licensing Manager be given delegated authority to make minor amendments to the wording of the conditions as necessary.**

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