



Licensing Sub-Committee

Notice of a Meeting to be held in the Council Chamber, Civic Centre, Tannery Lane,
Ashford, Kent TN23 1PL on Thursday 22nd October 2015 at 10.00am*

*Please note start time

The Members of this Sub-Committee are:-

Cllrs. Bennett, Bradford, Mrs Webb
Reserve Cllr. Pickering

Agenda

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Nos. |
|---|----------------------|
| 1. Election of Chairman | |
| 2. Apologies/Substitutes – To receive Notification of Substitutes in accordance with Procedure Rule 1.2(iii) and Appendix 4 | |
| 3. Declarations of Interest:- To declare any interests which fall under the following categories, as explained on the attached document:

a) Disclosable Pecuniary Interests (DPI)
b) Other Significant Interests (OSI)
c) Voluntary Announcements of Other Interests

See Agenda Item 3 for further details | i |
| 4. Minutes – To approve the Minutes of the Meetings of this Sub-Committee held on the 16 th September 2015 | 1 – 13 |

Matters for Decision

- | | |
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| 5. The Phoenix, Tufton Street, Ashford, Kent, TN23 1QP –
Application for a Premises Licence. | 15 – 23 |
| (a) Clarification and Determination of Equal Maximum Time to be allocated to each party | |
| (b) To note withdrawal of any representations | |
| (c) The Hearing of the case. | |
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Please refer to the Guidance Notes on the procedure to be followed at this meeting as attached to this Agenda

If you know the applicant/objector(s) and have a possible conflict of interest or have any queries concerning the Agenda please contact Danny Sheppard on 01233 330349

Declarations of Interest (see also “Advice to Members” below)

- (a) **Disclosable Pecuniary Interests (DPI)** under the Localism Act 2011, relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares a DPI in relation to any item will need to leave the meeting for that item (unless a relevant Dispensation has been granted).

- (b) **Other Significant Interests (OSI)** under the Kent Code of Conduct as adopted by the Council on 19 July 2012, relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares an OSI in relation to any item will need to leave the meeting before the debate and vote on that item (unless a relevant Dispensation has been granted). However, prior to leaving, the Member may address the Committee in the same way that a member of the public may do so.

- (c) **Voluntary Announcements of Other Interests** not required to be disclosed under (a) and (b), i.e. announcements made for transparency reasons alone, such as:

- Membership of outside bodies that have made representations on agenda items, or
- Where a Member knows a person involved, but does not have a close association with that person, or
- Where an item would affect the well-being of a Member, relative, close associate, employer, etc. but not his/her financial position.

[Note: an effect on the financial position of a Member, relative, close associate, employer, etc; OR an application made by a Member, relative, close associate, employer, etc, would both probably constitute either an OSI or in some cases a DPI].

Advice to Members on Declarations of Interest:

- (a) Government Guidance on DPI is available in DCLG’s Guide for Councillors, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/240134/Openness_and_transparency_on_personal_interests.pdf
- (b) The Kent Code of Conduct was adopted by the Full Council on 19 July 2012, with revisions adopted on 17.10.13, and a copy can be found in the Constitution at <http://www.ashford.gov.uk/part-5---codes-and-protocols>
- (c) If any Councillor has any doubt about the existence or nature of any DPI or OSI which he/she may have in any item on this agenda, he/she should seek advice from the Head of Legal and Democratic Services and Monitoring Officer or from other Solicitors in Legal and Democratic Services as early as possible, and in advance of the Meeting.

Licensing Sub-Committee

Minutes of a Meeting of the Licensing Sub-Committee held in Committee Room No.1 (Fougeres Room), Civic Centre, Tannery Lane, Ashford on the **16th September 2015**.

Present:

Cllr. Shorter (Chairman);

Cllrs. Bradford, Sims.

Apology:

Cllr. Miss Martin.

Also Present:

Interim Licensing Manager, Health, Parking & Community Safety Manager, Licensing Officer, Principal Legal Assistant, Senior Member Services & Scrutiny Support Officer.

PC Alastair Pringle, Sgt Gary Brimson – Applicant's Representatives.

Mr A Daly – Licence Holder, Mr N Baldock – Licence Holder's Representative.

Mr P Fellowes, Mr S Shannon – Interested Parties.

132 Election of Chairman

Resolved:

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

133 Declarations of Interest

Councillor	Interest	Minute No.
Shorter	Made a Voluntary Announcement as he knew the owner of the property but he had no association with the operation of the business.	135

134 Minutes

Resolved:

That the Minutes of the Meeting of this Sub-Committee held on the 21st August 2015 be approved and confirmed as a correct record.

135 The Auction House, 7 New Street, Ashford, TN24 8TN – Application for a Summary Review of the Premises Licence

The Chairman opened the meeting and welcomed all those present. The Senior Member Services & Scrutiny Support Officer advised that this meeting was a public meeting and it was intended to hear the whole application in public. However, if during the course of the hearing any items arose that required private or confidential matters to be discussed, it may be necessary to exclude the press and public for that part of the meeting. Members confirmed that they had read the papers relating to the application. The Chairman explained the procedure to be followed at the meeting.

The Interim Licensing Manager then gave a brief summary of her report. The Licensing Authority had received an application for a summary review of the premises licence from the Chief Officer of Police on the 19th August 2015. The Police considered that the premises were associated with serious crime. A meeting of this Sub-Committee took place on the 21st August to consider whether it was necessary to take interim steps pending the review of the licence. At that meeting the following decision was made: -

- All non bottled drinks to be provided in plastic or polycarbonate glasses. Bottled drinks to be decanted into plastic or polycarbonate glasses or provided in plastic bottles. No glass vessels or bottles to be on the bar or in the public area at any time.

At that meeting the Sub-Committee had considered that the interim steps proffered by the Police, namely interim steps 1, 2, 3 and 5 as detailed on the application (Appendix B to the report) were in fact covered by the existing licence but were not currently being adhered to. The Sub-Committee as such felt that to add the same to the licence would be duplication.

The above decision had taken immediate effect. The premises licence holder did not make any representations against the interim steps at that stage and as such they had remained unchanged to date. The application therefore now came forward for review under Section 53C of the Licensing Act 2003 and the Police had since submitted further documentation in support of their application for review of the premises. This included information regarding the historical events that had happened at the premises which could be found at Appendix E to the report – in summary, in addition to the three serious assaults on 15th/16th August 2015 which resulted in the interim review, a further 25 calls (later clarified to be 23) had been made to the Police from 18th January to 1st August 2015. The Police had requested that the interim step made pending the review was added as a condition to the licence and requested that some additional conditions be added to the licence. The Interim Licensing Manager advised that six representations had been made from interested parties in support of The Auction House. She then concluded her report by running through the decision options open to the Sub-Committee.

Sgt Gary Brimson then addressed the Sub-Committee. He advised that there had been a history of disorder at the premises and the Police had previously called for a review of the premises licence in December 2014. At the time the Premises Licence Holder had agreed to amend his conditions following dialogue with the Police and the Licensing Authority and the request for a review had been withdrawn. Since that time there had been a further 23 incidents at the premises and the Police had called for an expedited review of the premises following three serious incidents on the evening of the 15/16th August 2015.

Between 23:30 hours and 01:05 hours, three assaults had occurred at the premises. The first involved a victim standing by the bar in a group of approximately 25 friends and colleagues celebrating, whilst there was another group of 15 males on a stag party. Witnesses described an accidental bumping into each other by the two groups, and that a fight then broke out. During this altercation the victim was punched and then hit over the head with a glass. Door security then intervened and the persons were removed outside. Security described seeing 8 to 10 males fighting and once outside the fight started again and Police were called. The victim received three deep lacerations to his face and had received 20 stitches for his injury. Sgt Brimson said that in his opinion the victim had been lucky not to lose an eye. The CCTV footage had not been available as no one present knew how to operate the system, contrary to existing licensing conditions.

The second offence took place on the same evening but was not connected. At around 00:55 hours two females became involved in an argument in the entrance corridor inside the premises. The argument became physical and one of the females threw several punches towards the other. Door security witnessed one of the females throw a glass at the other. Luckily the glass missed and smashed on the floor. Security then removed the two females but the altercation continued. One of the females received a lump on her forehead following a blow. The victim of this assault then began walking away from the premises with her boyfriend which led to the third incident. A person ran up behind them with both arms raised and pushed and punched the boyfriend to the back of the head, knocking him to the ground. The victim did not raise either of his hands to break his fall and he hit the ground face first. The suspect then stamped on the victim's back and head. Door security from the premises was present and helpfully restrained the main aggressor. Police attended and the main aggressor was arrested as was the female offender for the previous assault. The victim was given medical assistance at the time by Kent Ambulance Service and is still receiving treatment. He received multiple fractures to his eye socket, cheek and jaw.

Sgt Brimson advised that the Police had difficulty obtaining the CCTV footage from the premises. It had first been requested when in attendance at the incidents and then on a number of occasions over the following four days. The Premises Licence Holder was on holiday and no other members of staff appeared to know how to operate or access the CCTV. One of the conditions of the premises licence was that CCTV would be available when requested by the Police. The delay in being able to retrieve the footage had allowed a violent offender to remain at large and hinder the investigation. The digital recording device was eventually seized by the Police on Wednesday 19th August in order to progress the investigations.

In view of the history of disorder at the premises and the clear involvement of glass in two of the three serious assaults on 15th/16th August, to prevent further injury and to promote the licensing objectives of prevention of crime and disorder and protection of public safety, the Police suggested that polycarbonate containers were used and this was implemented by this Sub-Committee at the interim review on the 21st August. He explained why the Police thought it was appropriate for the interim steps to be made in to a permanent condition on the licence and for the tightening up of the existing conditions as detailed on page 37 of the report. He further indicated that a bound incident book as detailed on page 19 of the report was not being used currently, but rather a lever arch file with loose papers. He explained why this was unsatisfactory, open to abuse and why the current condition for a bound book was so important. Sgt Brimson concluded by directing the Sub-Committee's attention to the conditions the Police had suggested were added to the licence, including the current interim condition, and the list of previous incidents at the premises as detailed in the report.

Mr Baldock, the Licence Holder's Representative then addressed the Sub-Committee. He said he had taken some quick advice from Mr Daly and said he was happy to comply with all of the suggested conditions related to CCTV, training, door staff and the incident book. In fact many of these measures were essentially in place and working effectively. He assured the Sub-Committee that The Auction House took the matter of CCTV very seriously and all staff had subsequently been re-trained in its use and there was now a daily logged check to ensure it was working properly. He said it was the remaining issue of the plastic/polycarbonate containers that he would concentrate his address on.

He said that the incidents that occurred on the 15th/16th August were both serious and regrettable and they had been taken seriously by all involved at the premises, however he sought to show that the Premises Licence Holder had taken a pro-active approach to look forward and rectify the situation for the future. He considered that any conditions to be imposed on the premises should be appropriate and proportionate and take into account the nature of the premises. It was a small bar, selling premium drinks and attempting to attract the higher end of the market. He referred the Sub-Committee to the representations of the Interested Parties, two of whom had attended to speak today, which described a relatively small, friendly and welcoming establishment with a pleasant atmosphere, seeking to set itself apart from others in the clientele it attracted.

Mr Baldock then referred to the 23 reported incidents since January 2015 and said that the Sub-Committee should view and consider these with some caution. He mentioned that many of the specific incidents, which although recorded against the premises as an 'incident', showed a premises that acted responsibly and worked effectively with the Police. He presented the view that much of the detail was from activities that took place outside the premises, for example people quite correctly being refused entry and becoming agitated, as opposed to activities taking place inside the premises. He also placed emphasis on the fact that none of the 23 incidents mentioned the use of glass, with the exception of a mirror being broken on one occasion.

He said that the incidents of 15th/16th August should be described as two incidents as the third was a continuation of the second. In the second incident it was true that a glass was thrown but as he understood it a drink was thrown and the glass went with it by accident. The first incident was very nasty but incidents such as this were highly unusual. He considered it was a “perfect storm of two groups coming together” and it had been dealt with well by staff both at the time and in the subsequent weeks. In terms of the issue of plastic glasses, he referred to the pertinent points of the Guidance under the Licensing Act 2003 and explained that it was important for the Sub-Committee to consider what was appropriate and proportionate in this case. He asked if glass was the cause of the events that took place in August or if it was a coincidence that a glass happened to be in the hand of the aggressor in the incidents? As had been stated in one of the representations the glass could have in fact been a mobile phone and these would not be banned. To completely ban the use of glass after incidents on one night would in his view be highly disproportionate. He went on to explain that the use of plastic glasses was putting people off using the establishment and the downmarket association that plastic would have in what was striving to be an upmarket destination. He said that the representations from the Interested Parties effectively explained the type of establishment that The Auction House was and the effect that plastic glasses would have on the clientele.

Mr Shannon, an Interested Party then addressed the Sub-Committee. He said that the main crux of the matter was the decision to replace all glassware with plastic alternatives. The Auction House was a stylish, friendly and welcoming bar and the incidents that took place in August were wholly out of character. Other establishments in the town centre had incidents like this every week so he therefore considered it was a question of proportion and to ban glassware here, after one evening, was overzealous and inconsistent. He said he would like to know how numbers at The Auction House compared with those of other pubs in Ashford. He used the bar both on nights out and for a quiet drink on the way home from work as it was the only place in the town that showcased good quality ales and craft lagers. He did not mind paying a slightly higher price for good quality drinks, but the plastic glasses reduced the quality of the products and detracted from his enjoyment of them. They made it go flat and warm quicker and made a beer lose its flavour and this was particularly devastating for brewers who spent a lot of time trying to perfect a signature taste of a particular brew.

Mr Fellowes, an Interested Party then addressed the Sub-Committee. He said his comments were essentially the same as Mr Shannon’s and he too would be interested to know how numbers of incidents at The Auction House compared to other premises in Ashford. It seemed to be just accepted that such incidents took place at other establishments but as soon as something had happened at The Auction House, measures had been taken.

The Sub-Committee then asked questions of Mr Baldock and Mr Daly, the Premises Licence Holder, as well as the Police Representatives.

In response to one of the questions Mr Daly advised that there was a turnover of approximately 1200 customers per week. He also indicated the detrimental effect plastic glasses were having on the type of establishment he was seeking to run. Mr Daly further detailed the measures that were now in place with regard to CCTV, the

incident book and the role that the SIA door staff played in the establishment. He also addressed the signs that he and his staff looked for to establish whether an individual was intoxicated and the measures that would be taken. He assured that all bar and door staff were trained in this regard.

In response to questions from the Sub-Committee the Police Representatives advised that at the time of the previous call for a review in December 2014, they had been satisfied that Mr Daly was adhering to his conditions relating to CCTV. With regard to the second incident in August PC Pringle advised that it was difficult to establish from the CCTV footage how the glass had come to be thrown and whether it was an accident. In general, the quality of the CCTV footage was reasonable, but there were perhaps some slight adjustments required to ensure full coverage of the premises. It was considered that a sensible conversation between the Police and the premises was needed in order to refine this.

The Interim Licensing Manager, Premises Licence Holder's Representative and the Police Representatives all then summed up.

Mr Baldock indicated that the interim measure should be exactly that – interim – and not placed in full on the licence. That to do so would not be a proportionate to the events that had occurred.

Sgt Brimson indicated that the summary review was not a sudden 'knee-jerk' reaction, but was the next step further to the variation that took place previously and the review that almost took place at that time. The Police indicated that continuing with the interim steps and tightening up the conditions as indicated in the report was both proportionate and necessary in order to promote the Licensing Objectives. Further, opinion was given that plastic glasses could be sourced in a quality that was not detrimental to clientele and very good branded plastic drinking vessels existed in the marketplace. He concluded that plastic was already in place and operational and he attributed that fact that there had been no further incidents at the premises to this fact.

The Sub-Committee then retired to make their decision.

On return the Chairman read out the Licensing Sub-Committee's decision and reasons and the Principal Legal Assistant read out the additional notes.

Resolved:

That the following steps (in bold) be applied to the licence:

- 1. The Licence Holder will ensure that staff are fully trained in responsible sales of alcohol (BIIAB or equivalent) and that training records are kept.**
2. (SIA registered door staff will remain until closing until everybody had left the building and vicinity)
the incident book will be updated prior to leaving site by the appropriate member of staff.

Other points to note-

3. The conditions in respect of CCTV

The Sub-Committee considered that these conditions were already addressed on the current licence. However, the Sub-Committee noted that not all cameras may be in their optimal positions. As such the Sub-Committee seek to instruct both the Police and the Premises Licence Holder within the next 21 days to meet and agree the appropriate positioning.

LICENSING SUB-COMMITTEE
Wednesday 16th September 2015

**APPLICATION FOR A SUMMARY REVIEW OF THE PREMISES LICENCE FOR
THE AUCTION HOUSE, 7 NEW STREET, ASHFORD, KENT, TN24 8TN, UNDER
THE PROVISIONS OF SECTION 53A TO THE LICENSING ACT 2003**

LICENSING SUB-COMMITTEE DECISION AND REASONINGS

**OFFICER CASE
STATEMENT OF :**

Licensing Manager

**REASON FOR
MEETING:**

An application was made by the Police for a summary review for the premises licence for The Auction House, 7 New Street, Ashford, Kent, TN24 8TN, under the provisions of Section 53A to the Licensing Act 2003

DELIBERATION:

The Sub-Committee was advised at the meeting by the Licensing Officer of the Police's full application, further to the previous interim steps hearing. They heard representations by the Police in respect of their application, and in particular they amplified the 3 incidents that occurred on the 15th/16th August and the 23 reported incidents since January 2015. The police explained why they thought it was appropriate for the interim steps to be made a permanent condition on the licence and in addition to this tightening up the existing conditions as detailed on page 37 of the report. The Police indicated that a bound book as detailed on page 19 of the report was not being used currently but rather a lever arch file with loose papers. The Police explained why this was unsatisfactory, open to abuse and why the current condition for a bound book was so important. The Police referred to a photograph whereby a victim had narrowly missed losing an eye in the incident that took place in August however this photo was not available to the Sub-Committee.

The Sub-Committee then heard from the Premises Licence Holder's representative who opened his address with the points that essentially the conditions in respect of CCTV, training, bound books were not in dispute. In fact the representative indicated that many of these measures were essentially in place and working effectively. The issues in respect of CCTV training had been addressed and evidence of a log of staff training was presented in this respect. The representative indicated that the main issue for consideration was that of the interim step that was placed on the licence being made a permanent feature.

The Sub-Committee was presented with detail that The Auction

House sought to service the higher end of the market, they supplied premium drinks, had a capacity of approximately 140 people and sought to set themselves apart from other establishments such as Weatherspoons.

The representative indicated to the Sub-Committee that the incidents that took place in August were serious and regrettable, however it was highly unusual. It was in fact a “perfect storm of two groups coming together”, further he indicated in respect of the second incident that it was not a throw of the glass but a throw of the drink and the glass went with it.

The representative examined in detail the 23 incidents since January and sought to explain to the Sub-Committee that they should view these and consider the same with caution. He presented the view that they showed a premises that worked effectively with the Police and acted responsibly, that the detail was from activities that took place outside the premises for example people being refused entry and becoming agitated as opposed to activities taking place inside the premises. There was great emphasis on the fact that none of these 23 incidents mentioned the use of glass, the exception being a mirror which was broken on one occasion.

The representative indicated to the Sub-Committee the pertinent points of the guidance as follows - 1.5, 10.10, 11.18, 11.20, 11.23. He went on to explain that the Committee were to consider what was appropriate in this case and to ask themselves what the cause of the events that took place in August was. Was the cause the glass or could the glass have in fact been a mobile phone, an analogy that had been used in one of the representations that he drew the Sub-Committee’s attention to. He went on to explain the use of plastic glasses putting people off, the reputation of an establishment forced to use plastic glasses and the downmarket association that plastic glasses would have in what was striving to be an upmarket destination.

The representative indicated that the representations made by members of the public detailed in the report explained effectively the sort of establishment it currently is and the affect plastic glasses had on the clientele.

The Sub-Committee then heard from Mr Shannon and Mr Fellowes, Essentially they addressed the Sub-Committee on the matter of proportionality and questioned whether other premises were forced to use plastic glasses. Both of them explained that the use of plastic glasses detracted from their enjoyment of the drinks that they paid a high price for – in one instance £4 for a pint.

The Sub-Committee heard from the Premises Licence holder

himself and who on answering questions from the Sub-Committee indicated that there was a turnover per week of approximately 1200 customers. Again he indicated the detrimental affect plastic glasses had on the type of establishment he was seeking to run.

The Sub-Committee heard the summing up from both the Premises Licence Holder and the Police. Essentially the premises licence holder indicated that the interim measure should be exactly that – ‘interim’ and not placed in full on the licence. That to do so was not a proportionate response to the events that had occurred. The Police indicated that the summary review was not a sudden knee-jerk reaction, but was the next step further to the variation that took place previously and the review that almost took place at that time. The Police indicated that continuing with the interim steps and tightening up of the conditions as indicated in the report was both proportionate and necessary in order to promote the licensing objectives. Further, opinion was given that the use of plastic glasses, the like of which could be sourced in a quality that was not detrimental to clientele and their existed very good branded plastic drinking vessels in the marketplace. It was further indicated by the Police that plastic was already in place and operational and they attributed the fact that there had been no further incidents at the premises to this fact.

Upon retiring to consider the summary review, the Sub-Committee recited to themselves the following:

That their decision should be made with regard to the Secretary of State’s guidance and the Council’s Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the guidance or policy clear or cogent reasons must be given. Members should be aware that If such departure is made the chances of appeal/challenge is increased.

The Sub-Committee refreshed themselves on all of the points of guidance that had been referred to by the Police and the Premises License Holder’s representative, in addition to Paragraph 1.16 of the guidance. The Sub-Committee also refreshed their minds of the options open to them.

The Sub Committee appreciated that the focus for interim steps were the immediate measures that were necessary to prevent serious crime or serious disorder occurring. (Section 53A Licensing Act 2003, summary review guidance). The Sub-Committee now being in full awareness of all facts in respect of a summary review were mindful that they were no longer dealing with a short-term measure to be placed on the licence if minded to add a Condition but were considering if full conditions should be placed on the licence in order to promote the licensing objectives. The licensing objective pertinent in this matter was that of the

Prevention of Crime & Disorder and Public Safety.

The Sub-Committee first considered the interim steps on page 37 of the report as follows:

1. The Licence Holder will ensure that staff are fully trained in responsible sales of alcohol (BIAB or equivalent) and that training records are kept.

The Sub-Committee noted that there was no opposition to this being placed on the licence and upon review of the current conditions on the licence thought that it would enhance the measures already in place.

2. The conditions in respect of CCTV

The Sub-Committee considered that these conditions were already addressed on the current licence. However, the Sub-Committee noted that not all cameras may be in their optimal positions. As such the Sub-Committee seek to instruct both the Police and the Premises Licence Holder within the next 21 days to meet and agree the appropriate positioning.

3. SIA registered door staff will remain until closing until everybody had left the building and vicinity and the incident book is updated fully.

The Sub-Committee considered that this condition was in the main already on the current licence. However, the Sub-Committee noted that there was no reference to an incident book. Therefore the current condition which is listed on the licence under the heading 'The Prevention of Public Nuisance' with the addition of the details as follows – the incident book will be updated prior to leaving site by the appropriate member of staff.

The Sub-Committee then considered the interim step placed on the licence being made permanent, namely the condition in respect of plastic glasses. The Sub-Committee deliberated in great detail the proportionality of placing this on the conditions of the licence. What was an appropriate interim step did not necessarily follow to be an appropriate or proportionate condition on the licence.

The Sub-Committee appreciated the explanations made on respect of the incidents that had occurred and the detailed analysis of the same by both the Police and the representative for the Premises Licence Holder. It was noted that this was a very busy town centre establishment with approximately 1200 customer

attendances per week. The Sub-Committee believed that it put in to perspective the number of incidents that, criminal or otherwise, had occurred at the premises and were mindful that in light of the large number of visitors the proportion of negative events was indicative of a well managed premises. In fact it was noted that many of the incidents recorded were those reported by the premises to the Police and through the Town Net radio service, use of which should not be discouraged - Again evidence that the premises took the matter of crime and disorder seriously and sought to resolve negative incidents swiftly and effectively. The Sub-Committee were mindful that praise had been levied on the swift actions of the SIA door staff involved in the August incidents.

In light of the above, and in consultation with the Guidance and the evidence presented the Sub-Committee considered whether the use of plastic glasses was necessary for the protection of the public and prevention of crime and disorder and whether this was a proportionate response to the incident that had occurred in August and the subsequent negative events.

The Sub-Committee were not minded to continue with the interim measure that had been placed on the licence in this regard.

The Sub-Committee had been very concerned that the current Licensing Conditions had not been fully complied with, however the Sub-Committee moving forward has confidence that the Licence Holder acknowledges his shortcomings, has put steps in place to rectify the same and will continue to work with the Police and the Licensing Authority to promote all of the Licensing Objectives.

DECISION MADE:

That the following steps (in bold) be applied to the licence:

1. The Licence Holder will ensure that staff are fully trained in responsible sales of alcohol (BIIAB or equivalent) and that training records are kept.

**2. (SIA registered door staff will remain until closing until everybody had left the building and vicinity)
the incident book will be updated prior to leaving site by the appropriate member of staff.**

Other points to note-

3. The conditions in respect of CCTV

The Sub-Committee considered that these conditions were already addressed on the current licence. However, the Sub-Committee noted that not all cameras

may be in their optimal positions. As such the Sub-Committee seek to instruct both the Police and the Premises Licence Holder within the next 21 days to meet and agree the appropriate positioning.

Additional notes made by the Sub-Committee at the meeting -

- This decision of the Licensing Authority will not have affect until the end of the period allowed for the appeal which is 21 days from the License Holder being notified of the Licensing Authority's determination or until the disposal of the appeal. (Licensing Act 2003 S.53C(11))
- An appeal may be made by the Premises Licence Holder, the Chief Officer of Police and/or any other person who made a relevant representation.
- Accordingly until such time as the decision comes in to affect, the interim steps taken on 21st August 2015 remain in place.

Agenda Item No: 5
Licence Reference WK/201507995
Report To: LICENSING SUB COMMITTEE
Date: 22 OCTOBER 2015
Report Title: Licensing Act 2003 - Application for a premises licence for **The Phoenix, Tufton Street, Ashford TN23 1QP**
Report Author: Interim Licensing Manager



Summary:

The report advises Members of a licence application under the provisions of the Licensing Act 2003.

Application type: **Application for a premises licence**

Applicant: **Gosschalks Solicitors on behalf of Phoenix Pub Group Limited**

Premises: **The Phoenix, Tufton Street, Ashford TN23 1QP**

Members are asked to determine whether to grant the premises licence.

Key Decision: NO

Affected Wards: Victoria Ward (Ashford)

Recommendations: **The Committee is asked to determine the application and decide whether to grant the premises licence.**

Policy Overview: The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy. Where the decision departs from the Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and such departure must be supported by clear and cogent reasons.

Financial Implications: The costs associated with processing the application are taken from licensing fee income.

Other Material Implications: **HUMAN RIGHTS:** In considering this application the Sub Committee will balance the competing Human Rights of the various parties including the right to respect for private and family life, the protection of property and the right to a fair hearing.

LEGAL: Under the Licensing Act 2003 the Council has a duty to exercise licensing control of relevant premises.

Exemption Clauses: Not applicable

**Background
Papers:** None

Contacts: jane.woodford@ashford.gov.uk – Tel: 01233 330578

**Report Title: Licensing Act 2003 - Application for a premises licence
The Phoenix, Tufton Street, Ashford TN23 1QP**

Purpose of the Report

1. The report advises Members of a licence application under the provisions of the Licensing Act 2003.

Application type: **Application for a premises licence**

Applicant: **Gosschalks Solicitors of Phoenix Pub Group Limited**

Premises: **The Phoenix, Tufton Street, Ashford TN23 1QP**

Issue to be Decided

2. Members are asked to determine whether to grant the premises licence.

Background

The Licensing Objectives

3. The licensing authority must carry out its functions under the Licensing Act 2003 with a view to promoting the licensing objectives namely, the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm (LA 2003, s4 (1)).

Application details

4. The application is for a premises licence. See Appendix A for the application for a premises licence, along with a plan of the internal layout of the premises. The application has been made and advertised in the correct manner. Licensing officers have checked that the public notice has been on display at the premises.
5. A location map of the premises and surrounding area can be found at Appendix B.
6. Representations have been received hence the determination coming before Members.

Additional steps

7. The applicant states within section M of the application form the additional steps they intend to take in order to promote the four licensing objectives if the proposed application is granted.
8. The conditions put forward by the applicant are listed in appendix E and will form part of the conditions on the licence. It is the responsibility of the

Licensing Authority to prepare conditions that are “consistent” with the operating schedule (s.18).

9. It is stressed that while a licensing authority has no discretion to add or modify a condition where there is no relevant representation, it may not issue a licence with conditions that are illegal.

Representations from Responsible Authorities

10. No representations have been received from responsible authorities.

Representations from Other Parties

11. Under section 35(5) of the Licensing Act 2003, representations are relevant if they are about the likely effect of the grant of the licence on the promotion of the licensing objectives and (subsection 6) are made by an interested party or responsible authority within the prescribed period, are not withdrawn or, in the opinion of the licensing authority, frivolous or vexatious
12. The prescribed period for the receipt of such representations in this case is, by Regulation 22(b) of the Licensing Act 2003 Regulations 2005 "during a period of 28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant". In this case the application was given to the authority 1 September 2015 and the last date for receipt of relevant representations was 29 September 2015.
13. 22 parties have made a representation. A list of these can be found in Appendix C and the representations in full in Appendix D.
14. 15 of the representations are from residents living within 14 properties in the church yard. One representation is from a person who owns a property in the church yard but is not currently resident there. The other six representations are from people who are not living in the immediate area. Members may wish to consider the weight given to these representations.
15. The main concern of the representations is the potential for anti social behaviour when customers leave the premises and the worry by residents that customers might head into the churchyard area. The residents of Church Yard Passage and Church Yard have these concerns as a result of previous complaints and issues experienced in the area in the past.
16. Since 14 February 2014 a gate has been installed at the north exit of the Church Yard. This is closed from 10pm to 6am on Friday and Saturday nights. This was because it had become a popular “cut through” from the licensed premises in Bank Street and Tufton Street through the Church Yard to the town centre. Since the gate was installed only one call has been logged regarding anti social behaviour. It should be noted that the gate was only installed and in operation after the premises had closed.

Relevant premises history

17. The premises was previously licensed but closed in November 2013 with the premises licence being surrendered in February 2014. The previous licence was for licensable activities until 00:00 Sunday to Thursday and 01:00 Friday and Saturday with closing time half an hour later.
18. Under the previous licence two noise complaints were received in 2009 and 2011.
19. The application proposes to permit:

Sale or Supply of Alcohol (on and off sales)	Sunday to Thursday 10:00 – 00:00	Friday and Saturday 10:00 – 02:00
	10:00 – 02:00 Thursday to Monday of bank holiday weekends, Christmas Eve and Boxing Day. From the end of permitted hours on New Years Eve to the start of permitted hours on New Years Day	
Late Night Refreshment (indoors only)	Sunday to Thursday 23:00 – 00:30	Friday and Saturday 23:00 – 02:30
	All days specified under the sale of alcohol 23:00 – 02:30 23:00 on New Years Eve to 05:00 New Years Day	
Recorded Music (indoors only)	Sunday to Thursday 10:00 – 00:30	Friday and Saturday 10:00 – 02:30
	All days specified under the sale of alcohol 10:00 – 02:30 New Years Eve until close on New Years Day	
Hours premises open to the public	Sunday to Thursday 10:00 – 00:30	Friday and Saturday 10:00 – 02:30
	All days specified under the sale of alcohol 10:00 – 02:30 New Years Eve until close on New Years Day	

20. It should be noted that from 6 April 2015 recorded music became exempt from entertainment licensing between 08:00-23:00 on the same day; provided that the premises has an on-licence and the audience does not exceed 500.

General

21. Members attention is drawn to the following matters:

- All applications are to be considered on their merits as well as against the relevant policy and statutory framework.
- Due regard should be given to the provisions of the Human Rights Act 1998, Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 and Section 17 of the Crime and Disorder Act 1998 and, so far as possible, reflect local crime prevention strategies.
- The operating schedule forms part of the completed application form for a premises licence. The operating schedule should include information, which is necessary to enable any responsible authority or other party to assess whether the steps to be taken to promote licensing objectives are satisfactory.
- The licensing authority may not impose any conditions unless its discretion has been engaged following the making of relevant representations and it has been satisfied at a hearing of the appropriateness to impose conditions due to the representations raised. It may then only impose such conditions as are appropriate to promote the licensing objectives arising out of the consideration of the representations. However, in order to minimise problems and the necessity for hearings, it would be sensible for applicants to consult with responsible authorities when schedules are being prepared. This would allow for proper liaison before representations prove necessary.
- Where problems have occurred, the application for the new licence will afford an opportunity for responsible authorities and other parties to raise the issue through representations and for conditions addressing any nuisance previously caused to be attached following a hearing where necessary. The views of local residents will be important in establishing the extent of any history of problems.
- The conditions put forward within this report are suggested on the basis of:
 - information contained within the application form;
 - interested parties representations and
 - on those measures currently in existence.
- The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be

disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

- Public nuisance is not narrowly defined in the 2003 Act and retains its broad common law meaning for the Act's purposes. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity of other parties living and working in the area of a licensed premises. Public nuisance may also arise as a result of artificial light, dust, odour and insects or where its effect is prejudicial to health.
- Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise may also prove necessary to address any disturbance anticipated as customers enter and leave the premises and therefore, in the immediate vicinity of the premises.
- In the context of preventing public nuisance, it is essential that conditions are focused on measures within the direct control of the licence holder. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, or premises management cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises. Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in his own right. However, it would be perfectly reasonable for a licensing authority to impose a condition it considered appropriate following relevant representations from an interested party that requires the licence holder to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living near-by to a peaceful night. After a licence has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence.
- The Guidance states "the conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence or certificate holder, which they should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public."
- It is perfectly possible that in certain cases, because the test is one of appropriateness, where there are other legislative provisions, which are

relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

Decision options

22. The steps an authority may take are:
- a) Grant the licence subject to
 - i) Such conditions as are consistent with the operating schedule accompanying the application modified to such an extent as the authority considers necessary for the promotion of the four licensing objectives, and
 - ii) any conditions which must under section 19, 20, or 21 of the Licensing Act 2003 be included in the licence (the mandatory conditions).
 - b) Exclude from the scope of the licence any of the licensable activities to which the application relates.
 - c) Refuse to specify the person named in the application as the Designated Premises Supervisor (DPS).
 - d) Reject the application.

Consultation

23. All relevant parties have followed the consultation procedures required under the Licensing Act 2003.

Implications Assessment

24. The decision should be made with regard to the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal / challenge is increased.

Human Rights

25. While all Convention Rights must be considered, those which are of particular relevance to the application are:
- Article 8 - Right to respect for private and family life
 - Article 1 of the First Protocol - Protection of Property
 - Article 10 – Freedom of Expression

The full text of each Article is given in the attached Appendix F.

Handling

26. The timings for handling the application are set out in the Licensing Act 2003 and related regulations.

Conclusion

27. Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.