

Licensing Sub-Committee

Minutes of a Meeting of the Licensing Sub-Committee held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **22nd October 2015**.

Present:

Cllr. Bradford (Chairman);

Cllrs. Bennett, Mrs Webb.

Also Present:

Cllr. Pickering.

Interim Licensing Manager, Licensing Officer, Legal Advisor, Senior Member Services & Scrutiny Support Officer.

Ms C Johnson – Applicant’s Representative, Mr C Malyan – Applicant.

Mr Aaby, Mr Buchanan – Interested Parties.

187 Election of Chairman

Resolved:

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

188 Declarations of Interest

Councillor	Interest	Minute No.
Bennett	Made a ‘Voluntary Announcement’ as he knew the two Interested Parties who were present but he had not spoken to them about this application.	190
Bradford	Made a ‘Voluntary Announcement’ as he had walked past the premises recently and passed pleasantries with one of the staff, although he had not spoken to them about this application.	190
Mrs Webb	Made a ‘Voluntary Announcement’ as she knew one of the individuals who had made a representation although she had not spoken to her for some time or about this application.	190

189 Minutes

Resolved:

That the Minutes of the Meeting of this Sub-Committee held on the 16th September 2015 be approved and confirmed as a correct record.

190 The Phoenix, Tufton Street, Ashford, TN23 1QP – Application for a 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 Interim Licensing Manager then gave a brief summary of her report. The application was for a premises licence at The Phoenix, Tufton Street, Ashford. The full application was contained at Appendix A to the report and a location map of the premises and surrounding area could be found at Appendix B.

The premises was previously licenced 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.

The application proposed to permit the sale of alcohol Sunday to Thursday 10:00 to 00.00 and Friday and Saturday 10.00 to 02.00 with some variations on Bank Holidays and New Year's Eve; late night refreshment Sunday to Thursday 23.00 to 00.30 and Friday and Saturday 23.00 to 02.30 with some variations on Bank Holidays and New Year's Eve; and recorded music (inside only) and opening hours Sunday to Thursday 10.00 to 00.30 and Friday and Saturday 10.00 to 02.30 with some variations on Bank Holidays and New Year's Eve.

22 parties had made representations. A list of these was contained in Appendix C of the agenda papers with the representations in full at Appendix D. 15 of the representations had come from residents living within 14 properties in the Church Yard. One representation was from a person who owned a property in the Church Yard but was not currently resident there. The other six representations were from people who were not living within the immediate area. The main concern of the representations was the potential for anti-social behaviour when customers left the premises and the worry of residents that customers may head into the Church Yard area. The residents of Church Yard Passage and Church Yard had these concerns as a result of previous complaints and issues experienced in the area in the past. Since 14th February 2014 a gate had been installed at the north exit of the Church Yard. This was closed from 22.00 to 06.00 on Friday and Saturday nights. This was because it had become a popular 'cut through' from the licenced premises in Bank Street and Tufton Street through the Church Yard to the Town Centre. Since the gate had been installed only one call had been logged regarding anti-social behaviour. It should be noted that the gate was only installed and in operation after the premises had closed.

The Interim Licensing Manager concluded by reminding the Sub-Committee of the decision options open to it.

Ms Johnson, the Applicant's Representative, spoke in support of the application. She advised that Phoenix Pub Group Ltd recently acquired the premises and had approximately 50 premises in the UK. The name of the company and the premises itself was a coincidence. They had been surprised to learn that the previous licence at the premises to which this application related had been surrendered and this application was ostensibly identical, save for an additional hour of operation. It was important to note that the licence had been surrendered rather than revoked and the applicant sought to run the premises as it had been before. Ms Johnson advised that there had been no representation from the Police therefore they had no concern that the grant of a licence would undermine any of the four licensing objectives as opined by some of the objectors. There had also been no representation from Environmental Health which indicated that they must be satisfied there would be no danger to public nuisance, which was also important bearing in mind the objections. Likewise there had been no representation from any safeguarding board, trading standards or any other professional bodies therefore the grants would not be contrary to any of the licensing objectives.

Ms Johnson advised that the set of circumstances around this application were different to the time of the previous premises. Attention was drawn to the installation of the gate and gating order which may or may not have an effect on the levels of anti-social behaviour in the town centre in general. She reminded the Sub-Committee that there was no evidence in the papers provided that anti-social behaviour stemmed from, or was caused by, The Phoenix. She referred to the written representations and the graph and newspaper articles submitted within the papers. She pointed out that whilst the bulk of the objections had come from people living in and around The Church Yard, nobody in the nine flats immediately above The Phoenix had objected. The letters of objection that had been received were detailing the premises at a different time when it was under a different management, before the gating order had been put in place and when a significant nightclub premises had been operating in the vicinity. She considered that the letters contained unsubstantiated speculation that previous problems would return and that there was no evidence before the Sub-Committee that crime would occur again. In respect of the graph, she drew attention to a mistake which indicated that four incidents of crime had taken place in September 2013 when this should be two. Furthermore at its worst a height of nine incidents in December 2012 was now three years ago, when the premises was under different management and in any event in her view was not an undue level of anti-social behaviour for any town centre environment. Additionally she drew attention to the fact that during the six months prior to the closure of the premises and the six months after there was no difference to the crime levels on said graph. She concluded by reminding the Sub-Committee of the decision of the High Court in Daniel Thwaites PLC vs Wirral Borough Magistrates Court and in particular that conditions/decisions must be evidence based. As such she urged the Sub-Committee to grant the application as applied for and allow the premises to re-open.

Mr Adby spoke in objection to the application. He said he lived in the Church Yard and he comprehensively detailed the issues that he had experienced with anti-social behaviour in and around the area. There had been fighting, banging on doors, windows smashed, drug taking, glasses and bottles smashed, objects including lit cigarettes coming through the letterboxes and Church Yard Passage had basically become a public urinal. He indicated that there had been such problems since 2006/2007 and whilst street lighting had been improved he still had concerns with the positioning of CCTV camera locations and whilst he was very pleased that there was now a gating order in place, as this was implemented after The Phoenix had closed they were unsure whether this measure would have resolved the issues of the past. So although it was difficult to categorically say that anti-social behaviour would begin again upon the re-opening of The Phoenix, he considered it probably would and it was his submission that upon the closure of The Phoenix anti-social behaviour had reduced in the area. There may not yet be firm evidence but this was very much the view of residents and he considered that this fear and perception should not be ignored. He considered not too much weight should be given to the lack of objections from the flats above the Phoenix as these had a high turnover of residents on short term tenancies.

Mr Adby said that if granted he hoped there would be some amendments to the licence as applied for, namely that suitable closing times for the premises were 23.00 from Sunday to Wednesday and 00.00 from Thursday to Saturday. He believed that these were the same times as The County Hotel and by amending them this would alleviate the concern that those from The County Hotel would all descend on The Phoenix to continue drinking. He also asked for a review of the Gating Order to take place before The Phoenix re-opened.

Mr Buchanan spoke in objection to the application. He owned a property in the Church Yard and had lived there when The Phoenix was originally open. He said he agreed wholeheartedly with Mr Adby's comments. He accepted the points made about evidence but he had no doubt that the incidents of 2012/2013 did stem from people coming from The Phoenix. He made reference to the experiences mentioned by Mr Adby and advised that on one evening he had been forced to make 33 calls to the Police and his young children were frequently up and awake beyond midnight as it was impossible for them to sleep and on many occasions they had been terrified. He said that the clientele was more of a 'hen party and stag party' type than a local pub and he had spoken to a member of door staff one night who had said that the footfall was in the region of 1600 which was a massive amount of people in such a premises. He therefore had concerns in respect of the control of people entering and leaving the premises. He also thought the location of the toilets (at the back of the premises and up a flight of stairs) was not ideal and led to many people not being bothered to use them and instead urinate outside in Church Yard Passage.

In response to questions from Members Mr Malyan, Area Manager for Phoenix Pubs Ltd advised that they did not seek to change their offering to the public. Previously the premises had been a great day time pub and a great weekend pub. He described it as a "Wetherspoons with Fun" and he wished to operate on the same basis, albeit with the 'fun' being controlled. Food would be served from 12.00 to 21.00 as before. From a management perspective they were clear about who would be allowed in to the premises. It was an offence to serve people who were intoxicated and he

understood that if the premises re-opened it would be under the spotlight. In respect of the door team there would be a team of three on Friday and Saturday nights from 20.00 until close - one of these inside and two outside the premises. They would be liaising with the Police to find a reputable door staffing company who had a history of operating in Ashford and would also be looking to join the Pub Watch Scheme. With regard to their pricing structure it was anything from £3.40 for a pint of Fosters to £4.60 for a speciality beer, with spirits retailing from £2.60 - £2.80 a measure with a £1.25 double up cost. This pricing structure applied across the chain and was not personal to Ashford. They would not be having 'happy hours' or pricing promotions. Mr Malyan advised that the square footage of the premises and the location of the sewer simply did not allow for the location of the toilets to be moved.

Ms Johnson then summed up on behalf of the Applicant.

The Sub-Committee then retired to make their decision.

On return the Chairman read out the decision and the Legal Advisor read out the additional notes.

Resolved:

That the Premises Licence be granted as applied for.

The decision notice and formal wording read out by the Chairman and the Legal Advisor is appended to these minutes.

LICENSING SUB-COMMITTEE
Thursday 22nd October 2015

**APPLICATION FOR A PREMISES LICENCE FOR THE PHOENIX, TUFTON
STREET, ASHFORD, KENT, TN23 1QP, UNDER THE PROVISIONS OF THE
LICENSING ACT 2003**

LICENSING SUB-COMMITTEE DECISION AND REASONINGS

**OFFICER CASE
STATEMENT OF :**

Licensing Manager

**REASON FOR
MEETING:**

An application was made for a Premises Licence for the Phoenix, Tufton Street, Ashford, Kent TN23 1QP, under the provisions of the Licensing Act 2003

DELIBERATION:

The Sub-Committee was introduced to the application for a Premises Licence by the Licensing Manager.

They heard from the Licence Holder's Representative who outlined the application as follows:

Phoenix is a company that has approximately 50 premises, previously the licence at the premises to which this application relates had been surrendered. Points were made that the licence had been surrendered and not been revoked. It was made clear that the applicant was here merely to re-instate the licence as had previously been held and no amendment for the same was sought. The indication was that the applicant sought to run the premises as it had been before. In respect of the cliental before there was nothing wrong with this cliental and they did not seek to change their offering to the public. The premises were described as a 'Weatherspoons with Fun'. The indication was that previously the premises had been a great day time pub and a great night time pub. They wished to operate on the same basis, the 'fun' being controlled.

The Applicant indicated to the Sub-Committee that there had been no representation from the Police, therefore the grant of a licence would not undermine the crime and disorder objective. There had been no representation from Environmental Services, therefore they must be satisfied that there is no danger to public nuisance. Further there had been no representation from any safeguarding board, trading standards or any other professional bodies therefore the grant would not be contrary to any of the licensing objectives.

The Sub-Committee were informed that these were a different set

of circumstances to what may have taken place before attention was drawn to the installation of a gate and a gating order which may or may not have an affect on the levels of anti-social behaviour in the town centre in general. The Sub-Committee was reminded that there was no evidence in the papers presented that anti-social behaviour stemmed from, or was caused by, the Phoenix.

The Sub-Committee's attention was drawn to the written representations, the graph supplied and the newspaper articles. In respect of the newspaper articles attention was drawn to the fact that none of these actually mentioned The Phoenix. In respect of the graph attention was drawn to the mistake indicating 4 incidents, should in fact show 2 incidents, further at best a height of nine incidents in December was three years ago, when the premises was under different management and in any event was not an undue level of anti-social behaviour for any town centre environment. Additionally attention was drawn to the fact that after closure of the premises there is no difference to the crime levels shown on the said graph. In respect of the letters of objection the Sub-Committee was reminded that these were detailing the premises at a different time when it was under different management and before a gating order was in place, also at a time when there was a significant premises called 'Liquid' within the vicinity. Further, the letters contained unsubstantiated speculation that previous problems would return and that there was no evidence before the Sub-Committee that crime would occur again. The Sub-Committee was advised that in respect of the door team the premises were indicating a team of 3 on Friday and Saturday nights from 8pm until close, one of these inside and two outside, however this did not feature as a condition on their application. In respect of pricing structure, it was anything between £3.40 for a pint of Fosters to £4.60 for a speciality beer, with spirits retailing from £2.60 - £2.80 a measure - with a £1.25 double up cost. That pricing structure is across the chain and not personal to Ashford. The Sub-Committee were reminded of the decision of the High Court in Daniel Thwaites Plc vs Wirral Borough Magistrates Court and in particular that conditions/decisions must be evidence based. As such the Sub-Committee should be minded to grant the application as applied for.

The Sub-Committee then heard from two Interested Parties, Mr Adby and Mr Buchanan who lived and owned property in the Church Yard. They detailed comprehensively the issues that they had experienced with anti-social behaviour in and around the Church Yard. They indicated that there had been problems since 2006/2007. Whilst street lighting had been improved they still had concerns with the positioning of CCTV camera locations and whilst they are very pleased that there is now a gating order in place, as this was implemented after the Phoenix had closed they are

unsure whether this measure would have resolved the issues of the past. It was made very clear to the Sub-Committee that it was very difficult to determine if anti-social behaviour will continue upon the opening of The Phoenix, they believe it probably will and the submission was that upon closure of the Phoenix the anti-social behaviour had reduced in the area, but again it was indicated that The Phoenix closed before the gating order was in place therefore it is just a personal opinion that anti-social behaviour will return as opposed to an evidence based statement. Further concerns were raised in respect of the control of people entering and leaving and the location of the toilets, the indication being that patrons on The Phoenix could not be bothered to use them and instead would urinate outside in Church Yard Passage.

The Sub-Committee were advised that suitable closing times for the premises were Sunday to Wednesday at 11pm and Thursday to Saturday at midnight. The indication had always been that these were the times of the County Hotel. The representation was that the hours should be amended to these thereby alleviating the concern that those from the County Hotel would all descend on The Phoenix to continue drinking.

The Sub-Committee were further advised by these representations that the clientele was more 'hen party and stag party' and the footfall could be up to 1600, a figure that had been indicated by a previous member of door staff.

The Sub-Committee heard the summing up from both the Interested Parties and the Licence Holder's Representative.

Upon retiring to consider the application, 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 considered the application in light of the following Licensing Objectives namely: -

- Prevention of Crime & Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

The Sub-Committee were mindful that there had been no representations from any Responsible Authorities in respect of the

licensing objectives. The Sub-Committee were very conscious that the objections received were from residents who had experienced anti-social behaviour when there had been a premises called The Phoenix open some three years ago.

The Sub-Committee refreshed themselves on the Thwaites Case and the need for any decision to be made with a view to promote the licensing objectives and further to evidence presented. The Sub-Committee aware of its responsibilities to promote the licensing objectives, had serious concerns about the de-stabilising affect of anti-social behaviour in the wider town area, but appreciated that those concerns did not apply to the Applicant in relation to the granting of a licence.

For these reasons the Sub-Committee were minded that if the Licence was granted as applied for, the residents could feel somewhat unsupported in what is clearly a serious matter to them and the potential for repeat anti-social behaviour should the premises re-open in line with what they experienced before and that they believed to be resulting from and caused by the previous premises. However these concerns could not affect the Sub-Committee's need to make an evidence based decision. That said, the Sub-Committee were in full agreement that Ashford Borough Council through the Licensing Department must work effectively and closely with both the Licensee and local residents and the Police to monitor and ensure that any perceived problems do not become a reality. As such, internally the Sub-Committee will be instructing the said Officers to carry out the above which not only will benefit these immediate residents but the night time economy of the town as a whole.

Further consideration was given to the current licensing hours in light of the statement made about the County Hotel. Upon investigation it was discovered that the closing hours on their licence were similar to those applied for by The Phoenix, although in one instance they were later. As such the suggestion made by the Objector that the hours should reduced in line with the County Hotel to eliminate through traffic from the County Hotel to The Phoenix is somewhat flawed and that a reduction in the hours on The Phoenix application could potentially increase through traffic between the two premises and thereby exacerbate the potential for problems to re-occur.

The Sub-Committee was re-assured by the commitment of the Area Manager to run a responsible premises, operate a door team and join the Pub Watch Scheme. They are equally confident that regular contact will be maintained with the Licensing Department and that the Area Manager or his representative will play an active part in allaying issues or fears of local residents in relation to the operation of the business. Further the Sub-Committee were

confident that there are proper legal mechanisms available to the residents in the unlikely event that matters cannot be resolved as above, namely a review process.

DECISION MADE:

The Application be granted as applied for.

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

- This licence, like any other licence, is subject to review at the instigation of any Responsible Authority or Interested Person should there be any concerns regarding the operation of, and/or, breaches of the licence.
- Other Persons 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 Premises 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.