

Public Agenda

Minutes of the Licensing Sub-Committee 24 May 2016

Present:

Councillor R.W. Sider BEM (Chairman)

Councillor C.B. Barnard and S.A. Dunn

In attendance for the applicant:

Mr James Anderson, Partner, Poppleston Allen

Mr Tom Davies, Chief Executive, W H Brakspears & Sons Ltd

Mr Garry Hughes, Operations Manager, W H Brakspears & Sons Ltd

Mr Simon Bailey, Designated Premises Supervisor at The Phoenix

Interested Parties in attendance:

Ms Veronica Flanagan, Resident

Ms Elaine Merrony, Resident

Ms Robyn Greeves, Resident

136/16 Disclosures of Interest

There were none.

137/16 To consider an application for a variation to the Premises Licence at The Phoenix, Thames Street, Sunbury-on-Thames, TW16 6AF, in the light of representations

The Chairman introduced members and officers present and welcomed everyone to the meeting.

The Chairman asked the applicant and his representative and the other parties to introduce themselves. He then explained the procedure to be followed at the hearing.

The Council's Licensing Manager summarised the application which was set out in full in the report of the Deputy Chief Executive.

Prior to the hearing the applicant's agent had submitted, as part of a bundle of papers, the following proposed conditions to be included on the operating schedule:

1. Customers will not be allowed to eat and drink in the garden after 10.30pm.
2. After 10.30pm a maximum of 6 customers will be allowed in the garden.
3. A minimum of 150 seats will always be provided for customer use in the garden whenever the premises are open for licensable activities.

4. Waiter/waitress service will be available to customers in the garden.
5. Signs will be displayed prominently in the garden informing customers that they must be mindful of the presence of local residents and that last orders for the garden bar is 10.00pm and that the garden must be vacated by 10.30pm.
6. There will be CCTV camera coverage of the garden whenever the premises are open for licensable activities.
7. Management and staff will monitor the garden and if necessary will request that customers respect the proximity of local residents.
8. Contact details (including telephone number) of the premises will be provided to local residents.
9. The Designated Premises Supervisor will arrange a meeting with local residents at least every three months to discuss any issues arising from the operation of the premises.

The hearing continued in accordance with the procedure. During discussions the applicant proposed a further amendment to the voluntary conditions proposed in the application as follows:

1. the outside bar would close at 9.00pm on Sunday to Thursday and at 10.00pm Friday to Saturday;
2. the garden would close at 10.00pm Sunday to Wednesday and 10.30pm Thursday to Saturday; and
3. after the closure of the garden, a maximum of 6 persons only would be permitted into the garden.

Having heard the evidence presented, the Sub-Committee retired to consider and determine the application, having regard to the licensing objectives on prevention of crime and disorder and prevention of public nuisance.

Upon reconvening, the Chairman gave the Sub-Committee's summary decision.

The full decision with reasons would be notified to the applicant and other parties within five working days of the hearing.

Resolved that the application for variation to the Premises Licence at The Phoenix, 26-28 Thames Street, Sunbury-on-Thames TW16 6AF be granted subject to modification to hours of licensable activities and conditions, as follows and as set out in full in the attached Decision Notice:

- the permitted hours for the sale of alcohol from the outside bar are 11.00am – 9.00pm 7 days a week;
- Condition 1 under 'Protection of Children from Harm' on the current Premises Licence is removed;
- Condition 1 under 'Conditions attached after a hearing by the licensing authority March 2010' on the current Premises Licence is removed

The following conditions are attached to the Premises Licence:

1. The garden will close at 10.00pm.
2. After 10.00pm a maximum of 6 customers will be allowed in the garden.
3. A minimum of 150 seats will always be provided for customer use in the garden whenever the premises are open for licensable activities.
4. Waiter/waitress service will be available to customers in the garden.
5. Signs will be displayed prominently in the garden informing customers that they must be mindful of the presence of local residents and that last orders for the garden bar is 8.30pm and that the garden must be vacated by 10.00pm.
6. There will be CCTV camera coverage of the garden whenever the premises are open for licensable activities.
7. Management and staff will monitor the garden and if necessary will request that customers respect the proximity of local residents.
8. Contact details (including telephone number) of the premises will be provided to local residents.
9. The Designated Premises Supervisor will arrange a meeting with local residents at least every three months to discuss any issues arising from the operation of the premises.

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Please reply to:

Contact: Gillian Hobbs
Service: Corporate Governance (Committees)
Direct line: 01784 444243
E-mail: g.hobbs@spelthorne.gov.uk
Our ref: GH
Date: 31 May 2016

SPELTHORNE BOROUGH COUNCIL

DECISION NOTICE

In accordance with the LICENSING ACT 2003 s.23

Date of Licensing Sub-Committee: 24 May 2016
Applicant: W H Brakspear & Sons Ltd
Premises: The Phoenix
26/28 Thames Street
Sunbury-on-Thames
TW16 6AF

REASON(S) FOR HEARING: Relevant representations received from interested parties concerning Prevention of Crime and Disorder and Prevention of Public Nuisance:-

- Likely increase in disorder and antisocial behaviour in general vicinity of premises
- Increase in noise later into the evening

DECISION

Granted subject to modification to hours of licensable activities and conditions

With effect from 24 May 2016

REASONS FOR DECISION

1. The application is for variation to a premises licence for The Phoenix, 26/28 Thames Street, Sunbury-on-Thames, TW16 6AF.

Attendance

2. Seven people attended the Sub-Committee hearing to make representations. They were:
 - Mr James Anderson, Partner, Poppleston Allen
 - Mr Tom Davies, Chief Executive, W H Brakspears & Sons Ltd
 - Mr Garry Hughes, Operations Manager, W H Brakspears & Sons Ltd
 - Mr Simon Bailey, Designated Premises Supervisor at The Phoenix
 - Ms Veronica Flanagan, Resident
 - Ms Elaine Merrony, Resident
 - Ms Robyn Greeves, Resident
3. The Licensing Sub-Committee considered all of the relevant evidence made available to it at the hearing including:
 - the report of the Deputy Chief Executive outlining the matter to be considered;
 - written representations from 9 interested parties and oral evidence at the hearing from three of these; and
 - a written representation in support from Surrey Police.

In addition the following documents were circulated prior to the hearing:

- a chronology from the Environmental Health file;
- a statement by the Environmental Health Officer outlining the history of the premises;
- a bundle of papers submitted by the applicant, proposing additional conditions to that set out in the application and including photographs of the premises, its menu and meals and customer reviews from the Trip Advisor website.

The applicant had prepared responses to the chronology of items from the Environmental Health file, which were circulated during the hearing. In considering all of this evidence, the Sub-Committee has taken into account the Regulations and National Guidance under the Licensing Act 2003 and Spelthorne Borough Council's Statement of Licensing Policy.

Application

4. The current premises licence holder, W H Brakspear & Sons Ltd., The Bull Courtyard, Bell Street, Henley on Thames, RG9 2BA made an application to vary the licence on 30 March 2016:
 1. To vary the permitted hours for the sale of alcohol from the outside bar to be 11.00am - 10.00pm 7 days a week.
 2. To remove condition 1 under "Protection of children from harm" which reads "No children to be allowed at the bar".
 3. To amend condition 1 under "Conditions attached after a hearing by the licensing authority March 2010" such that it states "All bar staff are to be trained in relation to licensing law in relation to the licensing objectives, age restrictions and the terms and conditions of the Premises Licence. A record of this training will be kept at the premises by the DPS and refresher training on these issues will be delivered not less than every 6 months. The records of the initial training and refresher will be available for inspection by a Responsible Authority on request".
5. The required notices were displayed and published in a local newspaper (The Staines Informer, dated 7 April 2016).
6. The application generated 9 representations from interested parties and one raising no objection from a Responsible Authority, Surrey Police.
7. On 20 May 2016, having had sight of the representations, the applicant's agent, Poppleston Allen, submitted a bundle of papers which included a list of 9 proposed conditions, internal and external photographs of the Premises, menus, photographs of food and reviews and comments from the Trip Advisor website.
8. The conditions proposed were:
 1. Customers will not be allowed to eat and drink in the garden after 10.30pm.
 2. After 10.30pm a maximum of 6 customers will be allowed in the garden.
 3. A minimum of 150 seats will always be provided for customer use in the garden whenever the premises are open for licensable activities.
 4. Waiter/waitress service will be available to customers in the garden.
 5. Signs will be displayed prominently in the garden informing customers that they must be mindful of the presence of local residents and that

last orders for the garden bar is 10.00pm and that the garden must be vacated by 10.30pm.

6. There will be CCTV camera coverage of the garden whenever the premises are open for licensable activities.
 7. Management and staff will monitor the garden and if necessary will request that customers respect the proximity of local residents.
 8. Contact details (including telephone number) of the premises will be provided to local residents.
 9. The Designated Premises Supervisor will arrange a meeting with local residents at least every three months to discuss any issues arising from the operation of the premises.
9. The representatives were notified of the additional conditions on 20 May 2016. No notifications of withdrawal of representations were received from any party.

EVIDENCE

Background

10. The premises are located at 26–28 Thames Street, Sunbury, with a beer garden opening onto the River Thames. It is surrounded, on both sides, by residential properties.
11. The premises was issued a licence under the Licensing Act 2003 when the Act came into force in 2005. The current Premises Licence was attached to the Report of the Deputy Chief Executive.
12. The current licence permits the sale of alcohol on Monday to Saturday: 11.00am to 11.00pm and on Sunday: 11.00am to 10.30pm. The outside bar permits the sale of alcohol between the hours of 11.00am and 5.00pm on Saturdays, Sundays and days listed on the licence as allowing “seasonal variations”. Other than restrictions on the use of the outdoor bar, there are no restrictions on the use of the beer garden on the current Premises Licence.
13. The current licence also restricts regulated entertainment to 12 occasions per year on Friday and Saturday (and days on which there is a seasonal variation for the sale of alcohol) from 8pm – 11pm.
14. There have been two full variation applications since the original premises licence was issued: one to permit structural alterations which was granted in the absence of representations, and another to permit later licensing hours. The latter was granted by a Licensing Sub-Committee on 22 April 2008, subject to modification by amendment of proposed hours and addition of conditions. The only change to hours that the Sub-Committee agreed to, in

terms of the times permitted for the sale of alcohol, was for certain seasonal dates.

15. There was a review of the licence brought by Surrey Police in February 2010, following which additional conditions were added to the licence, one of which (no. 3 of paragraph 4. above) the current application is seeking to remove.
16. Between August 2012 and October 2015, there were numerous complaints and incidents while the former DPS, Gary Fearn, was in post. It is clear that the pub suffered from poor, and at times irresponsible, management during the time Mr Fearn was in post. A review of the licence was avoided because W H Brakspear & Sons Ltd, was working with the licensing team and other responsible authorities to terminate the contract with Mr Fearn. Although this took longer than all parties had hoped, the Council was satisfied that the legal channels were being pursued as quickly as possible.
17. Due to concerns about the potential for noise during a leaving party for Gary Fearn over the weekend of the 31st October 2015, the Council served a notice under Section 80 of the Environmental Protection Act 1990 on W H Brakspear and Sons Ltd, and Gary Fearn. The Notice was served on the grounds that the Council was satisfied of the likely occurrence of noise amounting to a statutory nuisance, and had the following requirements:
 1. To exercise effective control over the volume of shouting, electrically amplified music and voices so as not to be a nuisance to neighbouring domestic premises.
 2. Cease the use of the beer garden after 21:00 hours, every day
18. The Notice became effective on 29 October 2015, was not appealed and remains valid.
19. The current DPS, Simon Bailey, was appointed in November 2015.
20. Since Mr Bailey's appointment, there has been one incident relating to crime and disorder. However, neighbouring residents have continued to raise concerns about the use of the beer garden.
21. Due to concerns of safety for smokers having nowhere to go after the garden closed at 9.00pm, other than the very narrow pavement at the front of the premises, the Environmental Health department came to a 'voluntary' agreement with W H Brakspear & Sons Ltd and Simon Bailey, DPS to permit use of the beer garden after 9.00pm to a maximum of 4 persons for the purposes of people smoking. No other use was permitted.

22. Since the restricted use of the beer garden was agreed on 18 November 2015, residents have reported at least five incidents where the agreement to restrict the numbers in the beer garden was not being adhered to.
23. The Sub-Committee was advised that this agreement to restrict the number of smokers in the garden after 9.00pm, was an informal compromise to manage the safety of smokers and was therefore unenforceable.

Applicant

24. The applicant's representative, Mr Anderson, outlined the history of The Phoenix. He explained that W H Brakspears & Son Ltd bought the freehold of the premises in 2012; they were the landlord, and there was an existing tenant (Mr Nigel Hunt) in place who effectively owned the business. The applicant explained that when they purchased the freehold in 2012, Mr Hunt had made arrangements to assign the lease to Gary Fearn. W H Brakspears & Sons Ltd had no reasonable grounds to object to the assignment.
25. Mr Fearn ran the premises for three years. W H Brakspears & Sons Ltd accepted that he did not run the premises well and offered their apologies to the residents, on his behalf, for the nightmare he caused. The authorities and Garry Hughes (Operations Manager for W H Brakspears & Sons Ltd) became involved when problems started occurring at the premises but there was little they could do to get him removed. Mr Fearn's continued existence at the pub was unsustainable but as W H Brakspears & Sons Ltd had no grounds for ending the tenancy they paid him in excess of £30k to leave. This was their last option as a responsible operator.
26. W H Brakspears & Sons Ltd also owns The Flowerpot in Thames Street, Sunbury where Simon Bailey is the DPS and chose him, as someone they knew and trusted, to run The Phoenix. Mr Bailey was on a tenancy agreement at The Phoenix, rather than a lease, giving W H Brakspears & Sons Ltd more control over the Premises. Mr Bailey operated 8 pubs and managed these other sites well.
27. Mr Bailey provided an outline of his experience of managing other establishments: since the purchase of his first pub in 2008 he now owns 8 food led pubs including The Bell Inn, Hampton, The Flowerpot and The Phoenix, Sunbury. Last year he bought two Thai led pubs. He had received numerous awards. The Sub-Committee asked Mr Bailey to explain how he manages his time as DPS for more than one premises. Mr Bailey stated that he has employed general managers in each pub. Mr Bailey employed his "strongest" manager to work in The Phoenix and has been in post for four years.
28. The applicant stated that it was their understanding that when Simon Bailey became DPS at The Phoenix he had met with residents. The applicant

stated that they wanted the relationship with their neighbours to be better than it had been and took this matter seriously.

29. The applicant explained that The Flowerpot was more typical of the style of premises W H Brakspear & Sons Ltd ran and they wanted The Phoenix to be a nice gastropub, which was successful and trading well. They had spent in excess of £20k to put The Phoenix back in good condition. There was dining inside which had proven to be popular and they wanted to do the same outside but the current restrictions on the licence meant they were not able to operate successfully.
30. The applicant stated that Simon Bailey had run The Flowerpot without any issues for the whole time he had been there. Surrey Police had not raised any issues in relation to crime and disorder at The Phoenix since Mr Bailey had taken over the premises. The only incident in November 2015 came about when the premises had thrown out some youths who had been drinking.
31. Mr Anderson explained that the noise abatement notice served on W H Brakspear & Sons Ltd and Gary Fearn was still in place restricting the use of the garden to 9.00pm due to the actions of this previous tenant and it was unfortunate that Simon Bailey had inherited it. He said that it was difficult to operate with this restriction and get everyone inside at 9.00pm because people wanted to enjoy the weather outside. He accepted that the summary of the Environmental Health file showed that the Premises had been in breach of the agreement to allow 4 people outside after 9.00pm on three occasions. The applicant acknowledged that they had not been perfect but felt they had done a good job overall in abiding by the restriction over the seven-month period. The applicant asked that the Sub-Committee did not judge them by their supposed inability to comply with the condition.
32. Mr Anderson referred to the bundle containing photos of The Phoenix pub garden with tables and chairs. The applicant's experience was that people wanted to go outside and eat at 7.30/8.00pm but the premises was unable to take bookings for the outside area with the current restriction in place. Simon Bailey, DPS, wanted people to sit down and eat. He did not want to encourage standing and drinking as he believes that was when people became noisy. The applicant said that the advantage of having the outside bar in operation was that there would be staff at the bar and waiters/waitresses managing the customers and able to give a better level of supervision. This would also be better for the customers and the flow of people as they would not have to come back inside through the alley to the inside bar. The bar would sell bottled beers and bottles of wine and have one keg of beer.

33. Mr Anderson said the applicant accepted that under the current premises licence the permitted use of the garden until 11.00pm was too late in a residential area. The applicant had offered conditions on the closure of the outside bar at 10.00pm and the garden at 10.30pm as a voluntary restriction on the licence. These were enforceable conditions whereas the current restriction of four people in the garden after 9.00pm was not.
34. In response to a question from the Sub-Committee the applicant explained how they intended to attract a different type of clientele to those who had caused the problems. They no longer sold 'Fosters' as it encouraged the wrong type of customer and had replaced it with premium, expensive beer. Simon Bailey had made changes to the premises to move away from the heavy drinking crowd to becoming a family friendly place in the daytime and a venue for a meal in the evening. It was set up as a restaurant with wine glasses on the tables and different music playing. There were no cheap drinks offers. In this way they hoped to wean out the people who caused problems.
35. Mr Bailey stated that he had actively turned away and discouraged certain visitors to The Phoenix, whom he had recognized from the past.
36. In response to a question from the Sub-Committee the applicant explained how they intended to control noise levels in the garden. The outside bar would be open when the weather was nice so it probably would not be every night. Having a garden bar allowed the staff to manage people in the garden, whereas they did not know what was happening in the garden when serving at the front of the pub. The applicant said that the atmosphere the pub had enabled for people having a meal inside would be replicated outside and they were confident that they could maintain that level of noise.
37. The applicant said they were confident that although it might be busy in the summer months that it would not be noisy because of the measures they proposed. Under Gary Fearn, people in the garden caused a disturbance but the applicant believed that 100 people dining would not be as noisy as lads at the bar drinking. The applicant was of the opinion that as it does not get dark until 9.30pm in the summer, it would be easier to manage people in the garden if it closes slightly later; customers are usually ready to go home at 10-10.30pm. It will then be easier to control 6 people in the garden after 10.30pm.
38. The applicant further commented on the "voluntary" 9.00pm restriction and stated that they do not accept that no attention has been given to it. The applicant explained that there are signs near the door which ask customers to keep the noise levels down, and have also informed customers who enter the premises at 9.00pm that they cannot go out into the garden. The applicant accepts that there have been occasions where people go out into

the garden, but it is usually for a short period of time until they are called back in.

39. In response to a question from the Sub-Committee the applicant explained the reason for proposing an amendment to the condition on training. This was because it was unduly onerous to put staff through the personal licence course before they were able to work on the bar; it was a two day intensive course aimed at landlords and was too involved for bar staff or waiting staff. The applicant explained that all staff undertook internal induction and were on probation until this was completed satisfactorily. He confirmed that they operated Challenge 25.
40. The applicant questioned Mr Leslie Spearpoint, Environmental Health Officer, about his involvement with the premises. Mr Spearpoint explained that when he received complaints of noise from residents, he undertook the usual process of asking for completed log sheets. He then installed noise monitoring equipment in two properties. One machine suffered from interference and did not record any evidence. The other one, installed in August 2015 indicated there was no statutory noise nuisance from the garden of the premises at that time. He went on to confirm that a noise abatement notice was served on W H Brakspear & Sons Ltd and the DPS at that time, Gary Fearn, when Mr Fearn was due to have a leaving party. Mr Spearpoint confirmed his comment in his statement submitted to the hearing that things had improved since Simon Bailey arrived.
41. The applicant reiterated that a lot of money has been spent on refurbishing the premises and they want to make the pub a successful gastropub. It is the applicant's belief that they did a good job overall of complying with the abatement notice that was served by Environmental Health to address noise nuisance, as well as complying with the restriction of no more than four smokers in the garden after 9pm. The applicant stated that if the abatement notice was withdrawn the use of the beer garden would be unrestricted and open in line with the current premises licence i.e. until 11.30pm Monday to Saturday, and 11.00pm on a Sunday. However, the applicant voluntarily proposed a restriction to close the beer garden at 10.30pm every day.
42. The applicant also offered a number of other conditions for inclusion on the operating schedule, including a restriction on the number of people in the garden after it closed to a maximum of 6 people.
43. The applicant reassured the committee that they had faith in Simon Bailey's ability to run the premises well, as he had run other premises nearby successfully. The applicant outlined the management controls that the premises planned to have in place to prevent public nuisance to neighbours.

44. The applicant acknowledged that the summer periods will be busier than the winter but was confident that the premises will still be managed properly as Simon Bailey is a proven operator.

Representations

45. Written representations were received from nine parties, eight of which raised objections to the variation application under the licensing objectives as follows:

Prevention of crime and disorder

- increase in numbers of people in the garden at night would lead to an increase in:
 - alcohol related crime and disorder, public urination, offensive language, shouting, violence and antisocial behaviour of a similar nature
 - numbers of intoxicated individuals leaving the Phoenix pub and behaving antisocially

Prevention of public nuisance

- increase in numbers of people in the garden at night would lead to an increase in:
 - noise from the garden
 - noise from the operation of the outdoor bar itself
 - late night noise from dispersing customers
 - littering of beer cans and bottles

Representations also made reference to the acoustic effect of the river.

Public Safety

- Concerns that the narrow pavement at the front, combined with larger numbers of intoxicated customers leaving, would pose a risk to public safety

Protection of children from harm

- there were no concerns raised specifically in relation to protecting children from harm

46. Representations also made reference to Articles 1 and 8 of the Human Rights Act 1998 and Spelthorne's Statement of Licensing Policy in relation to the careful balance required between providing people with greater choice and flexibility with the rights of local residents to peace and quiet.

47. Three residents who had submitted written representations made oral representations at the hearing: Veronica Flanagan of 30 Thames Street,

Emily Merrony of 34 Thames Street and Robyn Greeves of 32 Thames Street.

48. Veronica Flanagan said that she had lived next door to the pub for seven years. She and her husband had met with all the Designated Premises Supervisors in order to forge good relations. She said that she and her husband are reasonable people who appreciate that they live next door to a pub and had shown tolerance and understanding of the noise from the pub. They told W H Brakspear & Sons Ltd on many occasions of the problems brought about by the poor management of the previous tenant, Gary Fearn, which had caused her and her husband stress and sleep deprivation. She explained that unlike other residents, they had lived in the house when the outside bar had been operated before Gary Fearn took over the premises. She described their experience when the outside bar was used two weekends ago up till 5pm: there was a 'horrific amount of noise' from the crashing and picking up of bottles. She said that in the past they chose to leave their house on occasions when the weather was good as they knew it would be noisy but they could cope with this knowing the noise would stop at 5pm, although it did not always stop then.
49. Mrs Flanagan stated that although they had bought a house next door to a pub they did not buy a house next door to a pub with a bar in the garden. She felt that if the hours applied for the outside bar were granted they would have nowhere to go to escape the continual noise. She asked that the status quo be retained, so that they would be able to come back and enjoy the evening at their home. She believed that the applicant had not demonstrated respect for the neighbours by the way in which they had handled both the problems caused by Gary Fearn, the current application and a proposed, but subsequently withdrawn, planning application.
50. Mrs Flanagan stated she was open to embracing a new publican and understood the business objectives behind the proposal but did not see a benefit to the community of having the outside bar operating seven days a week.
51. Mrs Flanagan stated that the outside bar should not be open past its current opening times.
52. Elaine Merrony said there had been no major change to the level of noise nuisance the residents experienced since Simon Bailey took over as DPS. The residents had tried to manage the situation. She alleged that the premises was not managing people in the garden: groups of customers were going into the garden after 9pm, some smoking, some not. The noise would get louder and louder. Recently a group of rowdy boys were in the garden at 7.00pm, and she could clearly hear them swearing. She said that residents would not be able to use their gardens until very late if the proposed licence

was granted. She questioned the premises' ability to manage 200 people in the garden when they could not manage four. She asked that the Sub-Committee find a balance between the needs of residents and the business and close the beer garden at 9.00pm.

53. Robyn Greeves said her main concern was the impact that the application would have on her right to peacefully enjoy her home and garden. She described her inability to sleep due to noise from the premises and that the only peace she had had was since the restriction was put in place to close the garden at 9.00pm. She can then relax, get to bed and sleep well. She cited some London gastropub gardens near to where she used to live which in her experience closed at 8.30pm or 9pm. She refuted Simon Bailey's claim that he did not allow sportswear or tolerate swearing in the premises, alleging that every Friday she observed young people wearing sportswear and swearing. She alleged that this was the type of customer who invariably visited the premises. She believed that this type of behaviour and noise would increase over the summer months because the garden was 'massive' and can take 150-200 people. She said that the level of conversation from this number of people dining and drinking with the associated noise from cutlery, plates and glasses 7 nights a week, would give the residents no peace.
54. Ms Greeves said the Premises Licence Holder was well aware of the location of the premises next to residents when they took on the premises, so they would need to make further compromises in order for the residents to feel it's a balanced management of the premises.

Further amendment of application

55. Mr. Anderson requested an adjournment for discussions with his client. Upon re-convening and having listened to the concerns of the residents about the effect of noise ancillary to the operation of an outside bar, he stated that the applicant would be willing to further amend the voluntary conditions proposed in the application such that:
1. the outside bar would close at 9.00pm on Sunday to Thursday and at 10.00pm Friday to Saturday;
 2. the garden would close at 10.00pm Sunday to Wednesday and 10.30pm Thursday to Saturday; and
 3. after the closure of the garden, a maximum of 6 persons only would be permitted into the garden.
56. The residents stated that they were of the unanimous opinion that the proposed revised conditions would not address their concerns and that the status quo should be maintained.

Findings

57. The Sub-Committee has considered the representations made by the applicant and other parties and finds as follows: -
58. This is a premises with a large garden offering seating for 150 people, backing onto the river and enclosed by residential property.
59. The Sub-Committee finds that the applicant accepts the premises has caused problems for the neighbours in the recent past but is persuaded that it is now in better hands with the appointment of the new Designated Premises Supervisor (DPS) in November 2015.
60. The Sub-Committee finds that there is very little evidence of anti-social behaviour and other crime and disorder issues since the change of DPS in November 2015. It notes that the Police did not raise an objection to the current application under the licensing objective of crime and disorder.
61. The Sub-Committee finds that the applicant, in particular the newly installed DPS, has successfully operated other premises. The Sub-Committee is persuaded that the applicant is working to change the nature of the business: the plans for the premises to become a food-led establishment, and changes to the ambience in the pub will attract a different type of customer to that which has caused problems for the residents in the past.
62. The Sub-Committee finds that overall the Premises has managed to comply with the voluntary arrangement to restrict the use of the garden to 4 people after 9.00pm, having only breached it on two or three occasions in the past 7 months. It is persuaded that the operation of an outside bar will enable the Premises to have better supervision over people in the garden due to the visible presence of staff.
63. The Sub-Committee notes that currently the Environmental Protection Act Notice requiring the use of the beer garden to cease at 9.00pm is still in force. However, it has considered this application on the basis that there is no restriction in place on the use of the garden, other than that volunteered by the applicant.
64. The Sub-Committee finds that the occasions of noise in the beer garden which the residents complained of were not identified as being a statutory nuisance which might be determined by an environmental health officer. However, when considering the likely effect of the licensable activities taking place at the Premises on the licensing objectives, the Sub-Committee only needs to be satisfied that a public nuisance would be caused.

65. The Sub-Committee noted that the premises was currently able to operate the outside bar from 11.00am to 5.00pm on Saturday and Sunday. The Sub-Committee is persuaded that the later opening hours applied for the outside bar brings with it the possibility that it will attract more people to the premises, particularly in the summer months, with the attraction of the riverside location.
66. The Sub-Committee finds that since the new DPS has been in place, residents claim to have continued to suffer a noise nuisance, both before and after 9pm, albeit on only a few occasions in the latter case, from people in the beer garden.
67. The Sub-Committee is persuaded that the presence of staff in the garden will be effective at managing any shouting and swearing.
68. The Sub-Committee finds that the premises is taking measures to encourage people to sit and eat in the garden. It is persuaded that with the possibility of up to 150 people in the garden up to 10.30pm, this is likely to generate a substantial amount of noise from both conversation, and the use of plates and glasses until a late hour every day of the week. The Sub-Committee is not persuaded that the presence of staff in the garden will be effective at controlling this type of noise.
69. The Sub-Committee is therefore persuaded by the residents that there is a real threat of the fears described in their representations occurring, and that this will impact on the prevention of public nuisance objective.
70. Additionally, the Sub-Committee is persuaded by the residents that the operation of the outside bar, which is positioned alongside the boundary fence with a neighbour, will result in a substantial amount of noise nuisance from bottles and glasses and people ordering food and drink.
71. The Sub-Committee finds that the proposed application, as amended by the applicant at this hearing, would have a detrimental effect on residents' right to peacefully enjoy their homes and gardens, due to the possibility of noise from a large number of customers dining and drinking and the operation of the outside bar, every day.
72. The Sub-Committee is concerned that the licensable activities may impact on the prevention of public nuisance objective in relation to the residents' ability to relax and get to sleep at 10pm, every day of the week.
73. The Sub-Committee finds the likely effect of licensable activities on the people living around the premises, from the operation of the outside bar until 10.00pm on Friday and Saturday, and the garden being open until 10.30pm on Thursday to Saturday, to be disproportionate and unreasonable.

74. The Sub-Committee is mindful of Spelthorne's Statement of Licensing Policy which states that providing consumers with greater choice and flexibility must always be balanced carefully against the rights of local residents to peace and quiet.
75. The Sub-Committee therefore considers on the basis of the evidence that it has heard and the findings of fact that it has made, that it needs to take steps to control the level of noise from the premises, particularly the beer garden, late in the evening in order to address the promotion of the licensing objectives.
76. The Sub-Committee finds that in order to meet the licensing objective on prevention of public nuisance that it is necessary to modify the conditions offered by the applicant relating to the closure of the outside bar and garden, as follows:
 1. The outside bar closes at 9.00pm 7 days a week.
 2. The garden closes at 10.00pm 7 days a week.

As a result of these modifications, it is appropriate to modify two further conditions offered by the applicant as follows:

1. After 10.00pm a maximum of 6 customers will be allowed in the garden.
2. Signs will be displayed prominently in the garden informing customers that they must be mindful of the presence of local residents and that last orders for the garden bar is 8:30pm and that the garden must be vacated by 10.00pm.

The remaining conditions proposed by the applicant are accepted:

3. A minimum of 150 seats will always be provided for customer use in the garden whenever the premises are open for licensable activities.
4. Waiter/waitress service will be available to customers in the garden.
5. There will be CCTV camera coverage of the garden whenever the premises are open for licensable activities.
6. Management and staff will monitor the garden and if necessary will request that customers respect the proximity of local residents.
7. Contact details (including telephone number) of the premises will be provided to local residents.
8. The Designated Premises Supervisor will arrange a meeting with local residents at least every three months to discuss any issues arising from the operation of the premises.

Decision

77. For the reasons stated above, the Sub-Committee has decided to grant the application to vary the licence subject to the conditions as modified and stated above.
78. The full decision with reasons has been communicated to all concerned within 5 working days of the date of this hearing.

Conclusion

79. That is the decision of the Sub-Committee. You have the right to appeal against this decision to the Magistrates Court within 21 days of receipt of this decision notice.

Cllr Robin Sider - Chairman
Cllr Colin Barnard
Cllr Sandra Dunn

Date of Decision: 24 May 2016
Date of Issue: 31 May 2016