

Licensing Sub-Committee

24/05/2016



Subject	Application for a Premises Licence full variation for The Phoenix Public House, Thames Street, Sunbury-on-Thames		
Purpose	For determination		
Report of	Deputy Chief Executive	Ward	Sunbury East
Contact	Dawn Morrison, Licensing Manager, (01784) 446432		

Description and Location	The Phoenix is located in Thames Street, Sunbury, and is attached to and surrounded by residential dwellings. The pub garden backs onto the River Thames. Location plan is at Appendix A .
The Application	<p>Full variation application:</p> <p>(1) to vary the permitted hours for the sale of alcohol from the outside bar so that it is 1100-2200 7 days a week;</p> <p>(2) To remove condition 1 under 'Protection of Children from Harm';</p> <p>(3) To amend condition 1 under 'Conditions attached after a hearing by the licensing authority March 2010'.</p> <p>An extract of the relevant pages from the application form and a plan showing the proposed outside bar is attached at Appendix B.</p>
Representations	Relevant representations were received from nine residents and these are attached at Appendix D .
Options	<p>The Sub-Committee is asked to consider the application for the variation of a premises licence on its merits.</p> <p>Having had regard to the representations, the Sub-Committee must decide on one or more of the following options as it considers appropriate for the promotion of the licensing objectives:</p> <ul style="list-style-type: none">▪ To grant the application subject only to such conditions as are consistent with the operating schedule and the mandatory conditions; or▪ To grant the application and modify the conditions of the licence, by alteration, addition or omission or▪ To reject the whole or part of the application.

1. Background

- 1.1 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.
- 1.2 The premises was issued a licence under the Licensing Act 2003 when the Act came into force in 2005. The current Premises Licence is attached at **Appendix C**.
- 1.3 The current licence permits the sale of alcohol on Monday to Saturday: 11am to 11pm and on Sunday: 11am to 10.30pm. The outside bar permits the sale of alcohol between the hours of 11am and 5pm 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.
- 1.4 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**.
- 1.5 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.
- 1.6 The licence was transferred to Mr Nigel Hunt in February 2009.
- 1.7 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 the current application is seeking to remove.
- 1.8 The licence transferred to Brakspear & Sons Ltd and Gary Fearn was appointed as Designated Premises Supervisor (DPS) in August 2012.
- 1.9 Between August 2012 and October 2015, there were numerous complaints and incidents while Gary Fearn was DPS. It is clear that the pub suffered from poor, and at times irresponsible, management during the time Gary Fearn was in post. A review of the licence was avoided because the licence holder was working with the licensing team and other responsible authorities and doing all in their power to terminate the contract with Mr Fearn. Although this took longer than we had all hoped, we were satisfied that the legal channels were being pursued as quickly as possible.
- 1.10 The current DPS, Simon Bailey, was appointed DPS in November 2015.
- 1.11 Since Simon Bailey’s appointment, there has been one incident relating to crime and disorder. Neighbouring residents have continued to raise concerns about the use of the garden.
- 1.12 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:

- 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.
- Cease the use of the beer garden after 21:00 hours, every day

1.13 The Notice became effective on 29 October 2015, was not appealed and remains valid.

1.14 Due to concerns of safety for smokers having nowhere to go after the garden closed at 21.00hrs, 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 and Sons Ltd and Simon Bailey, DPS to permit use of the beer garden after 21.00hrs to a maximum of 4 persons for the purposes of people smoking. No other use is permitted.

1.15 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.

1.16 Members should note that this agreement to restrict the number of smokers in the garden after 21.00hrs, was an informal compromise to manage the safety of smokers and is therefore unenforceable.

2. Application Summary

2.1 The current premises licence holder, WH Brakspear and Sons Ltd., The Bull Courtyard, Bell Street, Henley on Thames, RG9 2BA has made an application to vary the licence:

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".

2.2 The required notices have been displayed and published in a local newspaper (The Staines Informer, dated 7 April 2016).

3. Promotion of the Licensing Objectives

3.1 The Licensing Objectives together with examples from Government Guidance are set out below for information:

Prevention of crime and disorder

- Criminal behaviour on, or directly attributable to, the premises.
- Anti-social behaviour on, or directly attributable to, the premises.

Public safety

- E.g. overcrowding, fire safety, emergency exits and anything related to the safety of the public within the premises.

Prevention of public nuisance

- Noise/light or odour nuisance
- Litter

Protection of children from harm

- Including moral harm from unsuitable entertainment and also allowing underage persons to buy and consume alcohol

3.2 Section P of the application form, at **Appendix B**, details the proposed steps to be taken to promote the licensing objectives. Should the licence be granted, these will be translated, where appropriate for the promotion of the licensing objectives, into enforceable conditions which will be attached to the licence.

4. Representations

4.1 i) Representations from Responsible Authorities

No representations were received from any responsible authorities. However, Surrey Police submitted a letter of support (**Appendix E**) and Environmental Health submitted a note of facts which have informed this report.

ii) Representations from 'other persons'

Nine relevant representations have been received from other persons and are attached at **Appendix D**.

4.2 The grounds for objection are self-explanatory but are mainly in relation to increased potential for disturbances from people in the garden and a reported inability to manage the current restrictions as explained above.

5. Planning permissions

5.1 A planning application which had been submitted on 11 March 2016 (which some representations may allude to) was withdrawn on 21 April 2016.

6. Licensing Policy

6.1 The following sections of the Council's Licensing Policy are relevant.

- Section 8 gives advice on appropriate and proportionate use of conditions
- 24.7.1 in relation to noise

- 24.7.2 in relation to smoke free legislation and outside areas

7. National Guidance

7.1 The following sections of the Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 are relevant in the consideration of this application:

- 2.16 – refers to measures such as limiting the use of a pub garden after a certain time
- 15.42 – refers to live or recorded music in pub gardens
- 15.52 – refers to conditions

To assist, these sections have been copied and are attached at **Appendix F**.

8. Making a decision

8.1 In making its decision the Sub-Committee must promote the licensing objectives only, taking into account National Guidance and Spelthorne's Statement of Licensing Policy.

8.2 The Sub-Committee must give reasons for its decision.

8.3 Conditions on licences must:

- be precise and enforceable;
- be unambiguous;
- not duplicate other statutory provisions;
- be clear in what they intend to achieve; and,
- be appropriate, proportionate and justifiable.

8.4 It is important in considering the promotion of the licensing objective on prevention of public nuisance, that the Sub-Committee focuses on any disproportionate or unreasonable effect the licensable activities at the premises, have on persons living and working in the area around the premises.

8.5 In determining the application, the Sub-Committee will need to consider whether there is actual evidence of problems in relation to the licensing objectives at this premises. Where the representations are unable to provide evidence of observed problems, as in the case of a new licence application, the Sub-Committee should be convinced that there is a very real threat of the fears or the dangers described in the representations actually occurring, before applying any conditions to address such fears or dangers.

Appendices:

Appendix A – Location Plan

Appendix B – Application

Appendix C – Current Premises Licence

Appendix D – Representations from other persons

Appendix E – Letter of support from Surrey Police

Appendix F – Extracts from National Guidance