Licensing Sub-Committee

13 February 2020

Subject	Application for a Full Variation to Premises Licence at The Phoenix 26/28 Thames Street, Sunbury-on-Thames, TW16 6AF.		
Purpose	For determination		
Report of	Deputy Chief Executive	Ward	Sunbury East
Contact	Paul Morey, Licensing Enforcement Officer, (01784) 446450		

Description and Location	The Phoenix is a public house. It has residential properties to each side and its frontage faces further residential properties across Thames Street. The rear of the Phoenix has an outside bar, with seating for 150 people and an open view over the River Thames. Plan at **Appendix A**
The Application	The application is to vary the permitted hours for the sale of alcohol from the outside bar. The present hours are Monday to Sunday (inclusive) 11:00 to 21:00. The application seeks to amend the hours as follows: 1. The outside bar will close at 21.00 hours on Sunday to Wednesday but 22.00 hours on Thursday, Friday, Saturday and Bank Holidays. 2. The garden will close at 22.00 hours on Sunday to Wednesday but 23.00 hours on Thursday, Friday and Saturday, and 22.30 hours on Bank Holiday Sunday 3. To amend the following conditions to read; • Condition 5 – the outside bar will close at 21:00 hours on Sunday to Wednesday and 22:00 hours on Thursday to Saturday and Bank Holiday Sunday. • Condition 6 – the garden will close at 22:00 hours on Sunday to Wednesday and 23:00 hours on Thursday to Saturday and 22:30 on Bank Holiday Sunday.

	4. To proceed with the removal of condition 7 and the amendment to condition 8 as outlined in the Representation from Environmental Health; "Signs will be displayed prominently in the garden informing customers that they must be mindful of the presence of local residents. Last orders for the garden bar is 21:00 hours on Sunday to Wednesday but 22:00 hours on Thursday, Friday, Saturday and Bank Holiday Sunday. The garden will close at 22:00 hours on Sunday to Wednesday but 23:00 hours on Thursday, Friday and Saturday, and 22:30 hours on Bank Holiday Sunday." The application and subsequent amendments to the hours and conditions are attached at Appendix B.
Representations	Relevant representations have been received from 1 relevant authority and 5 other persons living nearby and are attached at **Appendix D and E.**
Options	1. The Sub-Committee is requested to consider the application for the grant of a premises licence on its merits. 2. 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: ▪ **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 was issued Premises Licence No. 05/00614/LAPRE under the Licensing Act 2003 when the Act came into force in 2005.

1.2 The current licence permits the supply of alcohol Monday to Saturday from 11:00 to 23:00 and Sundays 11:00 to 22:30 and the sale of alcohol from the outside bar 11:00 to 21:00.

1.3 There are restrictions on the use of the garden as below:-

- The outside bar shall close at 21:00 seven days a week
- The Garden shall close at 22:00 seven days a week
- After 22:00, a maximum of six customers will be allowed in the garden
- 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 20:30 and that the garden must be vacated by 22:00
- A minimum of 150 seats will always be provided for customer use in the garden whenever the premises are open for licensable activities
- Waiter/waitress service will be available to customers in the garden
- There will be CCTV camera coverage of the garden whenever the premises are open for licensable activities
- Management and staff will monitor the garden and if necessary will request that customers respect the proximity of local residents.

1.4 The current licence does not include regulated entertainment of live and recorded music nor late night refreshments.

1.5 The current Premises Licence is attached at **Appendix C**.

1.6 A routine licensing inspection of the premises in December 2019 did not highlight any licensing issues or concerns. It was noted that although the new DPS Flavio Martignago (17.06.2019) held a meeting with the local residents when he first took over, this had not continued as required by the Licensing condition. However anecdotally Flavio Martignago and Alice Martignago state that they have spoken to the residents individually whilst they were using the bar.

1.7 There are 4 Temporary Event Notices recorded on the Licensing system since the change of DPS. These are as follows:-

- 2019-08-10 Extension of hours for the garden to 22.00 to 24.00, 16-08-2019 to 18.08.2019
- 2019-08-14 Extension of hours for the garden

  23.30 (24.00), 31.08.2019 to 01.09.2019
- 2019-08-23 Extension of hours for the garden 22.00 and 24.00 for 2 days
- 2019-10-25 Halloween night 23.00 on the 31.10.19 till 1am on the 1.11.19

There are no reports of nuisance caused by these events.

1.8 There is one recorded noise complaint made to Environmental Health in August 2018. It was regarding noise and disorderly behaviour from patrons, including an allegation that an empty bottle of rum had been thrown into the complainant's garden. Noise monitoring sheets were dispatched to the complainant, however these were not returned.

1.9 The Joint Enforcement and Community Safety Teams have no records of any litter problems related to this public house and its immediate surrounding area.

2. Application Summary

2.1 The application has been amended twice (2) since its submission at the request of the applicant. The first amendment was to address a mistake in the hours and the second after a meeting held on 17 January 2020 between the applicant and a small number of those whom made representations. The committee should be aware that the new proposed hours are still not agreed by those making their representation.

2.2 The application now seeks to vary the licence to specify the following activities and respective timings and includes a proposal from Environmental Health representation to which the applicant has agreed:

- The outside bar will close at 21.00 hours on Sunday to Wednesday but 22.00 hours on Thursday, Friday, Saturday and Bank Holidays.
- The garden will close at 22.00 hours on Sunday to Wednesday but 23.00 hours on Thursday, Friday and Saturday, and 22.30 hours on Bank Holiday Sunday
- Amend Condition 5 to read: Condition 5 – the outside bar will close at 21:00 hours on Sunday to Wednesday and 22:00 hours on Thursday to Saturday and Bank Holiday Sunday.

- Amend Condition 6 to read: Condition 6 – the garden will close at 22:00 hours on Sunday to Wednesday and 23:00 hours on Thursday to Saturday and 22:30 on Bank Holiday Sunday.

- To proceed with the removal of condition 7 which reads: After 22.00, a maximum of six customers will be allowed in the garden;

- Amend Condition 8 to read: Condition 8 -"Signs will be displayed prominently in the garden informing customers that they must be mindful of the presence of local residents. Last orders for the garden bar is 21:00 hours on Sunday to Wednesday but 22:00 hours on Thursday, Friday, Saturday and Bank Holiday Sunday. The garden will close at 22:00 hours on Sunday to Wednesday but 23:00 hours on Thursday, Friday and Saturday, and 22:30 hours on Bank Holiday Sunday.";

2.3 The required notices have been displayed and published in The London Gazette (Hounslow) on 27 November 2019.

3. Representations

3.1 **i) Representations from Responsible Authorities (RA's)**

There has been one relevant representation received from an RA as amended 17 January 2020.

ii) Representations from 'other persons'

Five relevant representations have been received from other persons and a further three from representations from those persons of this group, who also attended the meeting of 13 January 2020 and are attached at **Appendix E.**

3.2 The grounds for objection are summarised below in relation to each Licensing Objective.

Prevention of crime and disorder

The representations are concerned that the extended opening hours would lead to an increase in anti-social behaviour and drug use.

Public safety

A representation states that there is a general build-up of refuse, including broken glass and cigarette butts left by the patrons.

Prevention of public nuisance

It is stated that local residences are affected by the people using the garden. They are concerned that this disturbance will increase with later opening hours. This disturbance increases at closing time with patrons ordering taxis. During this period they state that there is swearing and litter is thrown into gardens.

3.3 Issues which are not relevant to the licensing objectives and cannot be taken into account by a Licensing Sub-Committee:

- Objections on the basis of need, or lack of need, for premises to sell alcohol

- Parking, or other issues relating to general amenity rather than licensing objectives.

4. Licensing Policy

4.1 The following sections of the Council's Licensing Policy are relevant;

- 9.0 ADMINISTRATION AND DECISION MAKING
- 24.0 CRIME & DISORDER
- 24.5 PUBLIC SAFETY
- 24.7 PUBLIC NUISANCE

5. National Guidance

5.1 The relevant section (chapter 9) of the National Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 on determining Premises Licence applications is relevant in the consideration of this application. (**Appendix F**)

6. Making a decision

6.1 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.

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

6.3 It is only where additional and supplementary measures are appropriate to promote the licensing objectives that there will be a requirement for appropriate, proportionate conditions to be attached.

6.4 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.

6.5 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.

6.6 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 – site plan

Appendix B – application form

Appendix C – current premises licence

Appendix D – relevant representation from Responsible Authority

Appendix E – relevant representations from residents

Appendix F – Paragraph 9, National Guidance