

Crawley Borough Council

Minutes of Licensing Sub Committee

Monday 5 November 2012 at 10.30am

Present:

Councillors B J Burgess, P K Lamb and L S Marshall-Ascough

Officers Present:

Mike Lyons Senior Licensing Officer
Sally English Democratic Services Officer (Observing)
Chris Pedlow Committee Clerk – Democratic Services Officer
Sharon Rana Legal Clerk – Solicitor

Apologies for Absence:

Councillor C J Mullins

Also in Attendance:

Applicant John Gaunt (*Solicitor for the Applicant – Marston's PLC*)
John McElholm (*Marston's PLC, Property Accusations Manager*)
David Walker (*Marston's PLC, Project Manager*)

Interested Parties Bill Healy (*Local Resident - Objector*)
Rev Anthony Ball (*Chair of Worth Conservation Area Advisory Committee - Objector*)

Responsible Authority Brian Cox (*Principal Environmental Health Practitioner*)
Robbie Burns (*Senior Environmental Protection Officer – Environmental Health*)

21. Appointment of Chair

RESOLVED

That Councillor B J Burgess be appointed Chair for the meeting.

22. Members' Disclosure of Interests

No disclosures of interests were made.

23. Application for the Grant of a New Premises Licence – Marston's PLC – '(New Build),' Maidenbower Officer Park, Balcombe Road, Crawley.

The Sub Committee considered an application for the Grant of a New Premises Licence – Marston's PLC – '(New Build),' Maidenbower Officer Park, Balcombe Road, Crawley.

Following the introduction of those present, the Legal Clerk outlined the procedure for the meeting. The Legal Clerk informed all parties that the Sub Committee had requested a briefing meeting with the Legal Clerk prior to the commencement of the Sub Committee, to confirm the procedure that would be followed during the meeting. She confirmed that she provided procedural advice on the process on the inclusion of

additional material sent to all parties in advance of the Hearing, she had referred the Members to Regulation 18 of the Licensing Act 2003. She also provided advice on the procedure in relation to continuing a Hearing when not all parties were present, where she referred them to Regulation 20 of the Licensing Act 2003. The Sub Committee confirmed that they were willing to continue the Hearing and would take all written representations with the same weight as those presented verbally at the Hearing.

The Legal Clerk then asked all parties present, if they wished to make any relevant applications, for example additional information or to cross-examine any party. All parties present indicated that they would request to reserve the right to cross-examine should it be required, which the Sub Committee agreed to allow. The Sub Committee also agreed to a request that all parties be able to sum up their views prior to the Sub Committee retiring to consider their decision.

Report PES/097 of the Council's Head of Planning and Environmental Services was presented by Mike Lyons, a Senior Licensing Officer for Crawley Borough Council.

The Application

The Senior Licensing Officer, Mr Lyons, informed the Sub Committee that on 21 August 2012, Marston's PLC (the Applicant), submitted an application to the Council as the Licensing Authority for the Borough of Crawley for a new premises licence in respect of a new build on Maidenbower Officer Park, Balcombe Road, Crawley. A copy of the application was detailed in Appendix A of the report which included information on which licensable activities had been applied for and how the applicant intended to meet the four licensing objectives. Following the submission of the application, the Applicant had held subsequent consultation with Sussex Police and had agreed a number of additional conditions to be added to their purposed licence, which was detailed in Appendix B.

It was confirmed that the application had been advertised in accordance with legislation. As a result of this process, the Licensing Authority received a representation from Responsible Authority - Environmental Health commenting that the application does not adequately address the objective, prevention of public nuisance. A copy of the full representation was attached as Appendix C to the report.

The Licensing Authority also received 36 individual relevant representations from local residents which made reference to the licensing objectives. A copy of the representations were contained Appendices D1 – D36 within the report. A number of representations were received by the Licensing Authority with regards to this application which in the view of the Council were not considered relevant to the licensing objectives and consequently not considered.

The Sub Committee were then guided through the remainder of the report which set out the reasons for the Hearing and the matters which the Sub Committee should take into consideration when dealing with the application, including the relevant sections of the Guidance issued by Government pursuant of Section 182 of the Licensing Act 2003, and the Council's policy considerations. It was reemphasised to the Sub Committee that the reference to the April 2012 publication of the Section 182 Guidance were contained within the report. However, since the publication of the agenda, the Government on 31 October 2012 had revised the Section 182 of the Licensing Act. It was noted that the Sub Committee had copies of both the April and October 2012 version of the guidance with them to inform their consideration.

He then proceeded to inform the Hearing of the options available to it in respect of the application, and reminded the Sub Committee that any decision must be appropriate for the promotion of the four licensing objectives. The options were to:

- (i) Grant the application subject to:
 - (a) conditions which are consistent with the operating schedule modified to such an extent as the authority considers appropriate for the promotion of the licensing objectives, and
 - (b) any relevant mandatory conditions;
- (ii) exclude from the scope of the licence any of the licensable activities to which the application relates;
- (iii) refuse to specify a person in the licence as the Premises Supervisor;
- (iv) reject the application.

The Applicant

Mr Gaunt addressed the Sub Committee on behalf of the Applicant Marston's PLC. He firstly provided them some background to the application, the premises and on Marston's business models. Including:

- Marston's was the leading independent brewer in the UK with 2000 premises and of those 600, were managed by the brewery and the proposed premises would be managed in-house
- Marston's had committed to 20-25 new build premises per year, all with broadly the same packages, product and premises specifications
- Marston's product was food lead with an average 70% food take to 30% - A copy of the menu was enclosed in the additional information page Z11-14
- Marston's would be investing £3million and making between 50-60 jobs on the proposed premises in Maidenbower.
- The new premises would include 180 covers and there would be a small area solely for drinkers
- The parking spaces and entrance to the premises would be at the back of the property, away from the Balcombe Road and Maidenbower residents
- The building would be designed against 2012 building regulations, with double glazing and a lobbied entrance.

Mr Gaunt addressed the representations made by Sussex Police and residents objecting to the application:

- He emphasised that Sussex Police originally objected to the application but his Client had worked with them to develop some further conditions as shown in Appendix B (page 39/40) which he confirmed now formed part of their application.
- In respect of the residents' representations, he showed the Sub Committee, using page Z/19 of the additional information, the location of where each of the objectors lived compared to the site of the premises.
- The applicant had organised a public meeting on the 18 October 2012 inviting all the objectors and those local businesses neighbouring the premises, to discuss the application and their concerns.
- However only 4 residents and 2 businesses (from the mini business estate located next to the proposed premises) turned up, but the meeting still lasted 1 ½ hours and by the end of the meeting there was a more conciliatory approach from all sides.
- Finally on the residents' representations one of their main concerns related to level regulated entertainment at the premises. However, regulated entertainment was an ancillary aspect of the product at the premises, the main aspect was the food.

Mr Gaunt then discussed the representation made by the Environmental Health's Noise Team (EHNT) which included:

- His client was disappointed by the nature of the objection, especially as they had made 50 applications across the country based on the same product and premises specifications.
- The objection refers to not engaging with pre application discussions with either the Police or the EHNT to mitigate any potential issues. The reason that did not occur was, my client was confident in their premises and product specifications as it had been satisfactory to other Responsible Authorities across the country. My client knows what were the potential issues and had mitigated against them.
- Similarly on the risk assessment aspect of the objection, Mr Gaunt confirmed that no specific assessment had been completed for the proposed premises. A risk assessment had taken place on our premises design specification. That it was felt it would be the same as the proposed premises based on their assessed design specification.
- Following the objection by EHNT, his client had worked with Mr Burns to address his concerns, including taking him to our nearest similar premises the Ladybird in Caterham, to show him our premises product first hand. During the visit Mr Burns heard the level of background music, which Marston's set, and would be the same at the new premises. He also saw that that no music or any noise had leaked from the premises.
- Also following discussions with EHNT my client has put forward a further set of conditions, as detailed on page Z/23 to mitigate any further concerns. Our conditions were affectively the same as those put forward by Mr Burns, as shown on page X/5. The only issue between both, related to our standard background ambient music not being played through a noise limiter. Our background music would and was set at a standard level across all our premises and cannot be heard outside of the premises, as we proved to Mr Burns when he visited the Ladybird. The music was played solely for ambience and to provide an atmosphere.

The Sub Committee then asked Mr Gaunt a number of questions for clarification purposes, which he responded to, which included:

- It was confirmed that there had been no withdrawals of objections, following the meeting held by the applicant and the local residents, but of those residents, none were present at the hearing.
- It was reemphasised that the main focus of the premises was food with at least a 60/40 split of income of food to alcohol.
- Last food orders would be at 10pm, but the applicant was requesting alcohol sales until, midnight or 1am on weekends. In reality the exact time of sales would be driven by trade, if consistently no one was purchasing drinks beyond 11pm, once the food trade had ended, then the premises would not remain open.

Responsible Authority

Mr Burns addressed the Sub Committee and commented that he firstly wanted to clarify the location of the proposed new premises, as the map provided by the applicant on page Z-19 was out of date. His map on page X-7 shows how close the premises would be from residents, approximately 40m away. He then queried a further aspect of the application as it requests the use of recorded music for both indoors and outdoors. Mr Burns believed that the applicant had recently removed the outdoors aspect. Mr Gaunt confirmed that was the case, the application now was solely for indoor use of recorded music only.

Mr Burns directed Members to page A/28 of the application, Section D which stated that a risk assessment had taken place on the proposed premises. However as already confirmed by Mr Gaunt that a specific noise risk assessment of the premises has not taken place. Mr Burns commented that Mr Gaunt had made reference that the only difference between the applicant's revised proposal and EHNT proposed

conditions was level of noise trigger. However from EHNT's perspective, their proposed conditions were based directly on the application before the Sub Committee to ensure there would be no noise nuisance; rather than on the applicant's intentions and promises.

EHNT duty was to be preventative and to do what is necessary to mitigate any noise nuisance. Thus, our proposed conditions had taken into consideration the location, the lack of acoustic assessment and the possibility that the residents living only 40 metres away on the west of the premises would likely hear bass breakout from the recorded music if it was played without the use of a limiter. Our proposed conditions were preventative, that a noise assessment occurs based on the location of the premises, as a result, a noise control scheme be identified in association with EHNT and that based on that noise limiting device be set according to all types of music. That ensures no breakout noise from the premises, even from background music. The cost of a limiter would be about a £1000.

Mr Burns then briefly responded to page Z-15 of the additional information, including that Brannigan's was a purpose built building to limit sound as it was a nightclub, thus didn't need a limiter. Of those premises listed, Goffs Park was closest to the application and it required a limiter. However, there were other premises within the Borough which were a better example, especially in terms of distance from residential properties; that being the Appletree in West Green which had a midnight closing time at weekend and a noise limiter, or the Frogshole in Maidenbower, which was limited to 29 occasions of regulated entertainment a year.

Mr Burns in closing reemphasised that a risk assessment must be based on the environmental conditions, as that affects how sound could break out. He reminded the Sub Committee that the Applicant was accountable by what was contained within their licence and if there was no condition, then the Applicant does not have to abide by it, even if it was there intention to do so.

At this point and based on what had been presented, the Sub Committee allowed some questioning and cross-examining to take place. The questions and the subsequent responses included:

- Mr Gaunt confirmed that the proposed premises would be their standard product, including standard installation, standard general specifications and size, standard windows, and standard background music levels set. With everything being standard my client knew what the breakout levels would be as it was predictable. The only sound that would be heard in the location would be that of the local roads, as by Mr Burns's evidence at the Ladybird.
- Mr Gaunt asked Mr Burns to confirm if he agreed that a number of the conditions both put by his client on page Z/23 and by the EHNT on page X/5, were the same, albeit numbered differently. i.e. 1, 3 and 4 were the same as 3, 1 and 2 respectively. Mr Burns confirmed that was the case. He then asked Mr Burns to confirm that similarly that his client's conditions 2a, 2b, and 2c were the same as the EHNT's conditions 5, 6 and 7, with the exception of what was categorised as recorded music. Thus, the only difference between both parties was his clients recommendation 2 compared to EHNT's number 4, relating to what was covered under the term recorded music. In response, Mr Burns said the need for having set limits on all recorded music was the crucial element of his condition as without that set limit, via a limiter, so called background music could be played at a level that would 'break out' and impact on local residents. Mr Gaunt commented that there was an agreed inaudibility condition that would prevent that from happening.

- Mr Gaunt asked Mr Burns how an environment risk assessment could occur on a location without a premises having been built yet. He replied that it would be based on environment and conditions of the locations, the expected specifications of the building combined with specific audible data and calculations, that information combined would be used to formulate the assessment. Mr Gaunt questioned how that differed from their standard risk assessment that his client had used on their standard build product, as both were based on calculations and statistics.

Interested Parties

Mr Healy informed the Sub Committee that he was not there representing other local residents; however, he asked the Sub Committee to consider the number of responses received by the Council to this applicant. He knew another of those responders would have attended the hearing but were unable to due to it being held during working hours. Mr Healy questioned why the applicant had not informed more of the local area of his proposal. In response the Senior Licensing Officer confirmed to the Sub Committee that Marston's PLC had fully complied with the regulations in terms of advertising the application, including advertising in the local press and placed the correct signs on the location of the proposed premises.

Mr Healy then addressed the application and commented he wanted to make two points with regards his concerns. The first related to direct noise from premises i.e. music etc coming from the building and impacting on local residents lives. He was pleased to hear the agreed conditions of new inaudibility, but he hoped it worked in practice, especially as no local risk assessment had occurred. The second concern and the biggest for residents was in direct nuisance coming from the premises i.e. the impact of people leaving and walking back passed houses in a drunken state. Mr Healy said he understands that once people had left the premises they were not the responsibility of the Applicant, but the time they leave the premises was. Reducing the proposed opening hours would certainly diminish the likelihood of disturbances.

Reverend Bell then addressed the Sub Committee and said that he was speaking on behalf of the Worth Conservation Area Advisory Committee, as the Chair. Their three concerns were covered in their representation D2 on page A/47 of the main report and it was his intention not to go through them. However, he would like to briefly address one on the proposed hours of opening and regulated entertainment. Having heard the discussions and taking it in good faith, that the applied for hours might not actually be those used in practice, possibly there would have been less concerns and suspicions by local residents if they knew the actual hours the premises would be open.

Closing Comments

Following the Sub Committee having heard from all those present, then seeking clarifications and asking any questions required, they then invited each party the opportunity to sum up their position.

Mr Burns – My position was to focus on preventative measures as with a flexible license it caters for a number of options and intentions. My proposed conditions were simple measures which would allow their proposed flexibility, whilst ensuring that local residents were unaffected.

Mr Healy – The key point was to ensure inaudibility for local residents.

Mr Gaunt – Firstly my client wanted flexibility within their licence so they could cater for their customers requirements. Both the Police and the Environmental Health were satisfied with the application and our proposed conditions. The only issue between my Client and Environmental Health was the simple trigger for the music inaudibly for a noise limiter. However the discussion on the trigger point should be treated as

redundant as our proposed audibility condition, so if there was audible sound from the premises we would be in breach of our conditions.

The final point, yes everything had to be considered against its environment but our product was consistent, controllable and predictable.

RESOLVED

In accordance with Regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005, the public be excluded from the following part of the Hearing. The Sub Committee considered that the public interest in taking such action outweighed the public interest in the Hearing taking place in public.

24. Application for the Grant of a New Premises Licence – Marston’s PLC – ‘(New Build),’ Maidenbower Officer Park, Balcombe Road, Crawley.

The Sub Committee gave further consideration to the application and to the matters raised at the meeting. In formulating its decision, the Sub Committee took into account the options that were available to it and considered what was appropriate to ensure that the licensing objectives were promoted.

RESOLVED

The Sub Committee, having considered the application and the relevant representations in detail, resolved to take the actions as detailed in **Appendix A** to these minutes, because it was considered appropriate to promote the licensing objectives.

25. Re-admission of the Public

The Chair declared the meeting re-open for consideration of business in public session and commented that the Sub Committee had requested that their decision and its rationale be announced by the Legal Clerk on their behalf. Prior to reading out the decision, the Legal Clerk informed those present of the advice she provided during the closed session which included:

- Reminding the Sub Committee what considerations they must take into account when determining the application, including the requirements of Section 18 of the Licensing Act, Section 182 Guidance, and the Council’s Licensing Policy;
- She had referred the Sub Committee to the case of Daniel Thwaites PLC v Wirral Borough Magistrates Court, which in summary was that there was case law which required decisions to be evidence-based, but that on certain matters members could use common sense and take into account their knowledge of the area.

The Legal Clerk read out the Sub Committee’s decision as detailed in **Appendix A** to these minutes. It was also announced that all parties would receive a copy of the decision notice within five days of the Hearing.

26. Closure of Meeting

With the business of the Sub Committee concluded, the Chair declared the meeting closed at 4.47pm.

B J Burgess
Chair

Appendix A

Decision of the Licensing Sub Committee

Decision of the Licensing Sub Committee sitting at Crawley Borough Council in relation to the application for a premises licence by Marston's PLC in respect of a prospective new build at Maidenbower Office Park, Balcombe Road, Crawley, West Sussex, RH10 7NN

The hearing was in respect of application for a premises licence made by Marston's PLC at a prospective new build at Maidenbower Office Park, Balcombe Road, Crawley, West Sussex, RH10 7NN.

At the conclusion of the hearing the Licensing Sub Committee notified those present of their decision. Set out below is the decision and the reasons for it.

The Sub Committee recognised that the application before them today was amended to the extent that the operating included conditions that had been agreed between the Applicant and the Police (as set out in Appendix B of the report).

The Sub Committee recognised that the task of a licensing authority on an application for the grant of a premises licence is to consider the application and representations made and thereafter a duty falls upon the authority to impose such steps as set out in section 18 of the Licensing Act 2003 as the licensing authority considers appropriate to promote the licensing objectives.

The Sub Committee listened carefully to the submissions made on behalf of the Applicant's representative, the oral submissions of Mr Healy and Reverend Ball who had made relevant representations and who attended the hearing, as well as considering all of the written representations including those made by people who had not attended the hearing.

In coming to its determination the Sub Committee took into account:

- The representations made on behalf of the applicant and the people who made relevant representations both in writing, and those who made oral submissions in support of their representations at the hearing;
- The requirements of the Licensing Act 2003;
- The Statutory Guidance;
- Crawley Borough Council Licensing Policy; and
- Relevant considerations under the Human Rights Act 1998.

The Sub Committee was mindful to ensure that it took into account the relevant representations made in writing (and the oral submissions made today) only to the extent that they related to the promotion of the licensing objectives.

The Sub Committee noted that, except from the representation made by Mr Burns on behalf of Environmental Services, the people who had made relevant representations were local residents who lived in the vicinity of the proposed premises and appreciated their personal experience and knowledge of the local area. They accepted there was a genuine fear of the promotion of the licensing objectives being undermined, particularly the prevention of public nuisance, given the proposed unusually lengthy hours for the supply of alcohol and the provision of regulated entertainment at a proposed premises within such close proximity of residential housing.

It also noted that it ought to focus on the impacts of the licensable activities at the specific premises on persons living and working in the vicinity and look to see if they are disproportionate and reasonable in accordance with its own policy.

The Sub Committee paid regard to the Statutory Guidance and its own policy which says that it was a matter for the licensing authority to make judgements about what constitutes public nuisance and what is necessary to prevent it in terms of conditions attached to premises licences.

The Sub Committee were of the view that because the premises were a proposed new build, then in respect of considering the potential nuisance caused to nearby residents if the licence were granted as applied for, it was appropriate to draw on the relevant representation and oral evidence of Mr Burns, what they had heard from the local residents, and from their own knowledge of the local area.

The Sub Committee carefully considered the representation of Mr Burns of the Environmental Health Department who they considered to be a professional officer and an expert in noise nuisance. They were persuaded by his representation made on the basis of the prevention of public nuisance, along with the oral evidence he gave at the hearing, and his conclusion that if the licence was granted as applied for, there would be resulting unacceptable nuisance to nearby residents.

The Sub Committee were of the view that, due to the locality of the premises (in close proximity to residential housing) and the expected target clientele, combined with the anticipated levels of noise associated with longer licensable hours, it had serious concerns that the licensing objective of the prevention of public nuisance would be potentially undermined if the premises were open until 1am at weekends, especially due to the lack of any apparent specific localised noise risk assessment from the Applicant.

Having taken all the relevant matters into consideration, the Sub Committee concluded that the appropriate step for the promotion of the licensing objectives was to grant the amended application subject to the following:

- That the licensable activity of recorded music be restricted to indoors only (which the Sub Committee noted that the Applicant's representative at the hearing stated that the Applicant was agreeable to this)
- The hours of the licensable activities of supply of alcohol and regulated entertainment be reduced as follows:
 - Monday – Thursday between 10:00 – 23.00
 - Friday – Saturday between 10:00 – 00:00
 - Sunday between 11:00 – 23:00
- The licence shall have the following conditions be imposed, which the Sub Committee considered appropriate for the promotion of the licensing objectives:
 1. Prominent, clear and legible signage shall be displayed at all exits which have the effect of requesting patrons to respect the right of local residents to a peaceful night and to leave the premises and the area quietly. Announcements to the same effect shall be made to patrons at appropriate times.
 2. The use of outside areas for licensable activities will cease at 23:00.
 3. Noise from regulated entertainment shall be inaudible within any noise sensitive premises (this includes any residence which may have one or more windows open

to allow for ventilation). A test for fulfilment of this condition shall be that noise from the premises shall be no more than barely audible at the boundary of any nearby noise sensitive premises.

4. Where regulated musical entertainment is to be provided on the premises after 23.00 on any day then:
 - a. Such entertainment shall not be provided unless the level of all noise due to regulated entertainment is controlled by a noise limiting device (NLD) that is satisfactory to the licensing authority. Regulated entertainment shall not be provided unless the NLD is set to limit noise at a level satisfactory to the licensing authority. The NLD shall be maintained at settings satisfactory to the licensing authority at all times. The NLD shall be secured (to prevent any alteration of its settings) to the satisfaction of the licensing authority. The settings of the NLD shall not be altered in any way, nor shall its function be interfered with in any way without the prior written consent of the licensing Authority.
 - b. The provision of such entertainment shall not take place until a noise insulation and control scheme (the scheme) has been submitted to and approved in writing by the licensing authority and until the approved scheme is implemented to the satisfaction of the licensing authority. The scheme shall be maintained in accordance with the approved details thereafter and no alterations shall be made to the premises without the prior written consent of the licensing authority
 - c. The provision of such entertainment shall not take place until a test of the sound insulation performance of the premises has been carried out to the satisfaction of the licensing authority

The Sub Committee would like to take this opportunity to thank all the parties for their attendance.