

COLCHESTER BOROUGH COUNCIL

LICENSING SUB-COMMITTEE

16 December 2016

MINUTES OF PROCEEDINGS

At a meeting of the Licensing Sub-Committee held on 16 December 2016 at 10.00am in the Grand Jury Room, Colchester Borough Council, Town Hall, High Street, Colchester

Present: - Councillor Buston
Councillor Cope
Councillor Hogg

1. Membership

RESOLVED that Councillor Cope be appointed Chairman.

2. Declarations of Interest

Councillor Hogg (in respect of his position as a personal licence holder and his position at the Oak Tree Centre) declared his non-pecuniary interest in the following item pursuant to the provisions of Meetings General Procedure 7(5).

3. Licensing Application

The Head of Professional Services submitted a report in relation to the following premises licence variation application for determination by the Sub-Committee, in accordance with the provisions of the Licensing Act 2003.

- **Yates, 1-3 High Street, Colchester**

The Sub-Committee considered objections to the variation of a premises licence application which had been received in respect of Yates at 1-3 High Street, Colchester to permit –

The provision of films, performance of live and recorded music and anything of a similar description indoors; and to permit the sale of alcohol on and off the premises –

- Fridays to Saturdays from 10.00 to 03.00

The provision of late night refreshment on and off the premises –

- Fridays to Saturdays from 23.00 to 03.00

Vary the layout of the premises in accordance with the plan at Appendix 2.

To amend the following conditions (by the addition of the words marked in bold)

Annex 4 Condition 1 – Crime and Disorder - Where the premises open for the sale of alcohol until 02:00 **or later** there will be a minimum of 2 door supervisors on duty from 21:00 until close and the remaining number to be determined by risk assessment and at all other times by risk assessment in addition.

Annex 4 Condition 3 – Public Nuisance - 3. Windows and doors to be **kept** closed by 23:00 to reduce noise levels for regulated entertainment, **except for access and egress**.

Annex 4 Conditions 5 – Public Nuisance - 5. No bottles and glasses to be taken off the premises **except for consumption in any external area**.

In Attendance

Ms S Taylor, Solicitor for the applicant, Poppleston Allen
Ms H Cardy, Poppleston Allen
Mr C Wilson, Area Manager for Stonegate Pub Company Ltd
Mr P Sparham-Simpson, Designated Premises Supervisor, Yates
Mrs S Harrington, Licensing Authority
Ms A Westbrook, Director, Balcerne Gardens Trust
Mrs A Ozono, Legal Services
Mr J Ruder, Licensing, Food and Safety Manager
Mrs White, Licensing Officer
Mrs Gentry, Democratic Services Officer
Mr Clifford, Democratic Services Officer

Mr Ruder outlined the application to which objections had been lodged by local residents from the Balcerne Garden Trust Retirement Complex and the Licensing Authority, acting in its capacity as a responsible authority. He highlighted that the premises were located in the Old Town Zone.

Ms Taylor outlined the application and explained that the additional hours were being sought at the request of customers who wished to stay in the premises a little longer than current hours permitted and there was no intention to change the way the premises was operating. The extension sought was to be open on Fridays to Saturdays until 03.00, but not allowing anymore customers in from 02.00, and to permit the provision of late night refreshment on and off the premises Fridays to Saturdays until 03.00.

The applicant was unaware of any problems with the operation of the premises and therefore did not consider that the extension was likely to undermine the licensing objectives. Ms Taylor had also asked that an exception should be made to the Licensing Policy as the premises had successfully operated the requested hours on a number of occasions using Temporary Event Notices (TENs) The applicant also referred to the judgement in the Brewdog case, which demonstrated that special polices as applied in the Old Town Zone, did not prevent the extension of hours and that each case need to be judged on its merits. The Police were supportive of the application for extended hours. It was not anticipated that the change in hours would increase the number of people in the area but rather that it would help prevent migration between venues by keeping patrons in the premises until it closed In addition, the extension in hours would lead to a more gradual dispersal of customers, which would lessen the impact on local residents. Reference was made to the fact that later hours were being operated by other premises in the area.

In response to questions from the members of the Sub-Committee Ms Taylor responded that no additional patrons would be let in from 02.00, the garden area will be closed at 01.00 as was current practice and that there had been no apparent increase in problems in the area as a result of the TENs that had been implemented.

Mrs Harrington addressed the Sub-Committee on behalf of the Licensing Authority. The Licensing Authority had no issue with the way the premises were currently operated. However, the hours requested were outside of those outlined in the Policy for the Old Town Zone and as such the Policy indicated that exceptional circumstances should be demonstrated to justify departure from the Policy. No such exceptional circumstances had been demonstrated by the applicant.

Ms Westbrook, Director of Balkerne Gardens Trust, then addressed the Sub-Committee on behalf of the residents of Balkerne Garden Trust. She outlined the problems of noise and anti-social behaviour experienced by elderly residents living at the Trust. This caused real stress to residents and the Trust had had to invest a significant sum in a CCTV system as a consequence. Ms Westbrook told the Sub-Committee that Zone Wardens and Police are called on a regular basis and most problems happen between 01.00 – 03.00. Ms Westbrook acknowledged that she could not categorically attribute specific events to patrons from Yates but the area around the back of Yates did cause problems and if longer hours are granted, it could cause more issues.

RESOLVED that the application be refused with the following exception –

- The layout of the premises be varied in accordance with the plan attached to the variation application and shown at appendix 2 to the report.

Reasons for the determination

In arriving at the decision the Sub-Committee considered each point very carefully. It noted the representations and the evidence presented by the Applicant and Objectors under the Licensing Act 2003 and had regard to the Section 182 Guidance and to its own Licensing Policy.

The Sub-Committee found that the premises was located within a mixed commercial/residential area and that its primary focus was the sale of alcohol. It also found that the premises was located in a noise sensitive location with residential accommodation in close proximity to the venue and its garden.

The premises was located in the Old Town Zone which meant it was located in an area where the promotion of the licensing objectives was being undermined as a consequence of the operation of licensed premises in the area.

The Sub-Committee had regard to the submission of the Licensing Authority that the hours sought in the application were contrary to those set out in the Council's Statement of Licensing Policy. It was also mindful of the authorities and precedents presented by the applicant including the need to consider each case on its own merits.

The Sub-Committee considered the evidence presented by Ms Westbrook, Director of the Balkerne Gardens Trust on behalf of the Balkerne Garden Trust retirement complex situate adjacent to the premises. It was noted that the problems in the area were such that the Trust were required to contact the Zone Wardens on a regular basis and that it had been necessary for the Trust to install CCTV because of anti-social behaviour in the area which affected its residents notably between 0100 and 03.00. The Sub-Committee considered the point made by the Applicant that such behaviour could not be directly attributable to the patrons of any particular premises but had further regard to the fact that the area was under stress and a special policy had had to be put in place by the Licensing Authority for the

protection of residents to address, inter alia, that issue and the prevention of Public Nuisance.

The Sub-Committee considered the point made by the Applicant that an exception should be made to the Licensing Policy as the premises had operated the requested hours using TENs and, noted its claim that there had been no apparent increase in problems in the area as a result of them. On questioning, Ms Westbrook was unable to confirm whether there had been problems on the nights in question as she was not aware of the dates and therefore unable to link events with the date of the TENs.

The Sub-Committee noted the Applicant's point that other premises within the town operated to the requested hours of 03.00 closing at 03.30. The Sub-Committee further noted the offer of additional conditions in the event that the licence was granted including a last entry restriction time of 02.00.

The Sub-Committee noted that the premises was well run and had a good working relationship with both the licensing team and the Police but considered this was no more than was expected of a well-run establishment and did not demonstrate exceptional circumstances. The conditions offered by the Applicant on the operating schedule were again those to be expected of a well-run premises. It placed little weight on the submission that other premises in the town operated the requested hours as the Sub-Committee was required to consider each case on its own merits and the operating hours of other premises was not therefore considered to be relevant.

The Sub-Committee noted the comments of the Applicant to the effect that it had received positive encouragement from the Police for the submission of the application for extended hours - but the Sub-Committee did not find that there was any evidence presented to support this contention, save the claim made by the Applicant.