

**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE held at
Surrey Heath House, Camberley on 14
January and 25 February 2014**

+ Cllr Bill Chapman
+ Cllr Paul Innicki

+ Cllr Valerie White

+ Present

In attendance: Cllr Ian Sams (as reserve) (14 January 2014 only)

Legal Adviser to the Sub-
Committee

Miss Karen Limmer (Head of Legal Services and
Legal Representative for Surrey Heath Borough
Council as Licensing Authority)

Democratic Services Officer

Mr Andrew Crawford

Surrey Heath Borough Council
as Licensing Authority

Mr Derek Seekings (Licensing Officer)

Applicant – Mr Robert Potter
and Ms Joanne Potter

Mr Robert Potter OBE – Applicant
Mr Glynn Evans – Personal Assistant to Mr Potter
Mr Danny Wallace – Bob Potter Leisure Ltd

Responsible Authorities:

Surrey Heath Borough Council

Michelle Fielder – Development Management Team
Leader (14 January 2014 only)
Richard Haddad – Principal Environmental Health
Officer
Jonathan Partington – Development Manager
Helen Riglia – Solicitor representing the Executive
Head of Community
James Robinson – Environmental Health Officer (25
February 2014 only)
Michelle Shoulder – Environmental Health Officer –
25 February 2014 only)

All Other Persons:

Mr A Daley (25 February 2014 only)
Mrs H Emuss
Mr JA Emuss
Mr I England
Mr M Heffernan
Mrs J Legg
Mr M Legg
Mr DR Miles (25 February 2014 only)
Mr J Milne
Mrs S Milne
Mr S Moynihan
Mr R Newman (25 February 2014 only)
Dr N Porritt
Mr S Roberts (25 February 2014 only)

Mr A Rumble (25 February 2014 only)
Mrs Rumble (25 February 2014 only)
Mr RW Sawers
Mrs T Sawers (25 February 2014 only)
Mr R Smith (25 February 2014 only)
Mrs Smith (25 February 2014 only)
Miss K Trevithick (25 February 2014 only)
Mr D Whitcroft (25 February 2014 only)

05/LS Election of Chairman

RESOLVED, that Councillor Bill Chapman be elected as Chairman for the meeting.

PART I **(public)**

06/LS Water's Edge, Mytchett Road, Mytchett, Surrey.

The Sub-Committee considered an application for a new Premises Licence relating to Water's Edge, Mytchett Road, Mytchett.

The Chairman reminded all present that the Sub-Committee would consider matters pertaining to licensable activities and not planning matters.

The Legal Advisor reported that Joanne Potter, one of the applicants was a Surrey Heath Borough Councillor and a member of the Conservative Group on the Council. However, the Sub-Committee Members had confirmed that they did not have close association with her and would therefore have no bias towards the applicants.

The Licensing Officer presented his report to the Sub-Committee and notified representatives of the parties who had a right to speak at the meeting. He referred Members to the Licensing Objectives and noted that relevant objections had been submitted.

The Legal Advisor reminded Members that any material which had not been circulated in advance to all parties could only be considered at the meeting if all parties present agreed.

All relevant parties present introduced themselves and stated their reason for attending the Sub-Committee.

The Licensing Officer reported that Responsible Authorities and other persons had contended that the carrying on of licensable activities at the premises could breach the following licensing objectives:

- (i) The prevention of crime and disorder;
- (ii) Protection of Public Safety;
- (iii) Prevention of Public Nuisance; and
- (iv) Protection of children from harm.

The Licensing Officer noted that the application was for the provision of regulated entertainment, late night refreshment and the supply of alcohol. He reported that, subsequent to the submission of the application, the applicant had requested that 'Boxing and Wrestling Entertainments' and any 'indoor Sporting Events' involving contact sport, be removed from the application.

Representations had been submitted by The Executive Heads of Community and Regulatory Services of Surrey Heath Borough Council and other persons. No other Responsible Authorities had submitted representations.

The Licensing Officer reported that an additional submission had been received from the applicants late on 13 January 2014. Efforts had been made to circulate the package to all concerned, but Members of the Sub-Committee and some of those making representations had not had the opportunity to consider this large document prior to the meeting.

Representations were made by Mr Partington for the Regulatory Services department. He stated that the Planning Authority had made a representation on the grounds of public nuisance only. The Authority was concerned that, whilst the building at Water's Edge was legal, the planning permission for the use of the building, granted in 1993, had been outline permission only, subject to planning conditions, with reserved matters, including excavation of soil, protected trees, foul water drainage and water contamination.

The permission granted had stipulated more restricted closing times and the Planning Authority continued to have concerns on the impact on residents of the proposed 2.00 a.m. closure, as proposed in the application.

Because the Planning Conditions had not been discharged, the planning permission had now lapsed and an application would be required to regularise the proposed activities.

There was insufficient detail in the application to allow the Planning Authority to determine the extent and nature of the proposed usage and in the absence thereof, it had not been possible to fully consider or consult on the environmental impact or the potential for anti-social behaviour. There were also concerns relating to the proposed marquee.

Mr Evans, on behalf of the applicants, disputed the status of the planning permission, which he considered to be still in place.

Helen Riglia, made representations on behalf of the Executive Head of Community, in respect of the 4 licensing objectives. She referred to the late submission by the applicants which responded to the Environmental Health representations with the exception of noise nuisance. Mr Evans confirmed that page 5 of 6 was missing from the papers submitted. This was copied and tabled.

Ms Riglia sought the Sub-Committee's permission for an adjournment to allow Environmental Services officers to discuss with the applicants the counter points made to the officers' representations.

The Sub-Committee adjourned from 10:30 until 11:50.

On resumption, Ms Riglia reported that whilst concerns in relation to the proposed closing times remained, the following had resulted from discussions with the applicants:

- (i) The applicant had now stated that, in addition to the conditions previously agreed, it was not intended to have any of the following activities at the premises:

Boxing, wrestling and any contact sport
Darts, snooker or any non-contact sport
Dancing competitions
School proms
Pantomimes and theatre shows
Public music concerts

- (ii) On the basis that the primary use of the premises would be as a restaurant, the Environmental Health Officers had proposed the following conditions be included, if the licence was granted:

1. There shall be monthly notification to Surrey Heath Borough Council of future events, including event management plans incorporating site-specific risk assessments and car parking / marshalling arrangements.
2. SIA staff to be employed during specified events as agreed with Surrey Heath Borough Council Environmental Health Department.
3. No under-18s to be permitted at adult entertainment events.
4. Noise level measured at the nearest residential property to be 10dB below ambient background noise level.

Ms Riglia noted that the applicants could, at a later stage, seek a variation to any licence granted, to cover the use of a marquee. This could also be the subject of temporary event notice applications in the interim.

The Chairman sought clarification on the proposed conditions, in terms of monthly notices of events, site specific risk assessments, parking assessments and the levels of SIA trained staff required, focussing in particular on the cost/resource implications to the Council. However, he received assurances that the primary use would be for a restaurant. It was difficult to predict the requirements as these depended on the nature of the events and the Environmental Health Officers were duty bound to ensure public safety, given a recent conviction relating to the applicants' Lakeside Complex.

Given the changes proposed and the request by other persons present to have time to consider these and the late submission, the Sub-Committee agreed to adjourn to a date to be established, to allow consideration of these later developments.

Given that the changes related to a reduction in what had previously been requested, the Chairman confirmed that those participating in this meeting would be afforded the subsequent opportunity to expand on existing representations, based on the changes outlined, but that new representations by others who had not previously submitted them would not be considered and new subject matters could not be introduced.

RESOLVED, that

- (i) consideration of the licensing application for a new premises at Water's Edge be deferred to a future date; and**
- (ii) Participants at this meeting be permitted to expand on previous representations, in the light of the changes proposed, but no new matters to be introduced or any submissions from others not present at this meeting.**

07/LS Water's Edge, Mytchett Road, Mytchett, Surrey – Re-commenced Hearing

The Sub-Committee re-commenced consideration of an application for a new Premises Licence relating to Water's Edge, Mytchett Road, Mytchett.

The Chairman reminded all present that the Sub-Committee would consider matters pertaining to licensable activities and not any outstanding planning matters, which would be for the applicant to resolve with the Executive Head of Regulatory.

The Legal Advisor reported that during a recess at the previous sitting of the Sub-Committee, the applicant and representatives of Community Services had agreed four amended conditions. She noted that these conditions would be subject to consideration by the Sub-Committee.

A late submission from the Applicants, forming an Events Schedule, was circulated to all present.

Members sought clarification on sound levels. It was established that ambient sound levels were tested at on 22 December 2013, at midday and between 11.45 p.m. and 12.15 a.m., from the rear patio of 208 Mytchett Road, with the daytime level recorded at 58 decibels and night-time at 45 decibels. The difference in sound levels, in terms of decibels, would mean that sound would double in intensity with an increase of 10 decibels, but halved with a reduction of 10. A condition had been placed on the proposed licence that sound levels emanating from the premises would be at least 10 decibels less than ambient sound.

The Sub-Committee heard from Mr Glynn Evans that the application was significantly changed from that originally submitted, with a number of the proposed activities being accommodated in other parts of the organisation. The prime role of Water's Edge would be a fish operation and the application had been amended accordingly. It was hoped that Water's Edge would bring vitality and employment to the area without causing any disquiet to neighbours. He emphasised that the applicants had an exemplary record of operating in the Borough and always sought to be good neighbours.

In response to questions in respect of a recent prosecution, Mr Evans noted the circumstances in which a member of the public had drowned at the Lakeside Complex and the outcome of the prosecution where it had been deemed that the complex should have had fencing round the lake. He reminded the Sub Committee that the organisation had disagreed with the findings. However, he advised that the necessary mitigation measures would be in place at Water's Edge before the operation commenced and the organisation would ensure that obligations to staff and the public were all met.

Mr Evans stated that whilst the organisation would not necessarily open till 2.00 a.m. every day, it needed the flexibility to decide hours within the requested parameters.

The Committee heard from the Other Persons present at the meeting, during which the following concerns were raised:

- (i) Sound/Light Pollution – The licensable property was across the road from a significant number of residential properties and a number of the households had school age children and/or adults who worked shifts. Any increase in noise from the premises or vehicles would have an adverse impact and cars exiting the site would shine their lights into bedrooms.

It was noted that lighting for the proposed golf range would be directed away from the residential areas.

- (ii) Timing – Given the above, there would be a significant impact on residents and in particular children, if the proposed 2.00 a.m. closure was agreed, given that it could take some time for the customers to leave the premises, get into their cars and exit the site.

- (iii) Car Park Capacity – There would be 167 parking places on site plus 2 disabled bays, but, with customers estimated at up to 600, there were concerns that local residential streets would be used as overflow car parks.

Mr Evans gave assurances that the organisation had sufficient alternative parking available with bussing facilities if necessary.

- (iv) Traffic Issues – The Mytchett Road ran between the Water's Edge and local residential areas. There were already concerns in relation to speeding and risk to the public. A further increase in traffic would be a matter of some concern.

Miss Limmer indicated that highways safety issues would be covered by the planning process.

- (v) Fireworks – Concerns were raised in relation to fireworks and pyrotechnics. Time restrictions were sought.

Mr Evans indicated that the applicants were happy for fireworks to be excluded from the licence. This is covered by other legislation.

- (vi) Adult Entertainment – Concerns were raised as to why the licensing application for the restaurant included adult entertainment and indeed what the nature of this entertainment would be.

Mr Evans explained that comedians using clean humour would be classed as caberet. A more rude content would be classed as adult entertainment.

Miss Limmer noted that Environmental Health had asked for a condition excluding children from adult entertainment events and confirmed that any activities of a more adult nature, such as pole dancing would require separate applications.

- (vii) Property Values – Residents who purchased their properties before the proposals were submitted for Water's Edge were concerned that the proposed package might have a negative effect on property values.

The Licensing Officer reported that, regardless of the outcome of the Hearing, the applicants could apply in the future for a variation of the licence and could also apply for a Temporary Events Notice up to twelve times a year. He agreed to notify any applications for variations to those who had supplied e-mail addresses with submissions on the application. He noted that, in addition standard conditions and the 4 additional conditions proposed by Environmental Health, the applicants had also agreed to the following:

- (i) The Licenced Premises would be restricted to the area marked in red on the map attached to the report – that being the restaurant and patio area only.
- (ii) Withdrawing Boxes C and D (indoor sporting events plus boxing and wrestling) from the operating schedule.
- (iii) A wind down period of 20 minutes before closing be introduced during which the volume and tempo of the music would be reduced.
- (iv) There would be no outdoor entertainment.
- (v) The proposal to have a separate area designated for children would be changed to indicate that children would not be allowed on the premises for any event of an adult nature.
- (vi) The inclusion of fireworks or pyrotechnics to be deleted.

The Sub-Committee adjourned from 11.55 a.m. until 1.10 p.m. for deliberation.

Following deliberations on the application, the Chairman reported that the Sub-Committee had taken into account:

- Section 18 of the Licensing Act 2003 which states that, having regard to relevant representations that are made, the Sub-committee must take such steps it considers appropriate for the promotion of the licensing objectives;
- The Secretary of State's Guidance issued under section 182 of the Licensing Act 2003, particularly paragraphs 2.18, 2.22, 2.25 and 1.19;
- The Council's Statement of Licensing Policy, particularly paragraphs 1-89 and 95-138; and
- The written and oral evidence presented at the hearing.

The Sub-Committee had heard evidence from the Applicants, the Responsible Authorities, and a number of local residents.

Members recognised that a balance had to be struck between the interests of the residents and the applicants. Having listened to the issues raised by residents relating to the impact on them from any noise emanating from the applicants' premises and potential noise and light pollution during the period when customers

exit the premises and the site, the Sub-Committee had concluded that the licensable activities would have an impact in those living in the area. For this reason, they considered that the hours of operation should be reduced.

The Sub-Committee proposed an additional condition that appropriate signage be displayed prominently requesting orderly conduct on departure from the premises.

Although made aware of planning issues relating to the premises, the Sub-Committee did not take these into account in their decision.

RESOLVED, that the Premises Licence for Water's Edge, Mytchett, be granted for the hours of 0800 to 2300 from Sunday to Thursday and 0800 to 2400 on Fridays and Saturdays, subject to the conditions attached in the Decision Notice at Annex A.

CHAIRMAN

Note 1: The hearing commenced on 14 January 2014 at 10.00, adjourned from 10.30 to 11.50 to allow further considerations and then adjourned at 12.15 to 25 February 2014 at 10.00. The meeting was further adjourned from 11.55 to 13.10 for deliberation. The meeting was closed at 13.15.

SURREY HEATH BOROUGH COUNCIL

LICENSING ACT 2003

Application for a new Premises Licence

Decision Record

APPLICANT: Robert Ronald Potter OBE and Joanne Daphne Potter

PREMISES: Water's Edge, Mytchett Road, Mytchett, Surrey GU16 6AG

DATES OF HEARING: 14 January 2014 and 25 February 2014

MEMBERS SITTING: Cllrs B. Chapman (Chairman), P. Illnicki and V. White

DECISION:

To grant the application for the premises licence, as amended by the Applicants, in the following ways:

The licensed premises are shown edged red on the attached plan.

The amendments include withdrawing Boxes C and D of the Operating Schedule, but incorporate the events set out in the attached revised Events Schedule

subject to:

- The mandatory conditions imposed by the Licensing Act 2003; and
- Conditions consistent with the Operating Schedule, as amended as follows:
 - The hours for the provision of regulated entertainment and the supply of alcohol are amended to 08.00 until 23.00 hours Sunday to Thursday and 08.00 until 24.00 and Fridays and Saturdays;
 - Condition 18: first sentence to be deleted;
 - Condition 22: to be deleted and replaced: A wind-down in music volume and tempo will commence 20 minutes before the end of any event;
 - Condition 26: to be deleted and replaced: Children under the age of 18 years are not to be allowed to attend events which contain material of an adult nature.
- The conditions agreed with Environmental Health namely:

- There shall be monthly notification to Surrey Heath Borough Council of future events, including event management plans incorporating site-specific risk assessments and car parking/marshalling arrangements;
 - SIA staff to be employed during specified events as agreed with Surrey Heath Borough Council Environmental Health Department;
 - No Under 18's to be permitted at adult entertainment events;
 - Noise level measured at the nearest residential property to be 10dB below ambient background noise level.
- A further condition requiring signs requesting orderly conduct when leaving the premises shall be placed at suitable locations.

REASONS

In coming to its decision, the Licensing sub-committee has taken into account:

- Section 18 of the Licensing Act 2003 which states that, having regard to relevant representations that are made, the Sub-committee must take such steps it considers appropriate for the promotion of the licensing objectives;
- The Secretary of State's Guidance issued under section 182 of the Licensing Act 2003, particularly paragraphs 2.18, 2.22, 2.25 and 1.19
- The Council's Statement of Licensing Policy, particularly paragraphs 1-89 and 95-138
- The written and oral evidence presented at the hearing.

The Licensing sub-committee heard evidence from the Applicants, the Responsible Authorities, and a number of local residents.

The Licensing sub-committee considered that a balance had to be struck between the interests of the residents and the applicants. Having listened to the issues raised by many residents relating to the impact on them from any noise emanating from the applicants' premises, as well as a more detailed description of the 'fish operation' that the applicants intend to run, the sub-committee considered that the licensable activities would have an impact in those living in the area. For this reason, they considered that the hours of operation should be reduced.

The Licensing sub-committee also considered that the proposed condition relating to noise monitoring would also assist in controlling noise issues.

The Licensing sub-committee, although made aware of planning issues relating to the premises, did not take this into account in their decision.