

LICENSING SUB-COMMITTEE

Friday, 13 August 2021

Attendance:

Councillors

Read (Chairperson)

Laming

Westwood

Others in attendance who did not address the meeting:

Councillor Radcliffe

Officers in attendance:

Briony Appletree – Interim Licensing Manager

Claire Humphreys – Licensing Officer

Nathan Mountney – Litigation Solicitor

[Full audio recording](#)

1. DISCLOSURE OF INTERESTS

There were no disclosure of interests made at this meeting.

2. REVIEW OF PREMISES LICENCE - THE EXCHANGE, 9 SOUTHGATE STREET, WINCHESTER, HAMPSHIRE, SO23 9DZ (LR548) (LESS EXEMPT MINUTE)

The Chairperson welcomed all those present to the meeting:

Applicant:

PC Brian Swallow (Hampshire Constabulary)

Premises Licence Holder & Representatives:

Colin Clark – Licence Holder and Designated Premises Supervisor (DPS)

Julia Palmer – Trethowans LLP (Solicitor for Mr Clark)

Other Persons who have made written representations:

John Cowking (representation on page 28)

William Gubbins (representation on page 29)

Tim Wright (representation on page 32)

The Interim Licensing Manager introduced the report which set out an application to review the premises licence under Section 51 of the Licensing Act 2003 for The Exchange, 9 Southgate Street, Winchester. The application was submitted on 20 June 2021 by PC Brian Swallow of Hampshire Constabulary, representing the Chief Officer of Police for the area (a Responsible Authority as defined by section 13 of the Licensing Act 2003) and related to all four of the licensing objectives. It cited incidents at the premises in both 2020 and 2021 as evidence to support the applicant's view that the licensing objectives were not being upheld. The full application was set out in Appendix 1 to the report.

The Sub-Committee were advised that the application proposed the imposition of conditions on the premises licence to promote the four licensing objectives. In addition, the application proposed that Mr Colin Clark be removed from the premises as a designated premises supervisor (DPS) who had held the premises licence and been named as DPS since November 2005. Details of the operating schedule and existing conditions were set out in Appendix 3 of the report.

No representations had been received by Responsible Authorities. However, ten written representations had been received from 'Other Persons'. These representations were set out in full in Appendix 2.

The Sub-Committee's attention was drawn to Appendices 6 and 7, which set out correspondence between the Police and the premises licence holder's legal advisor that had been submitted to the local authority since the publication of the report.

In addition, two further documents were circulated at the meeting, Appendix 8 (additional material submitted by the applicant) and Appendix 9 (proposed amendments to conditions submitted by Trethowan's LLP on behalf of the licence holder). These documents are available on the council's website [here](#).

In conclusion, the Interim Licensing Manager advised the Sub-Committee that there were options to consider in the determination of the application, as set out in Section 4 of the report, to have regard to the National Guidance and the Council's Licensing Policy and to promote the licensing objectives.

At the invitation of the Chairperson, the applicant, PC Swallow for Hampshire Constabulary addressed the Sub-Committee and responded to questions.

In summary, PC Swallow outlined the various incidents that had occurred at the premises and advised of Mr Clark's failure to respond to the points raised by Hampshire Constabulary on several occasions in order to rectify and address their concerns to prevent further incidents at the premises. It was noted that since the phased opening following the Covid-19 pandemic, The Exchange had received a disproportionately high volume of incidents in comparison to other similar premises in the vicinity; these incidents were continually followed up each time by Hampshire Constabulary with Mr Clark who had failed to introduce adequate interventions to mitigate concerns.

PC Swallow made reference to the limited contact he had received from Mr Clark or his legal representatives during the consultation period for the review application.

In addition, PC Swallow set out incidents that had occurred at the premises and referred the body worn camera footage supplied to the Sub-Committee which was taken during various days at the premises. He outlined the very serious nature of all the incidents, the action taken and advice provided by Hampshire Constabulary during each visit to the premises and in all correspondence issued to Mr Clark and provided a full representation of the issues surrounding the premises and its management. These highlighted a lack of due diligence from Mr Clark, a lack of any appropriate staff training, particularly in preventing intoxication and drug use, under-age drinking or dealing with refusals or confrontation and the lack of accredited SIA security door personnel which were also drawn to Mr Clark's attention as basic measures to be implemented. PC Swallow stated that despite the numerous steps taken to draw matters to Mr Clark's attention, none of the measures provided to prevent future incidents occurring at the premises had been adopted and no records of the incidents that had taken place had been adequately documented or addressed.

It was reported that the premises was attracting a younger clientele, particularly during the screening of England football tournaments (i.e Euro 2020) and other popular televised sporting events and that significant measures to prevent the extreme levels of intoxication experienced during the incidents reported needed to be adopted and enforced by Mr Clark and that all members of staff needed to be adequately trained whilst on duty.

Furthermore, PC Swallow reported that Mr Clark and his staff had also failed to adhere to Government legislation in place during the Covid 19 pandemic in respect of track and trace scanning regulations and isolation measures.

In conclusion, PC Swallow stated that due to the poor response and levels of control and care taken by Mr Clark following the previous incidents reported, there was no confidence in Mr Clark's ability to prevent future incidents from occurring or faith that measures would effectively be put in place and strictly adhered to prevent any reoccurrence of the previous serious incidents that had taken place at the premises, all of which had led to this application seeking the removal of Mr Clark as DPS, along with conditions on the licence in respect of SIA security, body worn video, CCTV, staff training, refusals recording, age verification, drugs policies, DPS qualifications, incident recording, till prompts and regular Pubwatch attendance.

As a point of clarification, Julia Palmer, Trethowans LLP (solicitor representing Mr Clark) stated that she had no record of incidents referred to that had occurred on 29 July 2021. In response, PC Swallow stated that, as he made the attendance in person and reported the matter directly to Mr Clark, they had not been included in the application or supplementary documents. Therefore, adequate time was permitted for the parties to consider this information.

The Chairperson then invited 'Other Persons' who had made valid written representations in support and in objection to the application to address the Sub-Committee. All the points raised were answered by the Interim Licensing Manager, the applicant and the licence holder's representative accordingly

John Cowking addressed the Sub-Committee speaking in objection to the application and referred Members to his representation shown on page 28 of the report. In summary, he stated that he regularly frequented the premises as a local resident for a period of approximately 8 years where he always found it to be a well-managed and friendly environment. He had never experienced any negative, unruly or drunken behaviour at the premises and suggested that the recent incidents could be as a result of new clientele drawn in to watch the recent Euro football tournament in the main and were not typical at the premises.

William Gubbins addressed the Sub-Committee speaking in support of the application and referred Members to his representation shown on page 29 of the report. In summary, he stated that he was a nearby resident and was seeking additional conditions to comply with the licensing objectives including a reduction in opening hours to 11pm on Fridays and Saturdays due to its location in a heavily residential area and restrictions on the broadcasting of commentaries on outdoor screens and speakers and a limit on the number of drinkers permitted in the beer garden.

Tim Wright addressed the Sub-Committee speaking in support of the application and referred Members to his representation shown on page 32 of the report. In summary, he stated that noise from the premises and the obstruction from patrons leaving the premises in St Clements Street were his primary concerns.

The Chairperson invited Julia Palmer, Trethowans LLP (solicitor on behalf of Mr Clark) to address the Sub-Committee in response to the application and the points raised by PC Swallow and responded to questions thereon.

In summary, Ms Palmer stated that application related to nine issues at the premises over eight days with eight of the issues taking place this year and four of these were called in by the premises with no Police attendance, indicating that the licence holder had acted appropriately on these occasions. She queried the accuracy of several aspects of the incidents as they had been reported to the Sub-Committee by PC Swallow and referred to specific points of evidence from the CCTV and body worn video footage. Ms Palmer made reference to the allegations raised and addressed various points during the reported incidents where she considered Mr Clark had appropriately dealt with the issues as they had occurred and had acted accordingly to control the situation.

In addition, Ms Palmer made reference to background of the premises, the extreme pressures placed on the hospitality industry as a result of the Covid 19 pandemic and to the consistent changes to restrictions and the legislation surrounding this made by the Government, the additional staff training required to adopt these strict measures and advised of the changes that Mr Clark had experienced to his customer profile and the unacceptable behaviour of some young male patrons, largely as a result of the pandemic with the easing of restrictions after a lengthy period of time which had coincided with the televised

broadcast of the Euro 2020 tournament at the premises that had attracted a younger clientele.

Ms Palmer highlighted that this set of exceptional and unusual circumstances caused by the pandemic, and the post lockdown measures had resulted in Mr Clark 'fire-fighting' with the constant updating of guidance and rules and regulations affecting public safety, as well as his normal responsibilities under excessive pressure. Mr Clark had admitted that his paperwork during this time had not been a priority and apologised for overlooking any issues that had led to the application being brought forward.

In summing up, Ms Palmer stated that Mr Clark had now started to use the templates issued to him by the Police with regards to staff training and as set out in the supplementary evidence submitted. Mr Clark had accepted that it would be necessary to have additional conditions on the licence to control the future of the premises which had been drafted and sent to the Police. Furthermore, several conditions had been suggested to address some of the concerns raised by 'Other Persons'.

Lastly, Ms Palmer referred to the stricter conditions submitted by the Police which she suggested were conditions you would commonly expect to see on high capacity drinking venues i.e. nightclubs. She advised that any imposition of conditions would require consideration of their appropriateness and proportionality and she questioned several of the proposed conditions on that basis. However, Ms Palmer stated that Mr Clark was keen to work with the Police going forward and was only seeking to challenge the conditions relating to security and queried the till prompt conditions and set out the reasons for this, offering an amendment to conditions to address these measures, as set out in Appendix 6 to the report and Appendix 9 linked above.

In summing up, PC Swallow stated that the proposed conditions were all necessary in this, particularly the conditions relating to the security at the premises which he considered to be fundamental to ensure the safety and security of the public and staff at the premises and set out the amendments to the proposed conditions suggested by Ms Palmer that he was prepared to amend in order to ensure the promotion of the four licensing objectives going forward.

The Sub-Committee retired to deliberate in private.

In his closing remarks, the Chairperson stated that the Sub-Committee had carefully considered the application, the representations made by the Applicant, PC Brian Swallow from Hampshire Constabulary on behalf of the Chief Officer of Police, Other Persons, the supplementary material from Trethowans LLP on behalf of the Licence Holder, Mr Colin Clark and supplementary material provided by Hampshire Constabulary and the evidence given today (excluding the folder of information brought by the Licence Holder and his representative). It has taken into account the Council's Statement of Licensing Policy, the Home Office Guidance issued under section 182 of the Licensing Act 2003, the duties under the Crime and Disorder Act 1998, and the rights set out in the Human Rights Act 1998.

The Sub-Committee concluded that the Premises Licence for The Exchange, 9 Southgate Street, Winchester, SO23 9DZ should continue, subject to the permanently amended conditions, as set out in (1) and (2) below. Furthermore, the Sub-Committee concluded that the Licence Holder, Mr Colin Clark should not be removed as Designated Premises Supervisor (DPS) from the Premises Licence, for the following reasons outlined below:

Amended Conditions:

Taking the conditions of Hampshire Constabulary, as set out in Appendix 7 to the report, amended by Trethowans LLP for the Licence Holder and supplied to the Sub-Committee at the meeting, the conditions be amended, as set out in italics in (1) and in (2) as below:

- (1) *"From 20:00 hours until the closing time of the venue, on Fridays and Saturdays or when the venue is showing a major football match (defined as England games in the World Cup and the Euros; Champions League from the quarter finals; the FA Cup final; and Premier League games with Southampton and a top 4 team or two top 4 teams) three frontline door supervisor, SIA licensed security staff shall be employed at the venue (unless it is previously agreed in writing with Hampshire Constabulary that a lesser number will suffice).*

Other events will be risk assessed and if deemed necessary SIA licensed staff will be employed at the minimum ratio of 1:100 customers and part thereof expected.

This number is to include only frontline door supervisor SIA Security staff employed solely on door supervisor / security duties, i.e. safety and security at the venue"

We then move the following paragraph up to include counting persons in and out at these events:-

"A nominated member of security staff shall be positioned at the entrance / exit doors and shall be responsible for counting persons in and out of the venue. They shall use a device suitable for counting as approved by the police – licensing dept responsible for the area. As such, an accurate number of persons in the venue shall be known at all times the venue is showing a televised major football match or other event assessed and requiring security staff"

As to the paragraph regards management of customers leaving the premises the word "immediate" shall remain.

One correction to the remaining proposed conditions is under Training; Second sentence should read "*Anyone not attaining the pass rate shall NOT be permitted to sell or authorise the sale of alcohol until the pass rate is attained*"

- (2) In addition, the following conditions proposed by Trethowans as attached to their letter dated 5 August 2021 and set out in Appendix 8 to the report are also included:
- Prevention of Crime and Disorder:
 - 3. Prevent customers leaving with glasses
 - 5. Security to control queues etc
 - 6. Toilet inspection re drugs
 - 7. Dispersal Policy
 - Prevention of Public Nuisance:
 - 1. Re signage to remain quiet on leaving
 - 2. Re telephone number for residents
 - 3. Re speakers off at 10:30pm

The Sub-Committee considered that if acted upon and proactively managed these conditions should result in the promotion of the licensing objectives.

The Chairperson thanked all those present for attending the meeting and explained to all parties that they would be formally notified of the decision in writing in due course and of their right to appeal to the Magistrates' Court within 21 days from the date of notification of the decision.

RESOLVED:

1. That the Premises Licence for The Exchange, 9 Southgate Street, Winchester, SO23 9DZ continue, subject to the permanently amended conditions, as set out in (1) and (2) above; and
2. That the Licence Holder, Mr Colin Clark should not be removed as Designated Premises Supervisor (DPS) from the Premises Licence, for the following reasons, set out below:

REASONS

The Sub-Committee considered that there had been a failure to promote all four licensing objectives.

Furthermore, it noted that there had been representations by customers in support of the premises. However, the factual evidence that the licensing objectives were not promoted outweighed any positive representations received.

The Sub-Committee recognised that as the Licence Holder and DPS, Mr Colin Clark had been through an exceptional period which included but was not limited to the Covid-19 pandemic lockdown

and the subsequent restrictive and changeable Government regulations, a peak of patrons enjoying the return to public life, the European Football Championships, and a change in clientele culminating in unusually pressurised circumstances.

However, representations provided by Other Persons had raised concerns that noise from the premises and instances of anti-social behaviour were on the increase prior to Covid 19. In addition, it was noted that a number of other establishments did not suffer issues to the scale evidenced at this premises.

The Sub-Committee noted that it had been accepted by the Licence Holder that standards had slipped generally.

The evidence clearly demonstrated the necessity to adjust the licence conditions to those proposed to ensure the promotion of the licensing objectives were met. In particular but not limited to:-

- (i) A lack of monitoring, challenging, refusing to serve and ejecting those who were over-intoxicated – made clear from the incidents recorded in Hampshire Constabulary's application for review, the video evidence showing general anti-social behaviour, and incidents of assault, both physical and sexual, fuelled by alcohol.
- (ii) Lack of proper security evidenced in all the video footage, the email from Lauren Taylor dated 14 June 2021, and any record of either training or contracting in security staff.
- (iii) An acceptance of the complete absence of any record keeping on ejections, refusals, intoxication and underage drinking.
- (iv) No evidence of sufficient training material or time spent in training staff.

3. **EXEMPT BUSINESS**

RESOLVED:

1. That in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

2. That the public be excluded from the meeting during the consideration of the following items of business because it is likely that, if members of the public were present, there would be disclosure to them of 'exempt information' as defined by Section 100I and Schedule 12A to the Local Government Act 1972, in accordance with Regulation 14 of The Licensing Act 2003 (Hearings) Regulations 2005.

<u>Minute Number</u>	<u>Item</u>	<u>Description of Exempt Information</u>
4	Review of Premises Licence – The Exchange, 9 Southgate Street, Winchester (exempt evidence) (a) Seven video clips submitted in evidence by the applicant) Information relating to any individual (Para 1 Schedule 12A refers)) Information which is likely to reveal the identity of an individual (Para 2 Schedule 12A refers)

4. **REVIEW OF PREMISES LICENCE - THE EXCHANGE, 9 SOUTHGATE STREET, WINCHESTER, HAMPSHIRE, SO23 9DZ (LR548) (EXEMPT MINUTE)**

The Sub-Committee considered the above exempt video footage submitted by the applicant, which set out the circumstances surrounding a review of the premises licence for The Exchange, 9 Southgate Street, Winchester.

RESOLVED:

That the exempt evidence submitted by the applicant as set out above, be received and noted.

The meeting commenced at 10.00 am and concluded at 2.06 pm

Chairperson