

Unconfirmed



Minutes of a Meeting of the **Licensing Sub-Committee** held in the Conference Room, Riverside, Lowestoft, on **Friday, 25 August 2023** at **9.30am**.

Members of the Sub-Committee present:

Councillor John Fisher, Councillor Alan Green, Councillor Keith Patience, Councillor Keith Robinson

Officers present:

Teresa Bailey (Senior Licensing Officer), Sarah Davis (Democratic Services Officer (Scrutiny and Member Development)), Leonie Hault (Licensing Officer), Matt Makin (Democratic Services Officer (Regulatory)), Jemima Shaw (Legal Advisor)

Others present:

Councillor Christine Ashdown (Oulton Broad Parish Council) Councillor Anthony Besford-Land (Oulton Broad Parish Council), the applicant, the premises director, the objector

Announcement

The Democratic Services Officer (Regulatory) opened the meeting and announced that there would be an immediate adjournment, to allow an interested party to arrive before proceedings commenced.

The meeting was reconvened at 9.40am.

1 Election of a Chair

The Democratic Services Officer (Regulatory) sought nominations for a Chair of the meeting.

On the proposition of Councillor Patience, seconded by Councillor Green it was

RESOLVED

That Councillor John Fisher be duly elected as Chair of the Licensing Sub-Committee for the meeting.

2 Apologies for Absence

No apologies for absence were received.

3 Declarations of Interest

Councillor Patience declared that two of the objectors were known to him in their capacity of former district councillors.

Councillor Robinson declared a Non-Registerable Interest as ward member for Oulton Broad.

4 Declarations of Lobbying and Responses to Lobbying

No declarations of lobbying were made.

5 Variation of Premises Licence

The Sub-Committee received report **ES/1629** of the Licensing Officer, which related to an application for a variation to the existing premises licence for the Everitt Park Café, Nicholas Everitt Park, Oulton Broad, to extend the licensed times for the provision of live and recorded music (indoors) and to extend the licensed area to include a new area outside.

The report was presented by the Senior Licensing Officer, who informed the Sub-Committee that the Licensing Officer was present remotely, via Zoom. The Senior Licensing Officer advised that the Sub-Committee had been convened as three relevant representations against the application had been received.

The Senior Licensing Officer noted that Oulton Broad Parish Council had mentioned in its representations that no alcohol was allowed to be consumed within the park in accordance with the Deed of Gift; the Sub-Committee was advised that this had been confirmed to not be the case.

The Senior Licensing Officer explained that a Public Space Protection Order (PSPO) had been issued for the park by the former Waveney District Council, however this had expired in 2020 as there was no evidence to support extending it. The Sub-Committee was informed that a PSPO is a discretionary power the Police have where alcohol is a factor in anti-social behaviour that is taking place.

The Senior Licensing Officer highlighted that the report identified a number of other points for the Sub-Committee to consider, namely the guidance issued under Section 182 of the Licensing Act 2003, the Council's current statement of licensing policy, and the Human Rights Act 1998. The Sub-Committee was asked to give full reasons if departing from these points when making its decision.

The Sub-Committee was requested to determine the application by either granting the application subject to any mandatory conditions and to those consistent with the application, granting the application subject to the same conditions but modified to such extent as the Sub-Committee considers appropriate for the promotion of the licensing objectives, or by rejecting the application. The Senior Licensing Officer advised that the Sub-Committee must state its reasons when announcing its decision.

There being no questions to the licensing officers, the Chair invited the applicant, Ms D, to make her representation. Ms D was supported by Mr L, the director for the premises. Ms D noted that she and Mr L had a combined 15 years of experience in the licensing and retail trade, and welcomed the opportunity to address the concerns raised in the representations objecting to the application.

Ms D outlined that the site presently operated as a trampoline and mini-golf facility but that both activities were no longer feasible to run, owing to health and safety restrictions for the former and financial viability for the latter. Ms D explained that as a result the business was moving towards using the site as a small events space for the local community. The Sub-Committee was informed that some free children's events had already taken place on the site and Ms D said it was the intention to run a range of community events on the site in the future.

Ms D stated that the reason for the application was to allow for licensed entertainment to take place indoors for events and private functions, and to allow a pop-up bar to be used in the outside area. Ms D considered this would be ideal for various events held in the park and would negate the need for Temporary Event Notices (TENs). Ms D advised that the Nicholas Everitt Park Trust would be able to use the site for smaller events.

Ms D confirmed that she and Mr L had worked with the Oulton Broad Parish Council and the Nicholas Everitt Park Trust in the past to host community events; she also noted that the park hosts the Nearly Festival annually, which relied heavily on bar trade. Ms D was aware of the need to seek a change of use for the site but considered it important to have the variation to the premises licence first.

Ms D was of the view that the proposed extension was not a security risk. The Sub-Committee was informed that the premises had a waste management plan in place and arrangements for tables to be cleared regularly. Ms D highlighted that the site was accessed via two gates; given the existing on and off-sales of alcohol on the site Ms D could not see an issue with what was proposed.

Ms D highlighted that there was a designated alcohol-free zone in Nicholas Everitt Park, although this excluded alcohol purchased from licensed premises within the park. Ms D highlighted that the Nicholas Everitt Park Trust had engaged the premises in the past to provide a mobile bar for events, which she considered set a precedent of allowing alcohol on the park for certain events.

Ms D said there was no evidence of intoxication from alcohol sales related to the premises, confirming that the staff were all trained in "Think 25" and that there was always a supervisor on site. Ms D said that the premises sought to discourage drinking to excess.

NOTE: at this point in the meeting, Councillor Keith Patience declared an Other Registerable Interest in the item as a member of the Broads Authority.

The Chair invited questions to Ms D and Mr L. The Senior Licensing Officer noted that 13 TENs had been submitted for events in the park since 2019, several of these by the applicant, and asked Ms D if she had ever received any complaints (noting that no

complaints had been received by the Licensing team). Ms D confirmed that no complaints had been made.

Councillor Besford-Land, representing Oulton Broad Parish Council, queried why the premises was fenced off from the remainder of the park if it was for the enjoyment of all park users. Mr L said that the fencing had replaced an old chain-link fence which had fallen into disrepair and become a trip hazard, and that fencing was required to ensure the site was not accessed outside of trading hours to avoid accidents that the café as tenant would be responsible for.

Councillor Besford-Land asked if the proposed events would be free or chargeable. Mr L said this would be dependent on how the business moved forward but he anticipated that community events would be free of charge to attend.

In response to a query from Councillor Besford-Land regarding security of the site, Mr L said he did not intend for community events to be late in the evening, ending by 8pm-9pm. Mr L said this was also influenced by there being no outside lighting. Mr L observed that the anti-social behaviour evidenced in the park generally occurred after the timeframe he was intending to hold events on the premises.

In response, Councillor Besford-Land noted the operating hours set out in the application and asked how any late evening events would be secured. Ms D said that temporary lighting would be used and security hired for events, as had been done so previously; alternatively arrangements would be put in place for supervising staff to attend late events.

The Legal Advisor asked why an extension to indoor music was being sought; Mr L said this was to facilitate private functions inside the premises and make them more viable.

The Chair invited Councillor Besford-Land to make a representation on behalf of Oulton Broad Parish Council. Councillor Besford-Land was supported by Councillor Ashdown, also a member of Oulton Broad Parish Council.

Councillor Besford-Land outlined Oulton Broad Parish Council's objections to the application. The Parish Council was concerned about the proximity of the licensable area to the adjacent children's play area, considering that any pop-up bar would be at the play area's peak time of use. Councillor Besford-Land highlighted the existing anti-social behaviour issues in Nicholas Everitt Park and said that the Parish Council was of the view that the sale of alcohol on the site would exacerbate these issues, especially if glass was broken in the children's play area.

Councillor Besford-Land said that Oulton Broad Parish Council supported its tenants but also had consider the safety of all residents in the parish, and could see no economic benefit from the proposals; the Parish Council considered that the extension of the licensable area went against the values of Nicholas Everitt Park and a licensed outdoor area conflicted with the values of founders of the Nicholas Everitt Park Trust. Councillor Besford-Land said the Parish Council was obliged to consider the wider community and local businesses when reviewing the application and had concluded that it would only benefit the applicant.

Councillor Besford-Land acknowledged that Oulton Broad Parish Council understood the applicant's reasons for the proposals but was of the view that the attempt to establish an outdoor bar area would put the café in conflict with its sub-lease agreement, which stated that alcohol was only to be served with food. Councillor Besford-Land asked the Sub-Committee to also consider the licensed operating hours, expressing the Parish Council's concerns that it was unsustainable to always have a Designated Premises Supervisor (DPS) present.

Councillor Besford-Land outlined that other licensed premises in Oulton Broad started operating later and finishing earlier than the application site and said this raised concerns with who would be drinking at the earlier hours operated by the café. Councillor Besford-Land said that Oulton Broad Parish Council considered that Nicholas Everitt Park set a precedent as the only park with a licensed area, given the purpose of the park was for its peaceful enjoyment for the whole community.

Councillor Besford-Land said that the Parish Council did not believe a park was the right place for a licensed premises hosting private events, noting that the Parish Council had not been approached to approve the facilitation of the latter.

The Chair invited questions to Councillors Besford-Land and Ashdown. Councillor Ashdown advised that security patrols had been established at Nicholas Everitt Park in response to anti-social behaviour in the past and that any incidents were reported to the Police; Councillor Ashdown advised that the Police did not take action in relation to these reports. Councillor Ashdown explained that needles and cannisters were often discarded in the park and that there had been some frightening incidents in 2020, which had been escalated to the Police and Crime Commissioner as the Police failed to respond. Councillor Ashdown noted that Oulton Broad Parish Council had not been consulted on the removal of the PSPO.

Councillor Ashdown acknowledged that the existing problems at Nicholas Everitt park could not be linked to the café, confirming that the current tenant was not in place at the time of the most serious incidents. Councillor Ashdown said there was no evidence the broken glass found in the children's play area had come from the café.

In response to a question regarding the Nearly Festival, Councillor Ashdown said that no issues had arisen from this annual event and highlighted that the organisers worked closely with Oulton Broad Parish Council when planning the event and also began their planning processes well in advance of the event date. Councillor Besford-Land added that the long-term planning was a key difference between the Nearly Festival and the private events proposed by the applicant, highlighting that the former was for the benefit of the wider public and did not close off part of the park from the community. Councillor Besford-Land noted that private events could also create parking issues at Nicholas Everitt Park.

The Chair invited Mrs H, a local objector, to make her representation. Mrs H said she accessed Nicholas Everitt Park at least twice a day all year round and had originally been confused by the wording of the public notice as to what was being applied for, this having become clear to her during the meeting.

Mrs H said she found it strange that what was effectively a public house was permitted in a public park; she pointed out that the site was visually exposed on all four sides despite the activity being contained to the site and considered the alleged cost of the new fencing to have been exorbitant. Mrs H highlighted that when she passed the site the day before, there was little human activity and a high number of seagulls on the site, considering the area did not feel like part of the park. Mrs H was interested to hear that the original Deed of Gift did not explicitly mention alcohol, surmising that perhaps this would have been less of an issue in society when the deed was drafted.

Mrs H said the current use of land was for income generation and acknowledged the issues preventing the current operations from continuing, but questioned how the proposed change of use would recoup costs. Mrs H highlighted that a wedding party hosted by the café in 2022 had spread rubbish beyond the leased area. Mrs H was of the view that a pop-up bar in the outside area would encourage passing trade and would be more permanent than suggested.

There were no questions to Mrs H. The Chair permitted a further question to Ms D and Mr L from the Sub-Committee; Mr L confirmed there were procedures in place to ensure a nominated supervisor was always on site during operating hours.

The Chair invited all parties to sum up. The Senior Licensing Officer highlighted that the DPS was not required to be on site at all times and other personal licence holders could supervise premises under the arrangements of a DPS. The Senior Licensing Officer clarified that the consumption of alcohol was not a licensable activity and informed the Sub-Committee that licensed premises for on-sales were automatically permitted to play music indoors until 11pm, hence the application for only an hour's extension.

The Senior Licensing Officer was of the impression that the prices charged at the premises were not attractive to young people wanting to drink late at night; she also noted the comments of Oulton Broad Parish Council regarding operating hours and reminded the Sub-Committee that this was not a matter for consideration at this hearing. The Senior Licensing Officer confirmed that there had been four TENs for the premises in 2023, with no issues reported.

The Licensing Officer noted that at least two other public parks in the district hosted licensed premises with similar operating hours, and that there were licensed premises in Oulton Broad that had licences permitting the sale of alcohol, including off sales, beyond 11pm.

Mr L highlighted that a pathway and a hedge/gate separated the premises from the adjacent play park and pointed out that there was alcohol advertising on the boulevard that was visible from the play park. Mr L described the premises as a family environment with a price structure that discouraged binge drinking. Mr L said that private events were usually indoors and rarely outside and that he and Ms D were trying to make things work at a difficult time, doing what they could to ensure rent was paid and Oulton Broad was supported.

Councillor Besford-Land reiterated his earlier points and said that if private events were indoors, Oulton Broad Parish Council saw there was no reason for extending the music provision.

Mrs H said she had nothing further to add.

The Sub-Committee retired, with the Legal Advisor and Democratic Services Officer, to make its decision. On its return the Chair read the following decision notice.

"An application has been made to vary the existing premises licence for the Everitt Park Café at Nicholas Everitt Park, Oulton Broad, to extend the licensed times for the provision of live and recorded music (indoors) and to extend the licensed area to include a new area outside.

This hearing was convened as three representations against the application were received, two from other persons and one from Oulton Broad Parish Council.

The Sub-Committee heard from the Senior Licensing Officer, who summarised the report and confirmed that the Deed of Gift did not explicitly prohibit the sale or consumption of alcohol on Nicholas Everitt Park, contrary to what had been suggested. Additionally, the Public Space Protection Order (PSPO) for Nicholas Everitt Park, in relation to anti-social behaviour, expired in 2020 and was not renewed. The Police saw no evidence at that time to justify its renewal.

The Sub-Committee then heard from the applicant, supported by the director of the premises. The applicant explained that they cannot operate as a trampoline and mini-golf centre due to health and safety restrictions, and were refocusing their business on public events and private functions. In response to the representations made, the applicant said there would be no permanent structure to serve alcohol in the courtyard area of the premises, and the extension of the licensable area was to accommodate the use of a pop-up bar.

The applicant confirmed that the café also had a waste management plan and were operating in an enclosed area. When asked if any complaints had been received in relation to events where the café had applied for a Temporary Event Notice, the applicant confirmed that no complaints had been received.

The Sub-Committee then received representations from both the Oulton Broad Parish Council and a local objector. The main areas of concern related to proximity to the nearby children's play park and the sale and consumption of alcohol in the extended area, and that this may affect the public's peaceful enjoyment of Nicholas Everitt Park.

Oulton Broad Parish Council referred to the previous PSPO in Nicholas Everitt Park and stated that it had not been consulted on its lack of renewal. The local objector reaffirmed their concerns with the application and concurred with the points made by Oulton Broad Parish Council.

The decision of the Sub-Committee

The Sub-Committee, having considered the application, representations from the interested parties and the premises licence holder, have decided to grant the application to vary the existing premises licence as applied for.

Reasons for decision

In arriving at this decision, the Sub-Committee has taken into consideration the representations of all parties present, and all written representations received.

The Sub-Committee gave great weight to the fact that no responsible authorities had objected to the application, in particular the Police and Environmental Protection. The Sub-Committee did not consider that the existing anti-social behaviour at Nicholas Everitt Park was linked to the sale of alcohol on the applicant's premises and the proposed variation would similarly have no impact.

The Sub-Committee considered the comments of the Oulton Broad Parish Council regarding the existing operating hours on the premises licence, however the previously approved sale of alcohol was not a matter for consideration at this hearing. The Sub-Committee also noted the advice of the Senior Licensing Officer, that the consumption of alcohol was not a licensable activity. In addition, the Sub-Committee acknowledged that several other outlets in the parish of Oulton Broad have similar licensable activity hours.

In making its decision the Sub-Committee considered the Council's own licensing guidance and statement of licensing policy, as well as the statutory Section 182 guidance, and Human Rights Act 1998.

Anyone affected by this decision has the right to appeal to the Magistrates' Court within 21 days of receiving notice of the decision.

Date: 25 August 2023"

The meeting concluded at 11.45am.

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Chair