

Dear Sirs

The following note is a brief written submission to assist the licensing committee and parties to the licensing application for The Crabshell at the licensing hearing now listed for 2pm on 18 April.

We have attached some photographs of the premises, the Shepherd's Hut (Hut) and the outside space.

### **Application**

The application is a variation application predominantly directed toward permitted an external additional dispense point, the Shepherd's hut, at the side of the premises. This unit will sell a modest range of drinks (alcoholic and non-alcoholic) and is also seeking to permit pizzas to be dispensed as well.

This Hut is a dispense point to reduce wait times on the internal bar and our client will ensure that any guests who have purchased from this point are kept within the current seating arrangements.

### **St Austell Brewery**

St Austell Brewery are a very well-known brewer and pub operator. They have a significant volume of premises across the southwest (and increasingly further afield) and their estate of public houses will be well known to the licensing committee. St Austell are responsible for the delivery of all licensable activities within the business and will bring their standards and controls to bear.

### **Presenter**

We attach a presenter that discloses a little bit about the background to the St Austell operations. St Austell have a field-based operations team who help support the manager on site, who are involved in training and who undertake regular assessments of the operation in terms of standards, cleanliness, compliance, regulation, as well as sales.

### **Crabshell**

These premises were acquired by the St Austell Brewery last year. The premises is very well appointed and the photographs that we have attached to this submission can be seen by the committee to confirm its design and position. This is a premium pub business with fantastic views, great beers and a good food offer.

There is already an area externally for families to eat, drink, stand, and socialise.

### **Responsible authorities**

It is of note that none of the responsible authorities have objected to this application. The licensing committee will be familiar with Section 9:12 of the national guidance which states as follows: "*Each responsible authority will be an expert in their respective field and in some cases, it is likely that particular responsible authorities will be the licensing authority's main source of advice in relation to a particular licensing objective... The police usually therefore will be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective*".

The police (and other Responsible Authorities (Health and Safety)) would most usually be associated with concerns that are raised by the Parish clerk and Town council, particularly in relation to vehicular traffic and the interaction with those who may be utilising the facilities.

### **Food and soft drinks**

This submission is not proposing to address the issue of the food or soft drink dispense from the Shepherd's Hut. Whilst late night refreshment is a licensable activity, attending to the late-night service of hot food and hot drink, it is not proposed that these premises will operate beyond 11pm and will not open before 5am.

The Hut will if granted a permission dispense a much reduced range from the internal bar, four draught lines, and some bottled beers and ciders. It also proposes to serve pizza, direct from the Hut, which is the same offer that can be ordered inside.

### **Representations**

There are two representations that have been served.

### **Kingsbridge Town Council**

This says that the car park is in the vicinity of the Shepherd's Hut. Whilst we accept that, of course, we do not accept that it may therefore fairly be said that the licensing objectives will be undermined because of this. Many pubs, bars, restaurants, hotels and other licensed units (as well as many other hospitality premises that do not oblige a premises licence to be obtained in order to conduct their activities) are in proximity to car parks. 15 St Austell sites currently operate a similar set up, three of these are in car parks and external spaces.

This is generally a quiet car park, and only for use of the pub. It has 18 spaces and usually fills up quite quickly at peak periods (when the Hut will more likely be open) without a significant amount of moving traffic. The Hut is in the back corner of the car park, and will be "protected" by planters as referenced in the photographs above. Cars will still be able to park in the area in front of the Hut, but this is also used by staff and this is not a part of the car park that has a lot of movement once full.

The second point that is raised against the application is the suggestion that the variation to the licence would create greater footfall in the area. We do not accept that that can fairly be said to be something that would undermine the licensing objectives. The tables, chairs, and covers we have at the premises are not being increased.

The suggested conclusion that that would in and of itself be a hazard for families with children attempting to negotiate traffic flow is not accepted. Adults, parents, guardians and children walking through busy car parks is part and parcel of much of life, unrelated to licensable activities.

### **Barrier/Protection**

We propose to position some planters to act as a barrier outside the immediate vicinity of the Shepherd's hut as a means of protecting against this modest concern. A condition to that effect can readily be attached to the licence and would, we respectfully suggest, entirely address the concern.

### **West Alvington Parish Council**

It is unclear from the representation as to the degree to which the representation is put forward on behalf of the parish council itself.

The first point raised is that a planning application has recently been refused. The licensing committee will be familiar with its own licensing policy and the national guidance. Planning and licensing are not identical regulatory regimes, a point recognised within paragraph 2.5.8 of the licensing policy. As the policy states *the planning and licensing systems involve consideration of different (albeit related) matters. Home Office guidance makes it clear that licensing committees are not bound by decisions made by planning committee and vice versa.*

For the avoidance of doubt, this variation application will not be operated in breach of its planning permission.

The second point raised against the premises is the proximity of a public right of way. The public house, the external seating area and the Shepherd's hut are all in proximity to one another and we are unaware of, and the representation does not seek to suggest, that the existing operations cause conflict, difficulty or any undermining of the licensing objectives as a result. We presume that this is in relation to the right of way to the immediate residential neighbour, no challenge has come from this individual, our client has a strong relationship with them and although they have vehicle access to their house, it is not in constant use. In fact it is infrequent.

The third point raised is that the premises is busy throughout the year, it is particularly popular with both residents and visitors and that peak season footfall should not be underestimated. As above, we do not accept that the application could and should be refused as a result of this comment. This does not attend to the licensing objectives, it does not suggest that the existing busy premises is in any way undermining the licensing objectives, nor causing any difficulties.

This proposal is a perfectly legitimate and natural extension to the premises, providing an additional dispense point, which cannot, respectfully, fairly be said to be such a departure as to invite the conclusion that the licensing objectives would not continue to be promoted.

The fourth paragraph suggests that noise will likely impact on surrounding businesses and neighbouring properties including those across the water. This is not accepted. Whilst it is right that there will be an additional dispense point and customers will be able to take a drink from this space, this is to help facilitate the premises and the occupation of the outside area. There is no suggestion within the representation that the existing external area, to the front of the premises, on the waterside, also adjacent to the car park, is undermining the existing licensing objectives.

We do not accept that the dispense and/or sale of alcohol (or food) will adversely impact the Licensing objectives through smell. It is right that the premises proposes to operate a pizza oven, wood fired, but that is not something that can reasonably lead to the conclusion that a public nuisance will arise. The suggestion that those "across the water" will be adversely impacted by such a modest development of the premises is perhaps instructive.

### **Evidence**

We submit that the licensing sub committee can only really make a finding based on the admissible materials submitted to it. What the licensing committee cannot be asked to do is to speculate, as the High Court made clear in *R (Daniel Thwaites) v Wirral Borough Magistrates Court* (2008) EWHC838 (Admin). The committee will also note, in parallel to the Thwaites matter that the light touch legislation, the absence of any responsible authorities making representations, are factors that should weigh heavily in the applicant's favour.

We also submit that all of the materials produced by the applicant support the proposition that the Shepherd's hut can perfectly legitimately operate without there being any suggestion of the licensing objectives being undermined.

### **Existing operations**

Finally, of very great significance is the fact that the two representors do not suggest that there is any undermining of the licensing objectives being undertaken by the operation on site at present. This application merely supports a modest extension of the existing proposal.

### **Conditions to consider**

If the committee consider the concerns raised are relevant representations, and additional restrictions may help support the objectives promotion, then our clients will propose to limit the hours between 12 and 9pm 1 April to 31 October and 12-6pm 1 November to 31 March. The Hut will always be manned when open, and will be covered by CCTV. These may be appropriate conditions for the committee to consider.

Best wishes

Matthew Phipps  
Partner  
Head of Licensing England and Wales