

Licensing Sub-Committee	07 September 2020
Is the final decision on the recommendations in this report to be made at this meeting?	Yes

Determination of an application to vary the premises licence for Colebrook Park

Final Decision-Maker	Licensing Sub-Committee
Portfolio Holder(s)	Councillor Matthew Bailey, Portfolio Holder for Sustainability
Lead Director	Paul Taylor, Director of Change and Communities
Head of Service	Gary Stevenson, Head of Housing, Health & Environment
Lead Officer/Author	Trevor Horner, Licensing Officer
Classification	Non-exempt
Wards affected	Sherwood

This report makes the following recommendations to the final decision-maker:

1. That Members determine the application and take such steps as the Sub-Committee consider necessary for the promotion of the licensing objectives, giving appropriate weight to:

- The merits of the application;
- The representations and supporting information presented by all parties;
- The Guidance issued by the Home Office under Section 182 of the Licensing Act 2003;
- The Council’s Statement of Licensing Policy.

Explain how this report relates to the Corporate Priorities in the Five Year Plan:

- A Prosperous Borough
Recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises.
- A Confident Borough
By providing a regulatory framework for alcohol and entertainment licensing which reflects the needs of local communities and empowers the Authority to make and enforce decisions about the most appropriate licensing strategies for the local area.

Timetable	
Meeting	Date
Licensing Sub-Committee	07 September 2020

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report sets out details of an application to vary a premises licence.
- 1.2 In accordance with the provisions of Section 35 (3) of the Licensing Act 2003 the licensing authority must hold a hearing to determine an application to vary a premises licence if relevant representations are made.
- 1.3 A representation is relevant if it relates to the likely effect of the grant of the licence on the promotion of one or more of the four licensing objectives. In other words, a representation should relate to the impact of licensable activities carried on at the premises on the objectives.
- 1.4 However, the Guidance issued by the Home Office under Section 182 of the Licensing Act 2003 recommends that: "In borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it."
- 1.5 At the meeting held on 20 December 2019 Members agreed to adjourn until 19 June 2020. However, due to COVID-19 Pandemic this could not take place, so a new date was set for 07 September 2020

2. INTRODUCTION AND BACKGROUND

- 2.1 On 5 November 2019 an online application, made under the provisions of section 34 of the Licensing Act 2003, was received for variation of the premises licence at Colebrook Park, Colebrook Lakes (Land east of Kingstanding Way), Royal Tunbridge Wells, Kent TN2 3UP.

A copy of the previous report to the Sub-Committee, the application form to vary the Premises Licence and the appendices can be found on the Council's website at

<https://democracy.tunbridgewells.gov.uk/meetings/ieListDocuments.aspx?CId=149&MId=4635&Ver=4>

On 12 August 2020 an amendment to the application was received and is attached as **APPENDIX A**

On 26 August 2020 a further amendment to the application was received and is attached as **APPENDIX B**

- 2.2 In accordance with the requirements of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, a public notice was

displayed at the premises for a period of 28 consecutive with the closing date for representations being 3 December 2019.

- 2.3 During the 28 day public consultation period responsible authorities or other persons may make representations about the likely effect of the grant of the application on the promotion of one or more of the licensing objectives, which are:
- Prevention of crime and disorder
 - Prevention of public nuisance
 - Public safety
 - Protection of children from harm
- 2.4 If representations are received a hearing must be held to determine the application, providing that the grounds for the representation are relevant to the promotion of one or more of the licensing objectives and are not vexatious, frivolous or repetitive.
- 2.5 At the Hearing, held on 20 December 2019, the Sub-Committee considered that it was in the public interest for Environmental Health to obtain further evidence which would be available for all parties to hear in order to fairly determine the application for a variation. For this reason, the application was adjourned for a period of 6 months to 19 June 2020
- 2.6 The Covid-19 Pandemic has resulted in a further adjournment to 07 September 2020
- 2.7 On 28 July 2020 a representation objecting to the application was received from Joanne Funnell based on the Licensing Objectives. The representation included a link to a petition against the application. As the application has been amended a copy of the representation is attached at **APPENDIX C**
- 2.8 The applicant has submitted a Colebrook Park Noise Management Plan and noise impact model report and is attached at **APPENDIX D**
- 2.9 The applicant has submitted a report with an explanation of the new control system to be put in place at Colebrook Park and is attached at **APPENDIX E**
-

3. AVAILABLE OPTIONS

- 3.1 Grant the application for variation of the premises licence subject to such conditions as are consistent with the operating schedule accompanying the application, modified to such extent as Members consider necessary for the promotion of the licensing objectives.
- 3.2 Reject the whole or part of the application.
-

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 That Members determine the application, and take such steps as the Sub-Committee consider necessary for the promotion of the licensing objectives, giving appropriate weight to:
- The merits of the application;
 - The representations and supporting information presented by all parties;
 - The Guidance issued by the Home Office under Section 182 of the Licensing Act 2003;
 - The Council's Statement of Licensing Policy

- 4.2 For Members information if considering attaching conditions to a premises licence, paragraph 1.16 of the Guidance issued by the Home Office under Section 182 of the Licensing Act 2003 states:

Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as "must", "shall" and "will", is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format

- 4.3 Paragraph 1.17 further advises that each application must be considered on its own merits and that conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions.

5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 Other than the statutory consultation described in Part 2 of the report above, no other consultation is required by the Licensing Act 2003.
-

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 The Chairman will announce the Sub-Committee's decision prior to the conclusion of the hearing.
- 6.2 The applicant, any person who made relevant representations and the chief officer of police will subsequently receive written confirmation of the decision.
- 6.3 A copy of the Decision Notice will be placed on the Council's website.
- 6.4 In accordance with the provisions of Section 181 and Schedule 5, Licensing Act 2003 the applicant and any person who made a relevant representation has a right to appeal the decision made by the Licensing Authority. The appeal must be made to the Magistrates' Court within a period of twenty-one days from the date on which the appellant receives notification of the decision from the licensing authority.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Legal including Human Rights Act	<p>Licensing Act 2003</p> <p>The Licensing Act 2003 at section 4(1) requires the Licensing Authority to carry out its functions with a view to promoting the Licensing Objectives which Section 4(2) sets out as:-</p> <ul style="list-style-type: none">a) The prevention of crime and disorderb) Public safetyc) The prevention of public nuisanced) The protection of children from harm <p>The Sub-committee is permitted under Section 35 (3) of the Licensing Act 2003, having had regard to relevant representations, to take such steps, as it considers necessary, for the promotion of the licensing objectives.</p> <p>Section 35(3) of the Licensing Act 2003 states 'where relevant representations are made, the authority must:-</p> <ul style="list-style-type: none">(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations	Robin Harris Interim Contentious Team Leader

agree that a hearing is unnecessary, and

- (b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

Section 4(3) of the Licensing Act also requires the Licensing Authority to have regard to the published statement of the Licensing Policy and any guidance issued by the Secretary of State under section 182

Each application that comes before the Sub-Committee must be treated on its own merits, and the Sub-Committee must take its decision based upon:

- a) The merits of the application
- b) The promotion of the four licensing objectives
- c) The policy of the Licensing Authority
- d) The Guidance issued under Section 182 of the Licensing Act 2003
- e) All valid representations made

Whilst the applicant, responsible authorities or persons making representations all have a right of appeal to the Magistrates Court dependant on the decision of the Sub Committee, the decision made takes immediate effect.

Human Rights Act

Article 1 of the First Protocol is concerned with the protection of property and provides that every person is entitled to peaceful enjoyment of his possessions. The term 'possessions' is given a broad definition and includes a licence.

Article 8 is concerned with the right to respect for private and family life. It states that Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no

	<p>interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. The Council has had the proper regard for Article 8.</p> <p>Article 6 relates to the right to a fair hearing. The applicant has seen this report prior to this hearing and is aware of the reason why the Sub-Committee is considering this application.</p>	
Finance and other resources	No implications	Trevor Horner Report Author 26.08.2020
Staffing establishment	No implications	Trevor Horner Report Author 26.08.2020
Risk Management	No implications	Trevor Horner Report Author 26.08.2020
Data Protection	No implications	Trevor Horner Report Author 26.08.2020
Environment and Sustainability	No implications	Trevor Horner Report Author 26.08.2020
Community Safety	<p>If the application is granted, the extra services offered are not unique to Tunbridge Wells.</p> <p>Kent Police have made a representation objecting to the application. A new condition has been proposed by Kent Police that the organiser submit an Event Management Plan, upon request, for small events. This will enable the Safety Advisory Group to fully assess the impact of an event.</p> <p>However, the following duty is placed on the licensing authority by <i>Section 17</i>,</p>	Terry Hughes, Community Safety Manager 05/12/2019

	<i>Crime and Disorder Act 1998 "17(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area."</i>	
Health and Safety	No implications	Trevor Horner Report Author 26.08.2020
Health and Wellbeing	Environmental Health has not made a representation objecting to the application.	Trevor Horner Report Author 26.08.2020
Equalities	The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users.	Trevor Horner Report Author 26.08.2020

8. REPORT APPENDICES

The following documents are to be published with and form part of the report:

Appendix A: Amendment to the application dated 12 August 2020

Appendix B: Amendment to the application dated 26 August 2020

Appendix C: Representation made by Joanne Funnell

Appendix D: Colebrook Park Noise Management Plan and noise impact model

Appendix E: Explanation of the new noise control system to be put in place

9. BACKGROUND PAPERS

Licensing Sub-Committee report dated 20 December 2019 (Appendices and further documents)

<https://democracy.tunbridgewells.gov.uk/meetings/ieListDocuments.aspx?CId=149&MId=4635&Ver=4>

Revised Guidance issued under section 182 of the Licensing Act 2003

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/702660/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf

TWBC Statement of Licensing Policy

http://www.tunbridgewells.gov.uk/_data/assets/pdf_file/0011/69878/03.05.17-Ratified-Statement-of-Licensing-Policy-2015-v2-word-version.pdf

LGA Licensing Act 2003 - Councilor's handbook (England and Wales)

<https://www.local.gov.uk/licensing-act-2003-councillors-handbook-england-and-wales>