

Determination of an application to vary the premises licence for The Barn, Flimwell House Farm, London Road, Flimwell, TN5 7QG

For Licensing Sub Committee on 25th May 2023

Summary

Lead Member:

Lead Director: Paul Taylor, Director of Change and Communities

Head of Service: Gary Stevenson, Head of Housing, Health and Environment

Report Author: Trevor Horner, Licensing Officer

Classification: Public document (non-exempt)

Wards Affected: Frittenden and Sissinghurst

| Approval Timetable | Date |
|-------------------------|---------------|
| Licensing Sub Committee | 25th May 2023 |

Recommendations

Officer / Committee recommendations as supported by the Portfolio Holder:

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.

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."

2. Introduction and background

- 2.1 On 12th April 2023 an online application, made under the provisions of section 34 of the Licensing Act 2003, was received for the variation of the premises licence for The Barn, Flimwell House Farm, London Road, Flimwell, TN5 7QG, attached at **Appendix A**
- 2.2 The application as made, seeks authorisation to extend opening hours for sale of alcohol on Friday and Saturday, and to open and sell alcohol on Sunday, as set out in **Appendix B**
- 2.3 The application also shows the change in the outside area for the consumption of alcohol; however consumption is not a licensable activity and the premises already has OFF SALES on the current licence.
- 2.4 A copy of the plan showing the change to the area for consumption is attached at **Appendix C**
- 2.5 A copy of the existing premises licence and plan are attached at **Appendix D**
- 2.6 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 10th May 2023.
- 2.7 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
- 2.8 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.
- 2.9 5 Relevant representations were received from 4 other persons, with one person submitting 2 representations.
- 2.10 The representations are attached at **Appendix E**.
- 2.11 All representations relate to one or more of the Licensing Objectives.
- 2.12 No other relevant representations were received from responsible authorities or other persons within the 28-day consultation period prescribed by the Act.
- 2.13 The Guidance to Licensing Authorities issued by the Home Office under Section 182 of the Licensing Act 2003 advises that it is imperative that the Licensing Authority ensures that the factors which form the basis of its determination are limited to considerations of the promotion of the licensing objectives and nothing outside of those parameters.
- 2.14 The authority's determination should be evidence-based, justified as being appropriate to the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 2.15 Moreover, decisions made in accordance with the provisions of the Licensing Act 2003 must not replicate or seek to enforce the statutory provisions of other legislation.

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 Reason

- 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 on Options

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. Implementation

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. Appendices and Background Documents

Appendices:

- Appendix A: Application form
- Appendix B: Proposed changes
- Appendix C: Plan
- Appendix D: Current premises licence and plans
- Appendix E: Representations

Background Papers:

- Revised Guidance issued under Section 182 of the Licensing Act 2003
<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>
- TWBC Statement of Licensing Policy
https://tunbridgewells.gov.uk/_data/assets/pdf_file/0006/394593/Ratified-Statement-of-Licensing-Policy-V1-2021-2026.pdf
- LGA Licensing Act 2003 – Councillors handbook (England and Wales)
<https://www.local.gov.uk/publications/licensing-act-2003-councillors-handbook-england-and-wales>

8. Cross Cutting Issues

A. Legal (including the Human Rights Act)

Licensing Act 2003

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:-

- a) The prevention of crime and disorder
- b) Public safety
- c) The prevention of public nuisance
- d) The protection of children from harm

The Sub-committee is permitted under Section 18 (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.

Section 18(3) of the Licensing Act 2003 states 'where relevant representations are made, the authority must:-

- (a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations 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 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.

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.

Helen Ward, Mid Kent Legal Services, Team Leader (Contentious), 16.05.2023

B. Finance and Other Resources

No implications

Trevor Horner, report author, 16.05.2023

C. Staffing

No implications

Trevor Horner, report author, 16.05.2023

D. Risk Management

No implications

Trevor Horner, report author, 16.05.2023

E. Environment and Sustainability

No implications

Trevor Horner, report author, 16.05.2023

F. Community Safety

If the application is granted, the extra services offered are not unique to Tunbridge Wells
Section 17, 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.

Terry Hughes, Community Safety manager, 16.05.2023

G. 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

No implications

Trevor Horner, report author, 16.05.2023

H. Data Protection

Article 5, General Data Protection Regulation 2016

1. Personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject;

(b) collected for specific, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;

(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;

(d) accurate and, where necessary, kept up to date;

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed;

(f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

No implications.

Trevor Horner, report author, 16.05.2023

I. Health and Safety

No implications

Trevor Horner, report author, 16.05.2023

J. Health and Wellbeing

No implications

Trevor Horner, report author, 16.05.2023