

**Committee:** Licensing Committee

**Agenda Item**

**Date:** 20 March 2014

**2**

**Title:** Application for the grant of a Premises Licence – Sugars Café Bar, Unit 6 Priors Green, Bennett Canfield

**Author:** Murray Hardy, Licensing Officer.

Item for decision

### Summary

1. This report sets out an application for the grant of a Premises Licence in respect of the above. Representations have been made to this application so therefore this matter has been deferred to the Committee for deliberation.

### Recommendations

2. The application is determined

In the event of an appeal against the decision of the Licensing Authority, then a member is nominated to represent the Authority at Court.

### Background Papers

3. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

Operating Schedule  
Representations from interested party  
Location of premises  
Plan of premises

### Impact

- 4.

Communication/ Consultation	Details of this application were conveyed to Members of Uttlesford District Council, The Parish Council and the application was published on the Uttlesford District Council Website.
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	Under Article 1 First Protocol to the European peaceful enjoyment of their possessions which includes property. This right may be interfered with if necessary to control the use of property in accordance with the general interest. The

	<p>imposition of conditions under the Licensing Act 2003 is a legitimate interference with this right in this context.</p> <p>In the event that an applicant, responsible authority or interested party is dissatisfied with the decision of the committee there is a right of appeal to the Magistrates Court.</p>
Sustainability	None
Ward-specific impacts	Takeley and The Canfields being the ward within which the premises are situated
Workforce/Workplace	None

### Situation

5. Sugars Café Bar is situated at Unit 6 The Local Centre, Priors Green, Bennett Canfield. It is adjacent to other retail units and overlooks a communal parking area.
6. In accordance with the Licensing Act 2003 where an applicant applies for the grant of a Premises Licence then included in the accompanying documents must be an operating schedule. This demonstrates how the licensing objectives will be met and also seeks to outline what licensable activities are being sought.
7. The licensable activities being sought are listed below:-
  - (a) Live Music (Indoors Only)

Thursday to Saturday	7pm to 11.30pm
Sunday	12 noon to 10pm
  - (b) Recorded Music (Indoors Only)

Monday to Wednesday	7pm to 11pm
Thursday and Friday	7pm to 11.30pm
Saturday	12 noon to 11.30pm
Sunday	12 noon to 11pm
  - (c) The sale of alcohol by retail for consumption both on and off the premises

Monday to Thursday	7am to 11.45pm
Friday and Saturday	7am to 12 midnight
Sunday	7am to 11pm
  - (d) The hours the premises are open to the public

Monday to Thursday	7am to 12.15am
Friday and Saturday	7am to 12.30am

Sunday

7am to 11.30pm

8. The operating schedule indicates that the following measures will be adopted in order to promote the licensing objective regarding the prevention of crime and disorder:-

CCTV will be present in the public areas of the premises, and full time staff will be given training regarding CCTV. A zero tolerance approach to drugs will be adopted and again staff will be given training in this regard. Any customer who appears intoxicated will be refused alcohol and if required they will be asked to leave the premises. Any groups or individuals who are being rowdy will be politely asked to respect the neighbourhood, with particular reference to closing time. Anybody found committing a crime will be reported to the Police.

9. The operating schedule indicates that the following measures will be adopted in order to promote the licensing objective regarding public safety:-

Challenge 25 will operate at the premises and anybody who cannot provide appropriate identification will be refused the sale of alcohol. A zero tolerance approach to drugs will be adopted and offenders will be reported to the Police. CCTV will monitor activities in the bar and café area. Anybody who appears to be intoxicated will be refused the sale of alcohol, and any known alcoholics will be refused alcohol. There will be no irresponsible alcohol promotions and small measures will be available.

10. The operating schedule indicates the following measures will be adopted in order to promote the licensing objective regarding the prevention of public nuisance.

Customers leaving the premises will be engaged by staff and made aware they are in a residential development so to respect our neighbour's. Closing time will be staggered so as to prevent a mass exit from the premises. Any customer that disregards these measures will be engaged further by the designated premises supervisor or a trained member of staff. Any customers on the premises that start to become overly intoxicated will be refused the further sale of alcohol.

11. The operating schedule indicates that the following measures will be taken in order to promote the licensing objective regarding the protection of children from harm.

Staff selling alcohol at the premises will be given regular training and on occasion will be tested in the terms of the Challenge 25 policy. If a voluntary test purchasing campaign is launched the applicant will volunteer the business. The challenge 25 policy will be clearly displayed and appropriate measures will be taken if staff fails to maintain this stance. New or inexperienced staff will be provided with training and will be supervised. CCTV of the bar area will be monitored regularly.

12. Copies of this application have been served on all of the statutory bodies which have attracted no representations.

13. Representations have been received from an interested party based on the licensing objectives that relates to public safety, the prevention of public nuisance and the protection of children from harm.

14 In carrying out the statutory function, the Licensing Authority must promote the licensing objectives as defined in the Licensing Act 2003:-

The prevention of crime and disorder  
Public safety  
The prevention of public nuisance  
The protection of children from harm

15. The decision that the Committee can make for this application is to

Grant the application  
Modify the application by inserting conditions  
Remove a licensable activity from the application  
Refuse to specify a person in the licence as the designated premises supervisor  
Reject the application

16. When determining an application due regard should be given to the Council's licensing policy and the Secretary of State's Guidance issued in accordance of the Act.

17. The relevant sections of the Council's licensing policy are:-

4.1 The Licensing Authority is committed to ensuring that the safety of any person visiting or working in licensed premises is not compromised. If representations are made applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified, and will be implemented and maintained to ensure public safety, relevant to the individual style and characteristics of their premises and events.

4.2 When addressing the issue of public safety, an applicant should consider those factors that impact on the standards of public safety. These may include:

- The occupancy capacity of the premises
- The age, design and layout of the premises, including means of escape in the event of fire.
- The nature of the licensable activities to be provided, in particular the sale or supply of alcohol, and/or the provision of music and dancing and including whether those are of a temporary or permanent nature.
- The hours of operation (differentiating the hours of opening from the hours when licensable activities are provided, if different).
- Customer profile (e.g. age, disability).
- The use of special effects such as lasers, pyrotechnics, smoke machines, foam machines, etc.

4.3 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule, in the event that representations are received, having regard to their particular type of premises and/or activities:

- Suitable and sufficient risk assessments
- Effective and responsible management of premises
- Provision of a sufficient number of people employed or engaged to secure the safety of the premises and patrons
- Appropriate instruction, training and supervision of those employed or engaged to secure the safety of the premises and patrons
- Adoption of best practice guidance (e.g. Guide to Fire Precautions in Existing Places of Entertainment and Like premises, The Event safety Guide, Safety in Pubs published by BBPA)
- Provision of effective CCTV in and around the premises
- Provision of toughened or plastic drinking vessels
- Implementation of crowd management measures
- Proof of regular testing (and certification where appropriate) of procedures, appliances, systems etc. pertinent to safety

5.1 Licensed premises have a significant potential to adversely impact on communities through public nuisances that arise from their operation. The Licensing Authority wishes to proactively maintain and protect the amenity of residents and other businesses from the potential consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide

5.2 The Licensing Authority intends to interpret “public nuisance” in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area

5.3 Applicants need to be clear that the Licensing Authority may apply stricter conditions, including controls on licensing hours where licensed premises are in or near residential areas and where relevant representations have been received. Conversely premises which can demonstrate that they have effective measures planned to prevent public nuisance, may be suitable for 24 hour opening

5.5 The Licensing Authority does recognise that in some circumstances flexible licensing hours may help to avoid concentrations of customers leaving premises simultaneously and could reduce the potential for disorder. It also recognises that licensing hours should not inhibit the development of safe evening and night time local economies. However, the Authority will always seek to balance their decisions with the duty to promote the four licensing objectives and the rights of residents to peace and quiet.

5.6 If representations are made applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been

identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and characteristics of their premises and events

5.7 When addressing the issue of prevention of public nuisance, the applicant should consider those factors that impact on the likelihood of public nuisance. These may include:

- the location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship
- the hours during which the licensable activities will be carried out particularly between 23.00 and 07.00 hours
- the closing time of the premises
- the nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside the premises
- the design and layout of premises and in particular the presence of noise limiting features
- the occupancy capacity of the premises
- the availability of public transport

Applicants for licences which include regulated entertainment will be aware of the potential of such entertainment to cause a public nuisance by reason of noise from the premises. If representations are made or a review is called for the Authority may consider imposing a condition to the effect that the licence shall take measures to ensure that music will not exceed a prescribed decibel limit at the boundaries of certain properties or within a location described in the condition. What may be an acceptable level of noise may vary from location to location or depending on that time of day as perception of noise is affected by background noise levels. Directions given under the Noise Act 1996 provide that the permitted level for the purposes of that Act is 34 decibels where the underlying noise level does not exceed 24 decibels or 10 decibels above underlying noise levels in any other case. In the event that representations are received and the Authority concludes that a noise limiting condition is required the starting point for such a condition would be 34 decibels. If an applicant wishes to contend that a higher limit is appropriate then the Authority would expect the applicant to provide a noise survey to support such a contention.

6.1 The protection of children from harm is a most important issue. While it is hoped that family friendly premises will thrive, the risk to children remains a paramount consideration when determining applications.

6.2 The general relaxation in the Licensing Act giving accompanied children greater access to licensed premises is a positive step, aimed at bringing about a social change in family friendly leisure. Clearly this relaxation places additional responsibilities upon licence holders. However, it is also recognised that parents and others accompanying children also have responsibilities.

- 6.4 The Licensing Authority considers that there should be no presumption of giving or preventing children's access to licensed premises. The licensing Authority will rarely impose bans on access to children. If representations are made then in exceptional circumstances, conditions restricting access or excluding children completely may be considered necessary. Where no licensing restriction is necessary, admission of children will remain entirely a matter for the discretion of the individual licensee or club or person who has given a temporary notice.
- 6.5 If representations are made applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to protect children from harm, relevant to the individual style and characteristics of their premises and events.
- 6.7 The following examples of control measures are given to assist applicants and are considered to be amongst the most essential that applicants should take account of in their operating schedule. In the event of representations are received, having regard to their particular type of premises and/or activities. These examples can be adopted in any combination:
- Effective and responsible management of the premises
  - Provision of a sufficient number of people employed or engaged to secure the protection of children from harm
  - Appropriate instruction, training and supervision of those employed or engaged to secure the protection of children from harm
  - Adoption of best practice guidance (Public Places Charter, The Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks)
  - Limitations on the hours when children may be present, in all or parts of the premises
  - Limitations or exclusions by age when certain activities are taking place
  - Imposition of requirements for children to be accompanied by an adult
  - Measures to ensure children do not purchase, acquire or consume alcohol
  - Measures to ensure children are not exposed to incidences of violence or disorder
18. The relevant sections of the guidance issued by the Secretary of State are:-
- 2.8 Licence holders have a responsibility to ensure the safety of those using their premises, as part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime

and disorder objective. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness of hygiene.

- 2.11 Licence holders should make provision to ensure that premises users safely leave their premises.

Measures that may assist include:

- Providing information on the premises of local taxi companies who can provide safe transportation home; and
- Ensuring adequate lighting outside the premises, particularly on paths leading to and from the premises and in car parks

- 2.20 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from the premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden on smaller venues.

- 2.22 Where applications have given rise to representations, for appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late-evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address and disturbance anticipated as customers enter and leave.

- 2.24 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.

- 2.25 The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated with alcohol but also wider



harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment)

- 2.28 Applicants must be clear in their operating schedules about the activities and times at which the events would take place to help determine when it is not appropriate for children to enter premises. Consideration should also be given to the proximity of premises such as schools and youth clubs so that applicants take appropriate steps to ensure that advertising relating to their premises, or relating to events at the premises, is not displayed at a time when children are likely to be near the premises.
  - 2.29 Licensing authorities and responsible authorities should expect applicants, when preparing an operating schedule or club operating schedule, to set out the steps to be taken to protect children from harm when on the premises.
19. If the Committee in their discretion wishes to impose conditions, the only conditions that can be imposed are those that are necessary and proportionate to promote the licensing objective relative to the presentations received. Equally, the Committee cannot impose conditions that duplicate the effect of existing legislation.

## Risk Analysis

20.

Risk	Likelihood	Impact	Mitigating actions
1 Either no conditions are attached to the licence or the conditions do not satisfactorily achieve the licensing objectives for public safety, the prevention of public nuisance and the protection of children from harm.	2 There is a possibility that local residents will suffer from crime and disorder and public nuisance even if what appears to be appropriate conditions are imposed.	2 Due to the availability of the review procedure any inconvenience which may be suffered by local residents would be relatively short lived.	In the event of complaints of crime and disorder or noise nuisance being received then Essex Police and/or Environmental Health Officers monitor the situation and apply for a review of the licence if it is considered necessary.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.