

Committee: Licensing Committee

Agenda Item

Date: 21 January 2015

2

Title: Application to vary a Premises Licence –
The Plough, High Street, Debden

Author: Amanda Turner, Licensing Team Leader.

Item for decision

Summary

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

Representations from interested parties
Letter of support from interested party
Location of premises
Plan of premises
Current premises licence

Impact

4.

Communication/Consultation	Details of the application was conveyed to Members of Uttlesford District Council, The Parish Council, and adjoining residents
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 imposition of conditions under the Licensing Act 2003 is

	<p>a legitimate interference with this right in this context.</p> <p>Where an applicant for a licence (or by inference a variation to a licence) wishes to contend that a certain noise limit is appropriate in given situations then it is for the applicant to establish that to the satisfaction of the committee on the balance of probabilities. This can most easily be achieved by a noise survey which (on the authority of the case Uttlesford DC v English Heritage) should be supplied by the applicant at his/her expense</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	Wimbish & Debden being the ward within which the premises are situated
Workforce/Workplace	None

Situation

5. The Plough Public House is situated in the centre of the village of Debden.
6. A premises licence was first issued for these premises under the Licensing Act 2003 following an application to convert their existing Justices Licence on 9th November 2005.
7. The current premises licence permits the following licensable activities
 - (a) The sale of alcohol by retail for consumption on and off the premises

Monday to Saturday	11.00am to 11.00pm
Sunday	Noon to 10.30pm

Non Standard timings:

Christmas Day 12 noon to 3.00pm and 7.00pm to 10.30pm

Good Friday 12 noon to 10.30pm

New Year's Eve, except on a Sunday 11.00am to 11.00pm

New Year's Eve on a Sunday 12 noon to 10.30pm

New Year's Eve from the end of permitted hours on New Years' Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31 December)

- (b) The opening hours of the premises
- | | |
|--------------------|--------------------|
| Monday to Saturday | 11.00am to 11.20pm |
| Sunday | Noon to 10.50pm |

Non Standard timings:

Christmas Day 12 noon to 3.20pm and 7.00pm to 10.50pm

Goof Friday 12 noon to 10.50pm

New Year's Eve, except on a Sunday 11.00am to 11.20pm

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8. Listed at Annexe 1 are the current mandatory conditions attached to this licence.
9. The holders of the premises licence are Elizabeth Edwards and Christopher Tripp who are seeking a variation to the current licence by increasing the licensable activities in respect of the sale of alcohol and adding recorded music.
10. In accordance with the Licensing Act 2003 where an applicant submits documentation for the variation of a premises licence then included must be an operating schedule. This demonstrates how the licensing objectives will be met and also seeks to outline what licensable activities are sought.
11. The licensable activities now being sought are listed below
- | | | |
|-----|--|------------------|
| (a) | Recorded Music | (Indoors only) |
| | Sunday to Thursday | 11am to Midnight |
| | Friday & Saturday | 11am to 1am |
| | Non Standard Timings – New Year's Eve 11.00am to 2am | |
| (b) | The sale of alcohol by retail for consumption (both on and off the premises) | |
| | Sunday to Thursday | 11am to Midnight |
| | Friday & Saturday | 11am to 1am |
| | Non Standard Timings – New Year's Eve 11.00am to 2am | |
| (c) | The opening hours of the premises | |
| | Sunday to Thursday | 11am to 12.30am |
| | Friday & Saturday | 11am to 1.30am |
| | Non Standard Timings – New Year's Eve 11.00am to 2.30am | |
12. 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:-.

The opening hours of the premises will be displayed at the entrance to the premises. Staff will be trained to prevent the sale of alcohol to under 18's by requiring photo ID from anyone who appears to be under the age of 21. Continued membership in both the Pubwatch and BOBB scheme.

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

Staff trained to prevent sales of alcohol to under 18s and those who appear intoxicated. Glasses will be collected regularly. Staff will be trained to comply with Health & Safety.
14. The operating schedule indicates that the following measures will be adopted in order to promote the licensing objective the prevention of public nuisance:-

Music volume will be regulated, especially after 11pm, and signs will be displayed requesting customers to leave the premises quietly.
15. The operating schedule indicates that the following measures will be adopted in order to promote the licensing objective regarding the protection of children from harm:-

Staff will be trained to prevent sales of alcohol to under 18's. Children under 14 will not be allowed at the bar and must be supervised by an adult at all times.
16. Copies of this application have been served on all of the statutory bodies which have attracted no representations.
17. Two representations have been received from interested parties causing concerns based on the licensing objectives that relates to the prevention of public nuisance. It is feared that the proposed increase in the extended hours would cause disturbance to neighbours when the rear door is opened and people are leaving the premises.
18. A letter has been received from an interested party living opposite the premises in support of the variation application.
19. 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
20. The decision that the Committee can make for this application is to
 - Grant the application
 - Modify the application by inserting conditions
 - Reject the whole or part of the application
21. 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.
22. The relevant sections of the Council's licensing policy are;-

3.1 The Licensing Authority is committed to further improve the quality of life for the people of the District of Uttlesford by continuing to reduce crime and the fear of crime.

3.3 The promotion of the licensing objective, to prevent crime and disorder places a responsibility on licence holders to become key partners in achieving this objective. If representations are made to the Licensing Authority 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 reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events.

3.4 When addressing the issue of crime and disorder, the applicant should consider those factors that impact on crime and disorder. These may include:

- Under age drinking
- Drunkenness on premises
- Public drunkenness
- Drugs
- Violent behaviour
- Anti-social behaviour

3.5 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:

- Effective and responsible management of premises
- Training and supervision of staff
- Adoption of best practice guidance (eg Safer Clubbing, the National Harm Reduction Strategy Toolkit and other voluntary codes of practice, including those relating to drinks promotions eg The Point of Sale Promotions published by BBPA, Security in design published by BBPA and Drugs and Pubs published by BBPA)
- Acceptance of accredited “proof of age” cards eg PASS, locally approved “proof of age” cards eg “Prove It” and/or “new type” driving licences with photographs or adoption of industry best practice eg (Challenge 21 policy)
- Provision of effective CCTV and mirrors in and around the premises
- Employment of Security Industry Authority licensed doorstaff
- Provision of toughened or plastic drinking vessels
- Provision of secure deposit boxes for confiscated items (sin bins)
- Provision of litterbins and other security measurers, such as lighting outside the premises
- Membership of local “Pubwatch” schemes or similar organisations

3.7 Whilst the Licensing Act 2003 requires each sale of alcohol (other than in certain community premises) to be made or authorised by a personal licence holder there is no requirement for every sale to be made by a personal licence holder or for them to be personally present at every transaction. In determining whether the real authorisation was given, the Guidance issued by the Secretary of State

encourages the practice of a written authorisation to make supplies of alcohol being given by personal licence holders to persons not holding a personal licence.

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 consequences 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.

5.6 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 from a particular source is affected by background noise levels. Directions given under the Noise Act 1996

provide that the permitted level for the purpose 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.

23. The relevant sections of the guidance issued by the Secretary of State are:-

2.7 It will normally be the responsibility of the premises licence holder as an employee, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. However, licensing authorities must ensure that they do not stray outside their powers and duties under the 2003 Act. This is important to ensure the portability of the personal licence and the offences set out in the 2003 Act and to ensure, for example, that the prevention of disorder is in sharp focus for all managers, licence holders and clubs.

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

2.19 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.:

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, any 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.

24. If the Committee in their discretion wishes to impose conditions, the only conditions that can be imposed are those that are appropriate 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

25.

Risk	Likelihood	Impact	Mitigating actions
1 Either no conditions are attached to the licence on variation or the conditions do not satisfactorily achieve the licensing objectives the prevention of crime and disorder, 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 after the variation takes effect 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.