

| | | | |
|-----------------------|---|--------------|-------------------------|
| Committee: | Licensing and Environmental Health Committee | Date: | Monday, 4 November 2019 |
| Title: | Application for a Premises Licence - Saffron Walden Chinese | | |
| Report Author: | Amanda Turner, Licensing Team Leader aturner@uttlesford.gov.uk | | |

Summary

- 1 This report sets out an application for a new premises licence in respect of the above. One representations has been received in respect of this application so therefore this matter has been referred to the Committee for determination.

The restaurant is situated in the centre of the town of Saffron Walden. A plan showing the location of the premises in the town is attached as Appendix C.

The Licensing Act 2003 places an obligation on a Licensing Authority to promote the four licensing objectives which are:

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

Recommendations

- 2 (a) The application is determined.
(b) In the event of an appeal against the decision of the Licensing Authority, then a member is nominated to represent the Authority at Court.

Financial Implications

- 3 None arising from this report

Background Papers

- 4 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.
 - (a) Premises Licence application (Appendix A)
 - (b) Plan of Premises (Appendix B)
 - (c) Location of premises plan (Appendix C)
 - (d) Representation from Interested Party (Appendix D)
 - (e) Email from Essex Police attaching conditions (Appendix E)

- (f) Revised Guidance issued under section 182 of the Licensing Act 2003
 (g) Uttlesford District Council Statement of Licensing Act 2003 Policy 2017-22

Impact

5

| | |
|---------------------------------|--|
| Communication/Consultation | Details of the application was conveyed to Members of Uttlesford District Council, and The Saffron Walden Town 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 Convention on Human Rights everyone is entitled to 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 a legitimate interference with this right in this context. 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. |
| Sustainability | None |
| Ward-specific impacts | Saffron Walden being the ward within which the premises are situated |
| Workforce/Workplace | None |

Situation

- 6 A Licence for this premises was first granted on 7 October 2005. The premises was then known as "China China". No representations were made in respect of the application and it was granted as applied for.
- 7 The Council received an application for the review of this licence from Essex Police dated 16 October 2018 on the grounds of the prevention of crime and

disorder relating to immigration offences. The review application was never considered by the Licensing & Environmental Committee as the premises licence was cancelled a few days prior to the hearing date by the applicant on 11 November 2018.

- 8 The restaurant has remained closed since November 2018. Ownership has been changed and internal refurbishments have also been taking place. An application for a new premises licence has now been submitted.
- 9 In accordance with the Licensing Act 2003, where an applicant submits an application for a premises licence then an operating schedule must accompany the application. This demonstrates how the licensing objectives will be met and also outlines what licensable activities are sought. These can be read on part M of the application form (appendix A).
- 10 The licensable activities and times being sought on the application are

Late night refreshment Monday to Sunday 12:00 to 23:30 and

Supply of alcohol Monday to Sunday 12:00 to 23:00

For information, the previous licence opening hours were for slightly longer hours with late night refreshment Monday to Saturday until 00:30 and Sunday to 00:00 and supply of alcohol Monday to Saturday 11:00 to 00:00 Sunday 12:00 to 23:30.
- 11 Copies of this application have been served on all the statutory bodies for the 28 days period and no Statutory Consultees other than the police have raised any representations relating to this application. An email (dated 6 September 19) from Essex Police who are a Statutory Consultee under the Act states they feel the licensing objectives are adequately covered and are happy not to raise any objections providing the applicant agrees to abide by the licence conditions they have compiled. An email dated the same day states the applicant is in agreement to this. Details of these can be seen in Appendix E.
- 12 The application was advertised in the Walden Local newspaper on 11 September 2019 and notices were placed by the applicant on the premises on 10 September 2019 for 28 days.
- 13 One representation has been received from an interested party living next door to the premises raising concerns based on the licensing objectives that relate to the prevention of public nuisance and crime and disorder (see Appendix D).
- 14 In carrying out its statutory function, the Licensing Authority must promote the licensing objectives as defined in the Licensing Act 2003. These are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance

- The protection of children from harm

15 The decisions open to the Committee upon this application are to

- Grant the application; or
- Modify the application by inserting conditions; or
- Reject the whole or part of 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 Councils Licensing Policy are:

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:

- Underage drinking
- Drunkenness on premises
- Public drunkenness
- Drugs
- Violent behaviour
- Anti-social behaviour
- Illegal working

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.

- 5.6 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, specifically tailored 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:
- (a) the location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship
 - (b) the hours during which the licensable activities will be carried out particularly between 23.00 and 07.00
 - (c) A “wind down period” between the end of the licensable activities and closure 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 premises
 - (d) the design and layout of premises and in particular the presence of noise limiting features
 - (e) the occupancy capacity of the premises
 - (f) the availability of public transport
 - (g) A last admission time
- 5.8 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:
- (a) Effective and responsible management of premises
 - (b) Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance, e.g. to ensure customers leave quietly
 - (c) Control of operating hours for all or parts (e.g. garden areas) of premises, including such matters as deliveries and clearing up
 - (d) Provision of effective CCTV in and around the premises
 - (e) Adoption of best practice guidance (e.g. Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by Institute of Acoustics, Licensed Property: Noise, published by BBPA)
 - (f) Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices
 - (g) Management of people, including staff, and traffic (and resulting queues) arriving and leaving premises
 - (h) Liaison with public transport providers
 - (i) Siting of external lighting, including security lighting
 - (j) Management arrangements for collection and disposal of litter
 - (k) Effective ventilation systems to prevent nuisance from odour

18. The relevant sections of the guidance issued by the Secretary of State (issued April 2018) are:-

- 2.15 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- 2.16 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 may 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.
- 2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 15). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 2.18 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns

raised in relevant representations and additional conditions may be appropriate.

- 2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.
- 2.21 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, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.
- 9.42 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.
- 9.43 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 19 The Secretary of State's Guidance provides at paragraphs 10.8 and 10.10 the following assistance for members-
- 10.8 The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises.
- 10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a

case-by-case basis and standardised conditions which ignore these individual aspects should be avoided...Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions.

- 20 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

21

| Risk | Likelihood | Impact | Mitigating actions |
|--|--|---|---|
| 1 Either no conditions are attached to the licence 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 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 noise nuisance being received after the licence takes effect then 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.