

Committee:	Licensing and Environmental Health Committee	Date:
		14
Title:	Application to vary a Premises Licence The Axe Pub, 60 Ashdon Road, Saffron Walden, CB10 2AT	December 2021
Report Author:	Steve Mahoney, Senior Licensing and Compliance Officer	Item for decision: Yes

Summary

This report sets out an application for the variation of a Premises Licence in respect of the above to remove condition 1, 2 & 3 of Annex 3. Representations have been made to this application so therefore this matter has been referred to the Committee for deliberation.

Recommendations

The application is determined.

Financial Implications

None

Background Papers

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

Appendix:

- a. Variation application form.
- b. Current premises licence.
- c. Plan of premises.
- d. Location map of premises.
- e. Representation from Statutory Consultee (noise /nuisance).
- f. Representations from interested parties.

Impact

Communication/Consultation	Details of the application was conveyed to all relevant responsible authorities. A blue public notice was displayed on the premises for the required timeframe and a public notice was placed in a local publication circulated within the area of the premises.
Community Safety	None
Equalities	N/A
Health and Safety	N/A
Human Rights/Legal Implications	<p>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.</p> <p>In the event that the licence holder or anyone who made relevant representations is dissatisfied with the decision of the committee there is a right of appeal to the Magistrates Court.</p>
Sustainability	N/A
Ward-specific impacts	Saffron Walden (Castle ward) being the ward within which the premises are situated.
Workforce/Workplace	N/A

Situation

1. The Axe is located on the northern side and facing Ashdon Road, Saffron Walden. There are residential dwellings situated on all 4 sides of the pub, and some at least of these postdate the grant of the first licence (by the Magistrates) to the premises. This is a two storey building with a single storey range to the rear. Access is onto Ashdon Road adjacent to Mill Lane with the pub garden and parking to the rear. There is a brick and flint wall adjoining the eastern boundary with Mill Lane.
2. The original application for licence from UDC was submitted for The Axe on 23 August 2005, during the transitional period with variations. Representations were received which required a hearing and the licence was granted subject to conditions on 23 August 2005. It is a statutory requirement for this Committee to review and approve the licence fees.
3. On 20 March 2013, the licence was transferred from Greene King Ltd to Axe Pub Ltd of Unit 3 Ashdon Road Commercial Centre, Saffron Walden, Essex, CB10 2NH.
4. On 6 October 2014, a review of the premises licence took place resulting in additional conditions being imposed by the Licensing and Environmental Health Committee.
5. On the 22 July 2019 a variation of the license was brought before the committee that resulted in it being refused in part with clause 1 – 3 of Annexe 3 remaining in force. Clause 5 was deleted and clause 4 was substantially amended.
6. Five changes of premises supervisor have taken place at these premises since the review hearing in 2014 and at the time of preparing this report the current post holder is Deborah Hooper who has been on the licence since 09 April 2021, taking over from Karen Storey.
7. The current premises licence permits Indoor sporting events, live and recorded music indoors only from 7pm to Midnight Monday to Sunday.
8. The current premises licence permits the sale of alcohol both on and off the premises from 10am until Midnight Monday to Sunday. The current premises licence permits the opening hours of the premises to be Monday to Sunday 10am to Midnight.
9. The variation application is to remove conditions 1,2 & 3 of Annexe 3 of the licence:
 - Drinks shall not be consumed outside the premises except in designated areas and in no event between the hours of 11:20 pm and 10:00am.
 - No regulated entertainment shall take place outdoors.
 - Music events to be limited to 6 in any 12 month period
10. Copies of this application have been served on all statutory bodies which have

attracted a representation from Environmental Health on the grounds of noise nuisance. Details of this representation can be seen in Appendix E.

11. An email from the Essex Police Licensing Officer dated 12 November 2021, they being the statutory consultee for crime and disorder issues, states they have no objections to this variation application.
12. No other responsible authority have raised objections to the variation of this licence application.
 - 18 representations have been received from interested parties, primarily local residents, raising concerns based upon the prevention of public nuisance objective, and hence support the views of Environmental Health. Residents are opposed to the removal of some of the Annexe 3 conditions from the Axe's licence. Details of these representations can be seen in Appendix F.
13. Under the Licensing Act 2003 there is no obligation to write to residents advising them of applications received by the local authority. The responsibility is on the applicant to place a blue public notice on the premises for 28 days and a public notice in a local newspaper which circulates in the area in which the premises are situated. The Licensing Authority must advertise the applications in their website and advise all statutory consultees of the application.
14. In carrying out the statutory function, the Licensing Authority must promote the licensing objectives as defined in the Licensing Act 2003:-
 - a. The prevention of crime and disorder
 - b. Public safety
 - c. The prevention of public nuisance
 - d. The protection of children from harm
15. The decisions that the Committee can make in respect of this application are to:
 - Grant the application.
 - Modify the application by inserting conditions.
 - Reject the whole or part of the application.
16. When determining an application due regard should be given to the Council's Licensing Policy: This state, inter alia,
 - i. Licensed premises have a significant potential to adversely impact on communities through public nuisances that might 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.

- ii. 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.
 - iii. 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 controls and measures in place or proposed to prevent public nuisance, may be suitable for 24-hour opening.
17. 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.
18. 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.
19. When determining an application due regard should be given to the Secretary of State’s Guidance issued in accordance of the Act. The most recent edition of this is dated April 2018, and the relevant sections of that Guidance state:
- i. The 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.

- ii. 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.
 - iii. 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.
 - iv. 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 where 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.
 - v. 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.
20. 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.

21. 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 representations received. Equally, the Committee cannot impose conditions that duplicate the effect of existing legislation.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
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 and the prevention of public nuisance	3 – 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.	3 – Due to the availability of the review procedure any inconvenience which may be suffered by local residents would be relatively short lived.	In light of objections received to this application members should consider if this premises would still meet the licensing objectives.

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.