

Committee: Licensing and Environmental Health Committee

Date: 29 June 2023

Title: Application for a full variation of a Premises Licence

Applicant: Chaterco Ltd

Premises: Chater's General Store, Café & Aperitivo Bar 17 Church Street Saffron Walden Essex CB10 1JW

Report Author: Sharon Bartram, Licensing Support Officer

SUMMARY

1. The Licensing Sub Committee consider an application made by Chaterco Ltd under section 34 of the Licensing Act 2003 ("The Act") to vary a premises licence in respect of Chater's General Store, Café & Aperitivo Bar, 17 Church Street, Saffron Walden, Essex CB10 1JW. This application has received relevant representations during the consultation period and therefore this matter has been referred to the Sub Committee for adjudication. The Sub Committee is requested to determine what steps, if any, it considers are appropriate to promote the Licensing Objectives for the overall interests of the community.
2. In carrying out its licensing functions, the Sub Committee should give appropriate weight and consideration to:
 - a) The Licensing Act 2003 ("The Act")
 - b) Secondary regulations issued under the Act
 - c) Section 182 guidance issued to local authorities under the Act
 - d) UDC's Statement of Licensing Act 2003 Policy 2017 – 22
 - e) The steps that are appropriate to promote the licensing objectives
 - f) The application to vary the premises licence
 - g) Relevant representations (and any supporting evidence) submitted by all parties.

RECOMMENDATIONS

3. The options open to the Committee are set out by law, and are:
 - To grant the application
 - To modify the application by inserting conditions
 - To reject the whole or part of the application

FINANCIAL IMPLICATIONS

4. None

BACKGROUND

Appendices

- Appendix A Premises Licence
- Appendix B Variation Application
- Appendix C Revised Plan of the Premises
- Appendix D Temporary Event Notice
- Appendix E Representation Essex Police (Support)
- Appendix F Representation Environmental Health (Object)
- Appendix G Representation Mr Scott Riley – Neighbour (Object)
- Appendix H Representation Mr Sean Kelleher – Neighbour (Object)
- Appendix I Representation Mr S Ulph – Adjacent Landlord (Object)
- Appendix J Representation Mr Michael Chappell – Neighbour (Support)
- Appendix K Representation Suzanna and Paul Doyle Neighbours (Support)
- Appendix L Representation F Mayer & A Felber Neighbours (Support)
- Appendix M Representation Sally Roper – Customer (Support)
- Appendix N Representation Samuel La Roche – Customer (Support)

5. Acting in the capacity of the Licensing Authority, Members must seek to promote the Licensing Objectives. Where Members consider that matters have engaged one or more of the Objectives, they may exercise their discretion. The Licensing Objectives as set out in the Licensing Act 2003 are:

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

6. There is no hierarchy of importance among the objectives, and all must be given equal weight.

7. Where appropriate, options available to the Sub Committee under section 35(4) of the Act in relation to an application to vary the premises licence for the promotion of the licensing objectives are:

- To grant the application as applied for
- To modify the application by inserting conditions
- To reject the whole or part of the application

and for this purpose the conditions of the licence are modified if any of them are altered or omitted or any new condition is added.

8. Chater's General Store, Café and Aperitivo Bar at 17 Church Street is situated in the town of Saffron Walden leading off Church Street. This premises is a warehouse converted into a café and provisions shop with a small aperitivo bar. The premises has a gated entrance which leads off the main street down a 3-metre-wide alleyway to the entrance of the premises on the right.

16. A plan was also submitted with the application which detailed the proposed extension of the licensable area to a small internal area which would be a seated tasting room and dining room (4.2m X 5.7m)
17. The plan also included an external licensable area of private land which would be a seated area for food and drinks (3m x 12m).
18. In accordance with the Licensing Act 2003 regulations, public notices have been displayed and published. Responsible authorities were notified of the application. The consultation period ended on 8 June 2023.

ISSUES/PROPOSALS

19. The proposal is for tables and chairs to be placed on the private land outside the premises doors halfway down the alleyway, away from the entrance at the top end of the alley near Church Street and residential properties. The aim is that the outside area will appeal to customers who wish to sit outside particularly mothers with children and pushchairs and dog walkers, who may find it easier to stop for refreshments outside, particularly in the summer months.

Consultation

20. Essex Police and Environmental Health responded in their capacity as Responsible Authorities. **Appendix E**
21. The representation from Essex Police was a positive one following negotiations with Max Chater. It was agreed that the proposed licensable area would be reduced to include only the inside area. and this area would remain unlicensed.
22. A revised plan was submitted by Mr Chater to incorporate this amendment and only the inside 'tasting' room was included as an extension to the licensable area. **Appendix C**
23. It was also agreed that the outside area would close at 21:00 every night.
24. The representation from Environmental Health objects on the grounds of prevention of Public Nuisance. **Appendix F**
25. Discussions between Environmental Health and the applicant about limiting evening hours by updating the existing noise management plan was agreed. There was no objection from Environmental Health regarding the extension of the licensable area inside the premises.
26. Three representations with objections on the grounds of prevention of public nuisance were received. Two objections from neighbours, one of whom has consistently complained numerous times about noise and various issues which are not relevant to the licensing objectives and one neighbour has never complained at all. The third objection is from the landlord of these two neighbours who lives in Dunmow. **Appendices G, H, I**

27. There are seven further representations from close neighbours and customers supporting the application. One close neighbour, Michael Chappell objected to the original application anticipating possible noise but now supports the business as a regular customer. **Appendices J, K, L M, N**

28. The applicant and all other parties that made representations have been sent the statutory Notice of Hearing, inviting them to attend this hearing with or without representation.

Determine the application

29. Any decision is to be made regarding the Licensing Act 2003, the Secretary of State's Revised Guidance issued under Section 182 of the Licensing Act 2003, and the Council's adopted Statement of Licensing Policy.

30. Members are reminded that should any conditions be added or modified, they should be practical, enforceable, and appropriate to promote the Licensing Objectives.

Secretary of State's Revised Section 182 Guidance for the Licensing Act 2003

31. The Sub Committee's attention is directed towards Chapter 9 'Determining applications' and Chapter 10 'Conditions attached to premises licences and club premises certificates' and Chapter 16 'Regulated Entertainment' in the Section 182 Guidance

32. Para 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...

33. Para 9.4 ...There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

34. Para 9.37 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.

35. Para 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.

36. Para 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.
37. Para 9.44 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters...
38. Para 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. This provision also applies to minor variations.
39. Para 10.9 It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.

Legal Considerations

40. Members should provide reason(s) for any decision taken and should set out the reasoning where they determine to depart in any way from the Policy or Guidance.
41. In addition to determining the application in accordance with the legislation, the Sub Committee must have regard to the:
 - a) common rules of natural justice
 - b) provisions of the Human Rights Act 1998
 - c) considerations in Section 17 of the Crime and Disorder Act 1998
42. The Human Rights Act 1998, which requires authorities to take into account the rights of individuals to respect for their private and family life (Article 8), a right to a fair trial/hearing (Article 6) and to protection of their property (Article 1, Protocol 1).
43. There is a statutory obligation placed on the Local Authority under section 17 of the Crime and Disorder Act 1988 to exercise its various functions doing all that it can to prevent Crime and Disorder, and Anti-Social Behaviour, behaviour adversely affecting the environment as well as the misuse of drugs, alcohol and re-offending in the Local Environment.

44. Under section 181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal for the applicant or a party to the hearing against a decision of the Licensing Sub Committee to the Magistrate's Court within 21 days of being notified.

Financial Implications

A. None

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	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. If 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

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 public nuisance	2 There is a possibility that local residents will suffer from 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 light of the objections received to this application members should consider if this meets 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