

LICENSING AND APPEALS SUB-COMMITTEE 22nd November 2011
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*PART 1 – PUBLIC DOCUMENT	AGENDA ITEM No.
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LICENSING ACT 2003

**APPLICATION BY SHARRON MARGARET FLETCHER FOR THE GRANT OF A
PREMISES LICENCE IN RESPECT OF THE CLUB ROOM, CHURCH END LANE,
BARLEY, HERTFORDSHIRE, SG8 8JW.**

REPORT OF THE SENIOR LICENSING AND ENFORCEMENT OFFICER

1. BACKGROUND

- 1.1 No premises licence under the Licensing Act 2003 is currently in place for the premises.

2. APPLICATION

- 2.1 The application is for the grant of a premises licence under Section 17 of the Licensing Act 2003.
- 2.2 The licensable activities and hours applied for are as follows:

3. APPLICATION PROCESS

- 3.1 On 27th September 2011, Sharron Margaret Fletcher made an application for the grant of a Premises Licence.
- 3.2 The Applicant served copies of this application to the Police Authority and the other Responsible Authorities.
- 3.3 A public notice was displayed on the premises for a period of not less than twenty-eight (28) days in accordance with the requirements of the Licensing Act 2003.
- 3.4 A newspaper advertisement was placed in a local newspaper in accordance with the Act.

4. REPRESENTATIONS

- 4.1 Following discussions during the application period between the applicant and Hertfordshire Constabulary, the applicant agreed to incorporate some additional operating schedule conditions as part of the application. As a result of these amendments Hertfordshire Constabulary were satisfied that the application would not adversely impact on the licensing objectives and made no representation.
- 4.2 The agreed amendments to the application are as follows:

- 4.3 Following discussions during the application period between the applicant and the Council's Environmental Protection Officer, the applicant agreed to incorporate some additional operating schedule conditions as part of the application. As a result of these amendments the Council's Environmental Protection Officer was satisfied that the application would not adversely impact on the licensing objectives and made no representation.
- 4.4 The agreed amendments to the application are as follows:

- 4.5 The amendments made as a result of the discussions between the applicant, Hertfordshire Constabulary and the Council's Environmental Protection Officer have been voluntarily included within the application's operating schedule by the applicant. The Sub-Committee do not need to consider whether or not to impose these conditions, therefore, and should read them as part of the original application when considering the representations. If the Sub-Committee deem it necessary based on the representations and the verbal submissions at the hearing, however, the operating schedule conditions could be amended, added to or removed at the Sub-Committee's discretion.
- 4.6 No representations were received from any other Responsible Authority.
- 4.7 Five representations were received from Interested Parties.
- 4.8 The Council's Scheme of Delegation in respect of the Licensing Act 2003 requires the Licensing Officer to determine whether a representation is relevant as specified by the Act.
- 4.9 One representation was deemed to be 'not relevant' by the Senior Licensing Officer as it did not relate to the effect or likely effect of the application on the four licensing objectives as prescribed by the Licensing Act 2003. This representation has not been included with this report.
- 4.10 In respect of the four remaining 'relevant representations', section 4.8 of this report still applies to the specific content of each individual representation. Where representations include paragraphs that are not relevant to the Licensing Act 2003, these paragraphs have been clearly marked as 'not relevant' by the Senior Licensing Officer and should not be considered as part of the determination process. Interested parties must not refer to these paragraphs in any oral presentation at the hearing.
- 4.11 The four relevant representations are as follows:

- 4.12 The Applicant has been served with a copy of the representations.
- 4.13 The Applicant and the 'relevant' Interested Parties have been invited to attend the hearing to present their respective cases. They have been advised that they may be legally represented and of the Committee Hearing procedure.

5. OBSERVATIONS

- 5.1 In determining this application, the Sub-Committee must have regard to the representations and take such steps, as it considers necessary for the promotion of the Licensing Objectives.
- 5.2 In making its decision, the Licensing and Appeals Sub-Committee must act with a view to promoting the Licensing Objectives. It must also have regard to the Licensing Authority's Statement of Licensing Policy and National Guidance.
- 5.3 The Licensing and Appeals Sub-Committee has the following options when issuing the Decision Notice:
- i) Grant the Application as made
 - ii) Grant the Application with conditions. Conditions should only be added where they are necessary to promote the Licensing Objectives.
 - iii) Refuse the Application.

6. LICENSING POLICY CONSIDERATIONS

- 6.1 The following paragraphs from the Council's Statement of Licensing Policy 2011 may be relevant to this application. This section does not prevent the Sub-Committee from considering other paragraphs of the Statement of Licensing Policy where they deem it appropriate.

5.1

Each licence application will be decided by reference to this Policy, the National Guidance issued by the Secretary of State, relevant legislation and to the individual circumstances of the particular application. The Council may depart from the Policy where the individual circumstances of any application merit such a decision in the interests of the promotion of the Licensing Objectives. Full reasons will be given for decisions taken by the Council when undertaking its licensing functions.

5.4

In addressing these matters the Council will primarily focus on the direct impact of the activities taking place on, or in the immediate vicinity of, the licensed premises on members of the public living or working within the vicinity. The Council are aware of the National Guidance in relation to assessing vicinity, in particular paragraph 8.6, however vicinity will be assessed on a case by case basis taking into account all relevant factors. As an example, a churchwarden or member of the Church Parochial Council would ordinarily be considered to be working in the vicinity, providing the church is deemed to be in the vicinity of the premises, however a churchgoer would not.

5.6

The Council acknowledges that the licensing process can only seek to control measures within the direct control of the licensee and 'in the vicinity' of the premises. The Council does not consider that the term 'vicinity' can be generically defined and will consider its definition relative to the specific circumstances of each application. Generally, to be considered to be 'in the vicinity' of a premises, an interested party will need to demonstrate a causal link between the problems or likely problems caused at the premises, or in the immediate vicinity of the premises, in relation to the Licensing Objectives. For example, an interested party may be able to hear music from the premises within their property or they may see patrons leaving the premises and causing a nuisance immediately outside the premises.

5.7

The Council recognises that the exercise of its licensing functions are only one of a number of means of securing the above Licensing Objectives. The exercise, by the Council, of its licensing functions should not be seen as a panacea for all problems within the community. The Guidance states at paragraph 1.26 :

Licensing law is not the primary mechanism for the general control of individuals once they are away from a licensed premises and therefore beyond the direct control of individual licensees or certificate holders. However, licensees and certificate holders should take reasonable steps to prevent the occurrence of crime and disorder and public nuisance immediately outside their premises, for example on the pavement, in a beer garden, or in a smoking shelter, where and to the extent that these matters are within their control.

5.9

The Council will carry out its licensing functions in the promotion of the Licensing Objectives and, in addition, will support the stated aims of the Act which are as follows:

- (i) the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting places of entertainment.*
- (ii) the introduction of better and more proportionate regulation to give businesses greater freedom and flexibility to meet their customers' expectations;*
- (iii) greater choice for consumers, including tourists, about where, when and how, they spend their leisure time;*
- (iv) the encouragement of more family friendly premises where younger children can be free to go with the family;*
- (v) the further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns; and*
- (vi) the regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring.*

8.1

The Council recognises that the public safety objective is concerned with the physical safety of the people using the relevant premises and not with public health, which is dealt with in other legislation.

9.1

Licensed premises may have significant potential to impact adversely on communities through public nuisances that arise from their operation. The Council interprets 'public nuisance' in its widest sense and takes it to include such things as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in activities in the vicinity of a particular premises. Ordinarily, the Council's Environmental Protection Team, in their role as a responsible authority, would take the lead in respect of nuisance issues.

12.1

The Council recognises that each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and activities concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises. A standardised approach to imposing conditions must be avoided and will only be lawful where they are deemed necessary to promote the Licensing Objectives in response to relevant representations.

12.2

Conditions will only be imposed when they are necessary for the promotion of the Licensing Objectives and will focus upon matters within the control of the individual licensee such as the premises, places or events being used for licensable activities. Conditions are likely to be focused towards the direct impact of those activities on persons living, working or otherwise engaged in activities in the vicinity.

7. RELEVANT EXTRACTS OF STATUTORY GUIDANCE

- 7.1 The following paragraphs from the Guidance issued by the Home Office under section 182 of the Licensing Act 2003 (October 2010) may be relevant to this application. This section does not prevent the Sub-Committee from considering other paragraphs of the Guidance where they deem it appropriate.

1.16

The licensing authority should only impose conditions on a premises licence or club premises certificate which are necessary and proportionate for the promotion of the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the premises licence holder or club. It is only where additional and supplementary measures are necessary to promote the licensing objectives that necessary, proportionate conditions will need to be attached to a licence.

2.4

The essential purpose of the licence or certificate in this context is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives. Conditions attached to licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff or agents, but can directly impact on the behaviour of customers on, or in the immediate vicinity of, the premises as they seek to enter or leave.

2.33

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 interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.

2.38

In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives.

2.39

Beyond the vicinity of the premises, these are matters for 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.

8. LICENSING OFFICER COMMENTS

- 8.1 The comments within this section of the report are provided by the Senior Licensing and Enforcement Officer to assist the Sub-Committee with the interpretation of the Act, the Guidance and existing case law. It is for the Sub-Committee to determine what weight they attach to this advice.
- 8.2 In determining whether or not a representation is relevant, the Licensing Officer has to consider whether or not the concerns raised relate to the four licensing objectives of:
- (i) the prevention of crime and disorder;
 - (ii) public safety;
 - (iii) the prevention of public nuisance; and
 - (iv) the protection of children from harm
- 8.3 Demand is not a relevant issue in relation to an application as it clearly does not fall within the remit of any of the four licensing objectives.
- 8.4 Much of the content of the representations deals with the impact of this application on the surrounding areas of the premises. As paragraph 2.33 of the Guidance confirms, public nuisance under the Licensing Act 2003 has a wide interpretation and it is for the Sub-Committee to determine, based on the evidence, whether they consider these issues to be a public nuisance.

- 8.5 The Guidance states at paragraph 2.38 that conditions relating to public nuisance beyond the vicinity of the premises are not appropriate and the Council's Statement of Licensing Policy supports that view. Conditions that it would be either impracticable or impossible for the licence holder to control would clearly be inappropriate.
- 8.6 That said, if behaviour beyond the premises can be clearly linked to a premises and it is causing a public nuisance, it is wrong to say that the Licensing Act 2003 cannot address this. Whilst conditions may well be inappropriate, if the evidence deems it necessary, times and/or activities under the licence could be restricted or, indeed, the application could be refused.
- 8.7 The recent magistrates court case of *Kouttis v London Borough of Enfield*, 9th September 2011 considered this issue.
- 8.8 In a summary of the case provided by the Institute of Licensing it is reported that District Judge Daber considered an appeal against a decision of the local authority to restrict the hours of musical entertainment of a public house to mitigate the noise from patrons as they left the premises in response to representations from local residents. The appellant relied on the sections of the Guidance that state that "beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right" (para 2.38). It was also suggested that, given that certain residents were not disturbed, this did not amount to public nuisance within the meaning of para 2.33 of the Guidance as approved by Burton J in the Hope and Glory case.
- 8.9 The District Judge held that there was ample evidence of public nuisance, and that section 4 of the Act gave the licensing authority a positive duty to deal with it proportionately. In this case, no less interventionist way of dealing with the nuisance had been suggested. He held that not only was the authority not wrong, but that it was in fact right to reduce the hours as it had. The appeal was therefore dismissed.
- 8.10 As this was a decision of the Magistrates Court it would not be binding on other courts, however, it could be considered as persuasive.

9. CONTACT OFFICERS

- 9.1 Steve Cobb
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