

WAVERLEY BOROUGH COUNCIL

LICENSING SUB-COMMITTEE A – 22 MARCH 2021

Title:

LICENSING ACT 2003 - APPLICATION TO VARY A PREMISES LICENCE– THE ROYAL ARMS, 172 FARNBOROUGH ROAD, HEATH END, FARNHAM, SURREY GU9 9AX

[Wards Affected: All Farnham Wards]

Summary and Purpose

The purpose of the report is to enable the Sub-Committee to consider an application for a variation to the Premises Licence of The Royal Arms, 172 Farnborough Road, Heath End, Farnham, Surrey GU9 9AX under section 34 of the Licensing Act 2003, made by Mr Jon-Paul Stubbings, the current Designated Premises Supervisor and Premises Licence Holder. A number of representations have been received by the Licensing Authority and therefore the application must be determined by the Sub-Committee.

Background

1. The Premises was the subject of conversion and variation when the Licensing Act 2003 came into force. The Royal Arms was first granted a Premises Licence on the 24th November 2005.
2. A copy of the current Premises Licence is attached at Annexe 1 and summarised below:

- **Regulated Entertainment** (Films, Indoor Sports Events & Recorded music)

Sunday to Thursday	0700 to 0000
Friday & Saturday	0700 to 0100

- **Regulated Entertainment** (Live music)

Monday to Sunday	1000 to 2330
------------------	--------------

- **Regulated Entertainment** (Anything Similar)

Sunday to Thursday	1000 to 0000
Friday & Saturday	1000 to 0100

- **Late Night Refreshment**

Sunday to Thursday	2300 to 0030
Friday & Saturday	2300 to 0130

- **Sale of Alcohol** (on & off the premises)

Sunday to Thursday	1000 to 0000
Friday to Saturday	1000 to 0100

- **Opening hours – premises are open to the public**

Sunday to Thursday	0700 to 0030
Friday to Saturday	0700 to 0130

3. The applicant submitted an application for a Minor Variation in August 2020 seeking to remove a number of the conditions attached to the Premises. That application was refused by officers under delegated authority. Officers concluded that, on balance, it would cumulatively and individually adversely impact upon the Licensing Objective of Prevention of Public Nuisance. The applicant was advised that he was entitled to submit a full variation application should he wish to. A copy of the decision letter is attached at Annexe 2.

Activities sought under this licence application

4. In brief, the applicant now seeks to amend the licence to remove all the conditions placed on the licence over 10 years ago (any conditions added on the licence before February 2011)

With the exception of the mandatory conditions that are required to be included on the Licence under the 2003 Act, all other conditions on the licence are over 10 years old.

5. The applicant is not seeking any variation in respect of the licensable activities, and hours and days of operation are to remain the same. A copy of the relevant parts of the application form is attached at Annexe 3.
6. Attached at Annexe 4 is a copy of the current conditions attached to the premises licence.
7. Attached at Annexe 5 is a copy of the plans of the premises.
8. Attached at Annexe 6 is a plan showing the location of the premises and surrounding properties.

Representations received

9. Representations can be made in opposition to, or in support of, an application. A representation is 'relevant' if it relates to the likely effect of the

grant of the licence on the promotion of at least one of the licensing objectives.

Responsible Authorities

10. There has been 1 representation in opposition from Environmental Health, a Responsible Authority, a copy of which is reproduced at Annexe 7.

The applicant has engaged with the Surrey Police representative during the process and agreed proposed conditions, attached at Annexe 8.

Other Persons

11. The Licensing Authority has received been nineteen (19) relevant representation from "other persons". 13 in support of the application and 6 in opposition. Copies of the representations are attached at Annexe 9 and Annexe 10 respectively.

Recommendation

- 12.
- It is recommended that the Sub-Committee considers the application and evidence of all parties involved at the hearing and then determines the application.
 - Members must determine the application in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.
 - The Sub-Committee should take such steps (as described at paragraph 12.11 below) as it considers appropriate for the promotion of the licensing objectives.

Once determined, the licensing authority must provide notification of the decision including its reasons to the applicant, any person who has made relevant representations and the Chief Officer of Police for the area in which the premises is situated.

Reason for the recommendation

13. The general principle is that an application for a variation of a Premises Licence must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.

Relevant representations are those which:

- Are about the effect of the granting of the application on the promotion of the licensing objectives
- Are made by a Responsible Authority or other persons

- Have not been withdrawn
 - Are not, in the opinion of the relevant Licensing Authority, frivolous or vexatious.
- 13.1 Licensing authorities are required to carry out licensing functions under the Licensing Act 2003 with a view to promoting the four licensing objectives of:-
- Prevention of crime and disorder;
 - Public safety;
 - Prevention of nuisance; and
 - Protection of children from harm.
- 13.2 Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.
- 13.3 The Licensing Sub-Committee must also consider Waverley Borough Council's Statement of Licensing Policy when deciding whether or not to grant the application. The terms of the Statement of Licensing Policy are highly persuasive, but not binding, on the Licensing Sub-Committee. The Licensing Sub-Committee may depart from the guidance contained in the Statement of Licensing Policy if it considers there are clear and convincing reasons to do so.
- 13.4 Where there is a conflict between the Licensing Act 2003 and the Statement of Licensing Policy, the Licensing Act 2003 must prevail.
- 13.5 Members are required to have regard to the Home Office Guidance issued under section 182 of the Licensing Act 2003 in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.
- 13.6 The guidance will be available for reference purposes at the meeting.* Particular attention is drawn to:
- Conditions – paragraphs 1.16-1.17 and 10.1 to 10.66
 - The Licensing Objectives – paragraphs 2.1–2.32
 - Hearings - paragraphs 9.31 to 9.44
- The guidance can be found at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003__April_2018_.pdf
- 13.7 When relevant representations are received then the Sub-Committee must have regard to them. Representations based on commercial reasons or need are not in themselves relevant representations. For example, a

representation from a bar owner, that the grant of a premises licence to another bar, will take customers away from his/her premises, is not a relevant representation, nor is a representation from other persons that another off licence in the parade of local shops is not needed.

13.8 The Licensing Sub-Committee can attach a “weight” to any relevant representations, such factors that could influence the “weight” to be placed on a representation could include:

- Whether the representation can be clearly related to any one of the four licensing objectives;
- Whether the representation concerns matters over which the applicant is able to exercise control;
- Whether the representation is based on “hearsay” evidence;
- Whether the representation is supported by firm evidence;
- Whether the person making the representation has attended the hearing in person (Zoom).

13.9 When considering applications to vary an existing certificate, only the variation is subject to determination. No changes can be made to the certificate unless they are subject to the variation application.

13.10 The Sub-Committee must consider the application on its individual merits and take into account all relevant matters then determine the application by taking the steps it considers appropriate and necessary / proportionate to promote the licensing objectives.

13.11 Members are advised that when considering applications to vary an existing premises certificate, the following options are available to them by virtue of Part 3 Section 35(3) and (4) Licensing Act 2003. This provides that the Sub-Committee, having regard to the relevant representations made, must take such steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:

- a. modify the conditions of the certificate (conditions are deemed to be modified if they are altered, omitted or a new condition added); or
- b. reject the whole or part of the application.

If neither of these steps are taken, the application must be granted.

Conditions

14 Conditions will not be necessary if they duplicate a current statutory requirement.

14.1 Members are also referred to the Home Office guidance on conditions, specifically section 10 which states that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises. Conditions should be determined on a case by case basis and

standardised conditions, which ignore these individual aspects, should be avoided. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions.

- 14.2 Licensing authorities should therefore ensure that any conditions they impose, are only those which are appropriate for the promotion of the licensing objectives.
- 14.3 If the Sub-Committee determines that it is necessary to modify the conditions, or to refuse the variation of the Premises Licence application, it must give reasons for its decision.

The Role of the Licensing Sub-Committee

- 15 Members should note that the Licensing Sub-Committee is meeting on this occasion solely to perform the role of licensing authority. The Sub-Committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the Licensing Law, Guidance and the Council's Statement of Licensing Policy.
- 15.1 As a quasi-judicial body the Licensing Sub-Committee is required to consider the application on its merits. The Sub-Committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on material evidence, which tends logically to show the existence or non-existence of relevant facts, the occurrence of which would be relevant.
- 15.2 The Licensing Sub-Committee must give fair consideration to the contentions of all persons entitled to make representations to them.
- 15.3 The Licensing Sub-Committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.
- 15.4 The Sub-Committee can only consider matters within the application that have been raised through representations from Responsible Authorities and other persons. This will be decided on a case to case basis.

Relationship to the Corporate Strategy and Service Plan

16 Not applicable

Implications of decision

17.1 Resource (Finance, procurement, staffing, IT)

Members should be aware that Environmental and Regulatory Services does not have a direct budget provision for costs, should the applicant be successful in appealing to the Magistrates Court against a decision of the Council.

17.2 Risk management

Not applicable

17.3 Legal

An appeal against the determination of this application may be made to the Magistrates Court within 21 days of all parties being notified of the local authority's decision. The applicant or any party making representation may make an appeal.

17.4 Equality, diversity and inclusion

Under the Human Rights Act 1998, the Sub-Committee needs to consider the balance between the rights of the licensee and those making representations when making their decision. The Sub-Committee has a duty under section 17 of the Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the Waverley area.

17.5 Climate emergency declaration

There are no relevant matters to consider.

Consultation and engagement

- 18 Application advertised at the premises and in a local paper in accordance with the Licensing Act 2003

Other options considered

- 19 Not applicable

Governance journey

- 20 Not applicable

Annexes:

- Annexe 1 – A copy of the current/existing Premises Licence.
Annexe 2 – Minor Variation decision letter.

- Annexe 3 – An extract of the relevant pages from the new application form
- Annexe 4 – A copy of the current conditions on the premises licence.
- Annexe 5 – A copy of the plans of the premises
- Annexe 6 – A plan showing the area of the premises and surrounding properties
- Annexe 7 – Copy of representation from Environmental Health
- Annexe 8 – Copies of the agreed proposed conditions with Surrey Police
- Annexe 9 – Copies of the representations in support received from 'Other Persons'
- Annexe 10 – Copies of the representations against - received from 'Other Persons'

Background Papers

Background papers, as defined by Section 100D(5) of the Local Government Act 1972) are

The Licensing Act 2003

Guidance under 182 Licensing Act 2003

Waverley's Statement of Licensing Policy

.

CONTACT OFFICER:

Name: Paul Hughes

Position: Licensing & Environmental Enforcement Manager

Telephone: 0148 3523189

Email: paul.hughes@waverley.gov.uk

Agreed and signed off by:

Legal Services: 11 March 2021

Head of Finance: date

Strategic Director: date

Portfolio Holder: date