

WAVERLEY BOROUGH COUNCIL

LICENSING SUB-COMMITTEE A

11 JULY 2022

Title:

**LICENSING ACT 2003 - APPLICATION FOR REVIEW OF A PREMISES
LICENCE- THE LEATHERN BOTTLE, 77 MEADOW, FARNCOMBE,
GODALMING, SURREY GU7 3JG**

[Wards Affected: All Godalming Wards]

Portfolio Holder: Cllr MacLeod Portfolio Holder for Enforcement, Operations and Brightwells

Head of Service: Richard Homewood Head of Environmental and Regulatory Services

Key decision: No

Access: Part Exempt

Annexes 3-7 are exempt on the basis of para 1,2 and 7 of Part I Schedule 12A Local Government Act 1972 (information relating to any individual; information which is likely to reveal the identity of an individual; and information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime). The public interest has been considered and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

1. Purpose and summary

- 1.1 *The purpose of the report is to enable the Sub-Committee to determine a request from Surrey Police for a review of the Premises Licence for the The Leathern Bottle, 77 Meadow, Farncombe, Godalming, GU7 3JG under section 51 of the Licensing Act 2003. Twenty Eight relevant representations have been received from 'other persons', all in support of the premises.*

2. Background

Grounds for review

The application to review the premises licence relates to the following licensing objectives;

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

A copy of the application for review is summarised as follows:

The application includes a series of incidents of anti-social behaviour in and around the area which are believed linked to the operation of the premises.

The applicants state that despite meetings held between the premises management, residents and responsible authorities and the efforts of the police, council officers and staff to address and alleviate the situation, the issues persist.

Details of premises licence

2.1. The premises was the subject of conversion and variation in the transitional period, under the 2003 Licensing Act. Accordingly, The Leathern Bottle was granted a Premises Licence.

2.2 A copy of the Premises Licence (current at the time of the Review submission) is attached (Annexe 1) and summarised below:

Provision of regulated entertainment:-

Live music:

Friday & Saturday 19.00 – 00.00
Sunday 12.00 – 23.00

Recorded Music:

Friday & Saturday 10.00 – 00.00
Sunday 12.00–

23.00

Sale by Retail of Alcohol

Monday - Saturday 10.00 - 00.00
Sunday 12.00 - 23.00

Hours of opening:

Monday - Saturday 07.00 - 00.30
Sunday 07.00 - 23.30

2.3 *In accordance with the legislation, the applicant has sent copies of the application to responsible authorities and was advertised in accordance with the requirements of the Licensing Act 2003 and notification was made to the licence holder and responsible authorities. The review documents were sent to the licence holders. The consultation period for the review ended on 20 June 2022.*

3. Application for a Review of the Licence

3.1 *An application for review of this premises licence has been made by Surrey Police as a responsible authority. The application has been advertised at the premises by the Licensing Authority, and elsewhere in accordance with the Licensing Act 2003. A copy of the review notice is attached at Annexe 2, giving a deadline date of 20th June 2022 for any representations to be submitted to the Licensing Authority. The application for a review is set out in full at Annexe 3.*

3.2 *The applicant for the review (Surrey Police) and the subject of the review, (The Leathern Bottle) may call witnesses in support of any evidence they may give, having first notified the Licensing Authority of their intention to do so.*

3.3 *Attached at Annexe 4 is a statement from Detective Constable Katz from Surrey Police regarding their investigation of an incident outside The Leathern Bottle on 09 September 2021. Surrey Police have also advised that at the review hearing they wish to show 'phone video footage of the motorcycle incident that took place on the 09 September 2021.*

3.4 *Attached at Annexe 5 are statements from Police Sergeant Ryan Edmonds and Police Constable Adam Larson from Surrey Police who were the officers that were in attendance to an incident outside The Leathern Bottle on Sunday 30 of April/01 May 2022. Surrey Police have also advised that at the review hearing they wish to show body worn video footage of PS Ryan Edmonds who was one of the attending officers at the premises on the 30 of April/01 May 2022.*

4. Other Responsible Authorities - Responses to the Notice Procedure

4.1. *No representations have been received from other responsible authorities in respect of the application.*

5. Interested Parties - Responses to the Notice Procedure

5.1 *Positive representations in support of the premises have been received from 'other persons', in the form of twenty-eight letters/emails which are attached at Annexe 6.*

6. **Action following submission of the application to Review.**

- 6.2 On the 10 June 2022 an email was received from the Leathern Bottle's representatives, 'The Licensing Guys', containing a Statement of Truth from the proprietor of the CCTV firm who have checked and improved on the CCTV system at the Leathern Bottle. A copy of the Statement of Truth is attached at Annexe 7.
- 6.3 On the 10 June 2022 the Leathern Bottle's representatives, 'The Licensing Guys', submitted a Minor Variation application proposing the addition of a number of conditions recommended previously by the Police Licensing Officer. Subsequently the application was considered, and the application was granted. The new additional conditions, a copy of which are attached at Annexe 8, have been added to the Premises Licence.
7. Annexe 9 to the agenda is an extract from the Statutory Guidance issued under Section 182 of the 2003 Act, published in April 2018, regarding determining a Review (Paragraphs 11.1 - 11.28).

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

8. **Policy and statutory considerations**

When determining the application, the committee must have regard to: the promotion of the licensing objectives which are

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

As well as:

- The Licensing Act 2003
- The adopted statement of licensing policy
- The current statutory guidance issued by the Home Officer in accordance with section 182 of the Act;
- The representations, including supporting information presented by all the parties; and
- The human rights of all the parties concerned to ensure both a fair and balanced hearing and to consider the Equality Act 2010 public sector equality duty requiring public bodies to have due regard to the need to:
 - Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
 - Advance equality of opportunity between people who share a protected characteristic and people who do not share it; and

- *Foster good relations between people who share a protected characteristic and people who do not share it.*

The Statutory Guidance provides advice in relation to the consideration of review applications. In particular, members should have regard to the following advice:

Paragraph 11.1 - "The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate."

Paragraph 11.2 - "At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives."

Paragraph 11.10 - "Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation."

Paragraph 11.16 - "The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives."

In reaching a decision upon a review application, the guidance offers assistance to the licensing authority as follows:

Paragraph 11.17 - "The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder."

Paragraph 11.18 - "However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker."

Paragraph 11.19 - "Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;*
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);*
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
- suspend the licence for a period not exceeding three months;*
- revoke the licence."*

Paragraph 11.20 - "In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review."

Paragraph 11.21 - "For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual."

Paragraph 11.22 - "Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives."

Paragraph 11.23 - "Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence."

Paragraph 11.26 - "Where a licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder."

Paragraph 11.27- "There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;*
- for the sale and distribution of illegal firearms;*
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;*
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;*
- for prostitution or the sale of unlawful pornography;*
- by organised groups of paedophiles to groom children;*
- as the base for the organisation of criminal activity, particularly by gangs;*
- for the organisation of racist activity or the promotion of racist attacks;*
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;*
- for unlawful gambling; and*
- for the sale or storage of smuggled tobacco and alcohol.*

Paragraph 11.28 - "It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence - even in the first instance - should be seriously considered".

A copy of the Statement of Licensing Policy, current statutory guidance and the Act will be made available for reference at the hearing.

9. **Recommendation**

- It is recommended that the Sub-Committee determine the application.

10. Reason for the recommendation

10.1 To address the application for review received as required by the Licensing Act 2003.

The general principle is that an application for a Review of a Premises Licence must be considered once received unless subsequently withdrawn. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.

10.2 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. Having considered all relevant representations, and having taken into account the promotion of the licensing objectives, a decision can be taken:

- 1. To modify or impose additional relevant conditions (ie to alter, omit or add any new condition) to such an extent as is considered necessary for the promotion of the licensing objectives (in relation to matters raised by this review);
- 2. To exclude one or more of the licensable activities from the scope of the Premises Licence
- 3. to remove the Designated Premises Supervisor;
- 4. to suspend the premises licence for not more than three months
- 5. to revoke the premises licence to continue in its present form, with or without a written warning

10.3 Members are also reminded of the option to issue a 'yellow card' i.e. a warning as to future conduct which may accompany options 1 to 4 above.

10.4 The Licensing Authority may decide that no action is appropriate if it finds that the Review does not require it to take any steps that are appropriate to promote the licensing objectives.

11. Relationship to the Corporate Strategy and Service Plan

11.1 Waverley promotes a strong, resilient local economy, supporting local businesses and employment and the health and wellbeing of our communities. Waverley's strategic priorities are supporting a strong, resilient local economy and improving the health and wellbeing of our residents and communities.

12. Implications of decision

12.1 Resource (Finance, procurement, staffing, IT)

There are no specific implications arising from this report.

12.2 Risk management

Members have received training on the Act and the Regulations governing the hearings. They are aware that any decision which is unreasonable or unlawful could be open to challenge. The report details the options available to the panel in determining the application and recommends that a decision be reached.

12.3 Legal

A decision of this Committee can be subject to appeal.

The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to cooperate in the reduction of crime and disorder in the Borough.

12.4 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.

12.5 Climate emergency declaration

There are no matters which directly impact upon the climate emergency declaration.

13. Consultation and engagement

13.1 The application has been dealt with in accordance with the requirements of the Licensing Act 2003

14. Other options considered

14.1 There is no provision for other options to be considered.

15. Governance journey

15.1 Not applicable

Annexes:

Annexe 1 - A copy of the current Premises Licence

Annexe 2 - A copy of the review notice

Annexe 3 - A copy of the application for a review

Annexe 4 - A copy of the Police statement re *09 September 2021 incident*

Annexe 5 - A copy of two Police statements re *30 of April/01 May 2022 incident*

Annexe 6 - A copy of the positive representations in support of the premises received from 'other persons'

Annexe 7 - A copy of a Statement of Truth regarding the CCTV

Annexe 8 - A copy of the new additional conditions that have been added to the Premises Licence following a Minor Variation..

Annexe 9 - Guidance under 182 Licensing Act 2003 (*Paragraphs 11.1 - 11.28*)

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

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Agreed and signed off by

Legal Services: date

Head of Finance: date

Strategic Director: date

Portfolio Holder: date