

**WAVERLEY BOROUGH COUNCIL**

**LICENSING SUB-COMMITTEE A – 12 SEPTEMBER 2022**

---

**Title:**

**LICENSING ACT 2003 - APPLICATION TO VARY A PREMISES LICENCE–  
CARLO ITALIAN BISTRO, 3 HAMPTON TERRACE, BEACON ROAD, BEACON  
HILL, SURREY GU26 6NR**

**[Wards Affected: All Haslemere 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 Carlo Italian bistro, 3 Hampton Terrace, Beacon Road, Beacon Hill, Surrey GU26 6NR section 34 of the Licensing Act 2003, made by Manuel Rocha as agent on behalf of Papagni Ltd, the current Premises Licence Holder. A representation has been received by the Licensing Authority and therefore the application must be determined by the Sub-Committee.

---

**Background**

1. Carlo's Italian Bistro was first granted a Premises Licence in December 2021.
2. A copy of the current Premises Licence is attached at Annexe 1 and summarised below:

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

Monday to Sunday      1000 to 2130

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

Monday to Sunday      0800 to 2200

---

**Activities sought under this licence application**

4. In brief, the applicant now seeks to amend the licence to extend the sale of alcohol hours to:

Monday to Sunday      1000 to 2300

Closing at 23.30

A copy of the relevant parts of the application form is attached at Annexe 2.

5. Attached at Annexe 3 is a plan showing the location of the premises and surrounding properties.

### **Representations received**

6. 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**

7. The Planning Team in their role as a Responsible Authority have emailed officers advising that there are current planning restrictions on the hours that the premises can operate. A copy of the email is attached at Annexe 4.

### **Other Persons**

8. The Licensing Authority has received one (1) relevant representation from "other persons". A copy of the representation is attached at Annexe 5.

### **Recommendation**

9

- It is recommended that the Sub-Committee considers the application and evidence of all parties involved at the hearing and then determines the application.

### **Reason for the recommendation**

10. 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.
11. 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.
- 11.1 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.
- 11.2 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.
- 11.3 Where there is a conflict between the Licensing Act 2003 and the Statement of Licensing Policy, the Licensing Act 2003 must prevail.
- 11.4 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.
- 11.5 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](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)

- 11.6 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.

- 11.7 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).
- 11.8 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.
- 11.9 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.
- 11.10 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**

- 12 Conditions will not be necessary if they duplicate a current statutory requirement.
- 12.1 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.

- 12.2 Licensing authorities should therefore ensure that any conditions they impose, are only those which are appropriate for the promotion of the licensing objectives.
- 12.3 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**

- 13 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.
- 13.1 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.
- 13.2 The Licensing Sub-Committee must give fair consideration to the contentions of all persons entitled to make representations to them.
- 13.3 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.
- 13.4 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**

- 14 Not applicable

### **Implications of decision**

- 15.1 **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.

#### **15.2 Risk management**

Not applicable

#### **15.3 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.

#### **15.4 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.

#### **15.5 Climate emergency declaration**

There are no relevant matters to consider.

#### **Consultation and engagement**

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

#### **Other options considered**

- 17 Not applicable

#### **Governance journey**

- 18 Not applicable

#### **Annexes:**

Annexe 1 – A copy of the current/existing Premises Licence.

Annexe 2 – An extract of the relevant pages from the new application form

Annexe 3 – A plan showing the area of the premises and surrounding properties

Annexe 4 – A copy of the planning email

Annexe 5 – Copies of the representation 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:

Head of Finance: date

Strategic Director: date

Portfolio Holder: date