

Waverley Borough Council

Report to: Licensing Sub-Committee A

Date: 14 August 2023

Ward(s) affected: All Haslemere Wards

Report of Director: Community Wellbeing/Place/Transformation & Governance

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Report Status: Open

Licensing Act 2003 – Application for a
new Premises Licence – Vicky’s
Brasserie, 10-12 Petworth Road,
Haslemere, Surrey. GU27 2HR



1. Executive Summary

- 1.1 An application has been received for a new premises licence from Mr Ferris Cowper, in respect of a restaurant with a small wine bar situated on the ground floor (with a small basement) of a retail unit. Residential properties are situated on the first floor. Thirteen relevant representations have been received, five in objection and eight in support.

2. Recommendation to Council

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

3. Reason(s) for Recommendation:

- 3.1. To address the application for a new Premises Licence following representations as required by the Licensing Act 2003. The general principle is that an application for a new Premises Licence must be considered by a Licensing Sub-Committee if within the statutory 28 day period for determining an application relevant representations are received unless subsequently withdrawn. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.
- 3.2. 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:
 - To grant the licence, subject to the mandatory conditions and conditions consistent with the operating schedule;
 - To impose additional relevant conditions to such an extent as is considered necessary for the promotion of the licensing objectives;
 - To exclude any of the licensable activities to which the application relates;
 - To amend the times for all or some of the licensable activities;
 - To refuse to specify a person on the licence as the designated premises supervisor;

- To reject the application.

4. Exemption from publication

- 4.1. No

5. Purpose of Report

- 5.1. The purpose of the report is to enable the Sub-Committee to consider an application for Vicky's Brasserie, 10-12 Petworth Road, Haslemere, Surrey GU27 2HR under section 17 of the Licensing Act 2003, where thirteen relevant representations have been received, five in objection and eight in support.

6. Strategic Priorities

- 6.1. 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.

7. Background

- 7.1. An application has been received for a new premises licence from Mr Ferris Cowper, in respect of a restaurant with a small wine bar situated on the ground floor (with a small basement) of a retail unit.
- 7.3. 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. The expiry date for making representations was midnight on the 19th July 2023.

7.4. **Activities sought under this licence application**

In brief, the applicant seeks to licence the premises for the sale or Supply of Alcohol and Regulated Entertainment as shown below. An extract of the relevant pages from the new application form is attached at Annexe 1.

- **Regulated Entertainment (Live Music indoors only)**

Thursday to Saturday	1900 to 2100
Sunday	1230 to 1500

- **Regulated Entertainment (Recorded Music indoors only)**

Monday to Thursday	1800 to 2130
Friday & Saturday	1800 to 2200
Sunday	1200 to 1600

- **Regulated Entertainment (Anything similar to above, indoors only)**

Thursday	1930 to 2100
Friday & Saturday	1930 to 2200
Sunday	1230 to 1500

- **Sale of Alcohol (Consumption On the Premises Only)**

Monday to Thursday	1200 to 2230
Friday & Saturday	1200 to 2300
Sunday	1200 to 1600

Opening hours

Monday to Thursday	0800 to 2245
Friday & Saturday	0800 to 2315
Sunday	1200 to 1615

- 7.5. Attached at Annexe 2 is a copy of the plans of the premises.
- 7.6. Attached at Annexe 3 is a plan showing the area of the premises and surrounding properties.
- 7.7. **Representations received**
Within the consultation period relevant representations have been received. In this application a number of representations include elements which are not relevant to the licensing objectives. The Sub-Committee may not take these elements into account in determining the application and must only consider those representations which are relevant for the purposes of the Licensing Act 2003.
- 7.8. **Responsible Authorities**
No representations have been received from responsible authorities in respect of the application.
- 7.9. Other Persons
There have been thirteen relevant representations from “other persons”, in where thirteen relevant representations have been received, five in opposition and eight in support.
A copy of the representations received are attached at Annexe 4 and 5 respectively.

Statutory Guidance

- 7.10. Statutory Guidance issued under Section 182 of the 2003 Act, published in December 2022,

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://www.gov.uk/government/publications/explanatory-memorandumrevised-guidance-issued-under-s-182-of-licensing-act-2003>

- 7.11. When relevant representations are received then the Sub-Committee must have regard to them.
- 7.12. 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.
- 7.13. The Sub-Committee must consider the application on its individual merits and take into account all relevant matters (and exclude non 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:
- To grant the licence, subject to the mandatory conditions and conditions consistent with the operating schedule;
 - To impose additional relevant conditions to such an extent as is considered necessary for the promotion of the licensing objectives;
 - To exclude any of the licensable activities to which the application relates
 - To amend the times for all or some of the licensable activities;
 - To refuse to specify a person on the licence as the designated premises supervisor

- To reject the application

7.14 **Conditions**

Conditions will not be necessary if they duplicate a current statutory requirement and there is no duty to impose conditions consistent with the operating schedule – rather it is a power.

Conditions must relate to the representation(s) and any conditions imposed must be proportionate, clear, achievable and enforceable. Evidence is required before conditions, restrictions or refusals can be imposed following representations – speculation is not sufficient (Daniel Thwaites PLC v Wirral Borough Magistrates’ Court [2008] EWHC 838 Admin).

7.15 Members are also referred to the Home Office guidance on conditions, specifically section 10 (para 10.10) 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.

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

7.17 If the Sub-Committee determines that it is necessary to modify the conditions, or to refuse the application for a Premises Licence application, it must give reasons for its decision.

7.18 **The Role of the Licensing Sub-Committee**

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.

- 7.19 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.
- 7.20 The Licensing Sub-Committee must give fair consideration to the contentions of all persons entitled to make representations to them.
- 7.21 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.
- 7.22 The Sub-Committee can only consider matters within the application that have been raised through representations from Responsible Authorities (none in this case) and other persons. This will be decided on a case-to-case basis.

8. Consultation

- 8.1. The application has been dealt with in accordance with the requirements of the Licensing Act 2003

9. Key Risks

- 9.1. There are no specific implications arising from this report.

10. Financial Implications

- 10.1. There are no immediate resource implications in this report; resources required to fulfil the Council's duties in respect of the licensing process are met from the existing budget.

11. Legal Implications

- 11.1. The Council has a duty to determine the application under the Licensing Act 2003. A decision of this Committee can be subject to appeal in accordance with section 181 and schedule 5 of the Licensing Act 2003.

12. Human Resource Implications

- 12.1. There are no additional human resource implications

13. Equality and Diversity Implications

- 13.1 None

14. Climate Change/Sustainability Implications

- 14.1. There are no implications arising from the recommendations contained within this report in terms of meeting the Council's climate change obligations.

15. Summary of Options

- 15.1 The general principle is that an application for a New Premises Licence must be considered once relevant representations have been received unless subsequently withdrawn. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.

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:

- To grant the licence, subject to the mandatory conditions and conditions consistent with the operating schedule;
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- To amend the times for all or some of the licensable activities;
- To refuse to specify a person on the licence as the designated premises supervisor;
- To reject the application.

16. Conclusion

16.1 The Committee is asked to consider the report and determine the application.

17. Background Papers

17.1 The Licensing Act 2003 (legislation.gov.uk)

Licensing Act 2003 Revised guidance (December 2022) issued under section 182 of Licensing Act 2003 - GOV.UK (www.gov.uk)

Waverley's Revised Statement of Licensing Policy 2018 (waverley.gov.uk)

18. Appendices

- 18.1 Annexe 1 – An extract of the relevant pages from the new application form
- 18.2 Annexe 2 – A copy of the plans of the premises .
- 18.3 Annexe 3 – A plan showing the area of the premises and surrounding properties.
- 18.4 Annexe 4 – A copy of the representations in opposition received from ‘Other Persons’.
- 18.5 Annexe 5 – A copy of the representations in support received from ‘Other Persons’

Please ensure the following service areas have signed off your report.
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Service	Sign off date
Finance / S.151 Officer	
Legal / Governance	
HR	
Equalities	
Lead Councillor	
CMB	
Executive Briefing/Liaison	
Committee Services	