

Waverley Borough Council

Report to: Licensing Sub-Committee B

Date: 16 July 2024

Ward(s) affected: All Farnham Wards

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

Author: Paul Hughes

Licensing and Environmental Enforcement Manager

Tel: 01483 523189

Email: paul.hughes@waverley.gov.uk

Executive Portfolio Holder/ Lead Councillor responsible: Cllr Tony Fairclough
Portfolio Holder for Enforcement and Regulatory Services

Email: tony.fairclough@waverley.gov.uk

Report Status: Open

Licensing Act 2003 – Application to vary a Premises Licence – The Luxe, 6 Lion and Lamb Yard, Farnham, Surrey, GU9 7LL.



1. Executive Summary

- 1.1 An application has been received to vary a premises licence from Mr Kenan Hazar, in respect of a two storey retail unit currently occupied by The Luxe, a restaurant and bar.
- 1.2 A total of 19 representations have been received in respect of the application. One representation has been received from a 'Responsible Authority', Environmental Health and 18 representations have been received from 'Other Persons', 7 in objection and 11 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 to vary a Premises Licence following representations as required by the Licensing Act 2003. The general

principle is that an application for a variation of a 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the statutory 28 day period for determining an application relevant representations are received unless subsequently withdrawn.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.

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- Have not been withdrawn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.

3.2. 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.

3.3. 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.

3.4. 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.

- 3.5. Where there is a conflict between the Licensing Act 2003 and the Statement of Licensing Policy, the Licensing Act 2003 must prevail.
- 3.6. 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 modify the conditions of the certificate (conditions are deemed to be modified if they are altered, omitted or a new condition added); or
 - To reject the whole or part of the application

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

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 to vary a premises licence for The Luxe, 6 Lion and Lamb Yard, Farnham, Surrey, GU97LL under section 34 of the Licensing Act 2003, where a total of 19 representations have been received in respect of the application. One representation has been received from a 'Responsible Authority', Environmental Health and 18 representations have been received from 'Other Persons', 7 in objection and 11 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. A Premises Licence was first granted to a previous company in June 2022.

7.2. In January 2024 the Premises Licence was transferred to Mr Kenan Hazar and the premises was renamed 'The Luxe'.

7.3. A copy of the current Premises Licence is attached at **Annexe 1** and summarised below:

7.4.

- Sale of Alcohol (on & off the premises)

Monday to Sunday 1100 to 2300

- Opening hours – premises are open to the public

Monday to Sunday 0900 to 2300

7.5. An application has now been received to vary a premises licence from Mr Kenan Hazar, in respect of this two-storey restaurant and bar.

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 20th June 2024.

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

In brief, the applicant seeks to increase the hours for the sale or Supply of Alcohol and to add Regulated Entertainment and Late Night Refreshment . An extract of the relevant pages from the new application form is attached at **Annexe 2.**

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

Sunday to Wednesday	1100 to 2300
Thursday to Saturday	1100 to 0050

- **Late Night Refreshment**

Thursday to Saturday	2300 to 0045
----------------------	--------------

- **Sale of Alcohol** (Consumption both On and Off the Premises)

Sunday to Wednesday	1100 to 2300
Thursday to Saturday	1100 to 0045

Opening hours

Sunday to Wednesday	1100 to 2315
Thursday to Saturday	1100 to 0100

- 7.5. Attached at **Annexe 3** is a copy of the plans of the premises.
- 7.6. Attached at **Annexe 4** 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. The Sub-Committee may not take elements which are not relevant to the licensing objectives 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**

One representation has been received from Environmental Health in its role as a 'Responsible authority', in respect of the application. A copy of the representation received is attached at **Annexe 5**.

7.9. **Other Persons**

There have been 18 relevant representations from "other persons", 7 in opposition to the application and 11 in support. A copy of the representations received are attached at **Annexe 6** and **Annexe 7** respectively.

Statutory Guidance

7.10. Statutory Guidance issued under Section 182 of the 2003 Act, updated in January 2024,

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 2.1-2.37
- Hearings — paragraphs 9.31 to 9.44

The guidance can be found at:

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

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. 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.

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

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

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

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

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 2023) issued under section 182 of Licensing Act 2003 - GOV.UK (www.gov.uk)
Waverley's Revised Statement of Licensing Policy 2023 (waverley.gov.uk)

18. Appendices

- 18.1 Annexe 1 – A copy of the current premises licence.
- 18.2 Annexe 2 – An extract of the relevant pages from the new application form.
- 18.3 Annexe 3 – A copy of the plans of the premises .
- 18.4 Annexe 4 – A plan showing the area of the premises and surrounding properties.
- 18.5 Annexe 5 – A copy of the representation received from Environmental Health, a 'Responsible Authority'
- 18.6 Annexe 6 – A copy of the representations in opposition received from 'Other Persons'.
- 18.7 Annexe 7 – A copy of the representations in support received from 'other Persons'

Please ensure the following service areas have signed off your report.
Please complete this box, and do not delete.

Service	Sign off date
Finance / S.151 Officer	
Legal / Governance	240624
HR	
Equalities	
Lead Councillor	
CMB	
Executive Briefing/Liaison	
Committee Services	