

PREMISES/PERSONAL LICENCES SUB-COMMITTEE

07 November 2019

REPORT OF CORPORATE DIRECTOR [OPERATIONAL SERVICES]

LICENSING ACT 2003

Members are respectfully reminded that, in determining the matters listed under item A.1, they are exercising an administrative function but should determine each matter adopting the civil burden of proof, i.e. 'on the balance of probabilities'. The matters will be determined on the facts before the Sub-Committee and the rules of natural justice will apply. Each application must be considered in its own right and on its own merits.

Premises Licence Applications

The Licensing Act 2003 established a single integrated scheme for licensing premises that are used for the supply of alcohol, regulated entertainment or provision of late night refreshment. This system of licensing incorporates the sale of alcohol both on and off licensed premises; public entertainment such as music, dancing, indoor sporting events, boxing or wrestling, theatres, cinemas; and late night refreshment houses and take-aways.

The purpose of the licensing system is to positively promote the four 'licensing objectives'.

These are:

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

The options open to the Sub-Committee when considering this application are:

1. To grant the application for a premises licence subject to such conditions that are consistent with the operating schedule accompanying the application and any mandatory conditions applicable.
2. To grant the application for the premises licence subject to such conditions as are consistent with the operating schedule accompanying the application and which are modified to such an extent as the Sub Committee considers appropriate for the promotion of the licensing objectives, and any mandatory conditions applicable.
3. To grant the licence as above, but to exclude from the scope of the premises licence any of the licensable activities to which the application relates.
4. To reject the application

When determining the application with a view to promoting the licensing objectives in the overall interests of the local community the Licensing Authority in the form of the Licensing Sub-Committee must have regard and give appropriate weight to the following:

- Full Hearing Procedure for Applications for Premises Licences/Club Premises Certificates where representations have been received.
- Tendring District Council's Statement of Licensing Policy.
- The Statutory Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003.
- The steps appropriate to positively promote the four 'Licensing Objectives'.
- Representations (including supporting information) presented by all the parties.

Human Rights Implications

A Licence is to be regarded as the property of the applicant; however their right to the use of the property must be balanced against all other public interests or representations in this matter that the Premises/Personal Licences Sub-Committee may wish to consider as appropriate, reasonable and proportionate in relation to the application that has been submitted and also the representation/s that has/have been received against it.

In making their decision as to whether to grant this application, Members of the Premises/Personal Licences Sub-Committee should also take into consideration Article 1 of the First Protocol of the Human Rights Act 1998, that individuals are entitled to the peaceful enjoyment of their property, and also Article 8 that everyone has the right to respect for his private and family life and his correspondence.

Crime and Disorder Implications

Section 17 of the Crime and Disorder Act 1998 imposes a duty on local authorities when exercising any of their functions to have due regard to the likely effect of the exercise of those functions on, and the need to do all it possibly can to prevent, crime and disorder in its area.

Members are requested to consider the information shown below where the Licensing Authority has received a representation about an application which is relevant to one or more of the four licensing objectives, and which suggests that the application may have a negative impact on one or more of the licensing objectives.

A.1 LICENSING ACT 2003 – APPLICATION NO: 19/00523/PREMVA APPLICATION FOR THE VARIATION OF A PREMISES LICENCE - THE PLOUGH, PLOUGH ROAD, GREAT BENTLEY, COLCHESTER, ESSEX, CO7 8LA

1.0 APPLICATION DETAILS

1.1 Applicants

Mr Deepak Patel

1.2 Premises

Plough Inn, Plough Road, Great Bentley, Colchester, Essex, CO7 8LA

1.3 Agents

None

1.4 Ward

The Bentleys and Frating

1.5 Reason for Application

The application is made under the Licensing Act 2003 for the variation of a Premises Licence to include car park and rear garden and for live music from 1400 hrs until midnight on Friday and Saturday, and from 1400 hrs until 2100 hrs on Sunday.

2.0 GENERAL DESCRIPTION OF PREMISES

2.1 No description supplied by the applicant.

2.2 OPENING HOURS

Monday to Thursday	1000 – 0030
Fridays and Saturdays	1000 – 0130
Sunday	1000 – 0030

3.0 CURRENT LICENSABLE ACTIVITIES

Sale of alcohol on and off the premises

Performance of live music

Fridays and Saturdays 2000 – 2300

Performance of recorded music

Monday to Thursday 1000 – 0000

Fridays and Saturdays 1000 – 0100

Sunday 1200 – 0000

Provision of facilities for dancing

Fridays and Saturdays 2000 – 0000

Sale of alcohol on and off the premises

Monday to Thursday and Sunday 1000 – 0000

Fridays and Saturdays 1000 – 0100

PROPOSED LICENSABLE ACTIVITIES (VARIATION APPLICATION)

Performance of live music [inside and outside]

Friday and Saturday 1400 – 0000

Sunday 1400 - 2100

4.0 STEPS THAT APPLICANTS PROPOSE TO TAKE TO PROMOTE THE LICENSING OBJECTIVES WITHIN THEIR OPERATING SCHEDULE

The applicant has stated the following steps in the application to promote the licensing objectives. These measures are reproduced as shown in the application form and are detailed below for ease of reference. These are:

4.1 Crime and Disorder

CCTV with recording facilities, images available on request.

Spirits located behind counter.

Staff trained on sale of alcohol, training records available for inspection by Police or other relevant authorities.

4.2 Public Safety

CCTV with recording facilities, images available on request to relevant authorities.

4.3 Prevention of Public Nuisance

Staff training with regards to the sale of alcohol with refresher training.

Training records available for inspection.

4.4 Protection of Children from Harm

Challenge 25 policy operated at the premises, forms of identification accepted, passport, driving licence and pass accredited ID card.

Spirits located behind counter.

Refusal log maintained.

4.5 General Information in support of the application in relation to all of the licensing objectives.

CCTV with recording facilities operating at premises at all times.
Staff training, sale of alcohol, training records maintained, refusal log.
Challenge 25 policy operated.

Attached to this report for the information of Members of the Licensing Sub-Committee and all other relevant and interested parties to this hearing, is a copy of the applicant's bundle which includes statements from the applicants, events for entertainment for 2019, noise impact assessment, noise management plan and letters from the public supporting the application.

5.0 RELEVANT REPRESENTATIONS

5.1 Interested Parties/Other Persons

5.2 The Police Reform and Social Responsibility Act 2011 (PRSR Act 2011) removed from the Licensing Act 2003 the specific reference for representations to be made by 'interested parties' and also removed the requirement that representations could only be accepted from persons living in the 'vicinity' of the premises concerned, or who had for example, a business in the 'vicinity' of the premises.

5.3 There was no guidance or definition of 'vicinity' within the Licensing Act 2003 which effectively had a limiting effect on those that could make relevant representations.

5.4 The PRSR Act 2011 replaced the references to 'interested parties' and 'vicinity' and substituted that representations can be made and accepted by the Licensing Authority from 'other persons' which means that those persons do not necessarily have to live or run a business for example in the proximity of the premises to be able to submit a valid and relevant representation.

5.5 The relevant extracts from the Section 182 Guidance that accompanies the Licensing Act 2003 advises the following in relation to 'other persons'. They are shown in italics for ease of reference.

8.12 As well as responsible authorities, any other person can play a role in a number of licensing processes under the 2003 Act. This includes any individual, body or business entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their geographic proximity to the premises.

5.6 Representations can be made either against or in support of an application. The relevant extracts from the Section 182 Guidance that accompanies the Licensing Act 2003 advises the following in relation to this point.

9.3 Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.

5.7 11 letters of representations/objections have been received from residents, including the Great Bentley Parish Council, in relation to this application.

6.0 RESPONSIBLE AUTHORITIES

The Council's Environmental Protection Team has been consulted and requested a Noise Management Plan (NMP) be submitted to them by the applicant. Upon receipt and review of the NMP, the Environmental Protection Team has formally objected to the variation application with the following comments:

The NMP submitted to this Team on 19th September 2019, does not provide adequate Information in relation to how they are going to manage the noise of the music they are proposing for the external and internal areas. The information is required to ensure the noise is managed to an extent that the neighbouring properties are not going to be adversely affected by noise.

The included site plan shows the nearest noise sensitive buildings, but the distance measurements included in the NMP, are in conflict to that of our own mapping systems. The Plough shares a boundary with 2 residential buildings – Rambler Cottage to the east and Coasters to the North East, with several residential properties located to the south of the site also. The distance measurements in relation to noise are measured to and from the boundary, so the indicated distances on the submitted NMP will need to be confirmed.

Information pertaining to the type of equipment being utilised in relation to recorded music and positioning of speakers were absent. In addition no information has been supplied concerning the equipment and positioning of the live performances. The information is necessary to be able to ascertain the noise distribution. Mention of a sound limiter was within the NMP, however no levels were given.

It is noted that the intention is to cease the playing of live music at 1900 and implied this activity would only take place during ‘seasonal activities’ – can this be elaborated on? Another note was that the beer garden would not be in use past the time of 2100 or dusk – can this be confirmed as to how this will be managed. Will this activity result in patrons using the front area of the premises, adjacent to the residential premises known as Rambler cottage? Confirmation on these points is required.

The issue over ‘thermal comfort’ is on that also required addressing – the NMP states that all windows and doors will be closed during operation of the venue, but also states there is no air conditioning installed at the site so as to minimise any potential noise to nearby residents – however this statement by its very nature implies that the opening of doors and windows during the performance or playing of amplified sounds, would likely adversely impact the nearby residents by potentially causing a nuisance resulting in the failure to promote the Licensing Objective.

In addition to the above, this Service is also aware of several complaints from local residents concerning an alleged noise nuisance emanating from the activities at The Plough.

Unfortunately the NMP is unable to evidence to the Environmental Protection Team that the noise from music is able to be managed, we therefore have no option but to formally object to this application based on the likelihood that the proposed activity will cause a nuisance to surrounding residential properties under Part P(d) and the licensing objective of The Prevention of Public Nuisance.

No representations have been received from any other Responsible Authorities.

7.0 POLICY CONSIDERATIONS

The Licensing Authority’s Statement of Licensing Policy expects applicants to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance relevant to the individual style and characteristics of their premises.

- 7.1** The relevant extracts from the Council’s Statement of Licensing Policy in respect of Planning considerations (shown in italics) and also the ‘Prevention of Public Nuisance’ licensing objective are as follows:

- 1.20 *When the Licensing Authority is considering any application, it will avoid duplication with other regulatory regimes, so far as possible, and does not intend to use the licensing regime to achieve outcomes that can be achieved by other legislation. In particular, its licensing functions will be discharged separately from the Authority's functions as the local planning authority. **However, applications for premises licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned.** (Other permissions may be applicable to licensed premises and applicants are expected to ensure that such permissions are obtained where necessary.)*

5.0 PREVENTION OF PUBLIC NUISANCE

- 5.1 Licensed premises have a significant potential to impact adversely on communities through public nuisances that arise from their operation. The Licensing Authority wishes to maintain and protect the amenity of residents and other businesses from the consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.
- 5.2 The Licensing Authority intends to interpret “public nuisance” in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.
- 5.3 Applicants need to be clear that the Licensing Authority will normally apply stricter conditions, including controls on licensing hours, where licensed premises are in residential areas and where relevant representations have been received. Conversely, premises for which it can be demonstrated have effective measures planned to prevent public nuisance, may be suitable for 24-hour opening.
- 5.4 In the case of shops, stores and supermarkets selling alcohol, the Licensing Authority will normally permit the hours during which alcohol is sold to match the normal trading hours during which other sales take place, unless there are exceptional reasons relating to disturbance or disorder.
- 5.5 Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and characteristics of their premises and events.

8.0 RELEVANT SECTION 182 GUIDANCE – PREVENTION OF PUBLIC NUISANCE

- 8.1 The following sections shown below in italics are taken from the Home Office Section 182 Guidance that accompanies the Licensing Act 2003 and are included for the assistance of the Licensing Sub Committee, the applicant, responsible authorities, residents and any other interested parties to this hearing. They do not however form the totality of the guidance in relation to this licensing objective which should also be considered in its entirety. These are:
- 2.18 *The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.*

2.19 *Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.*

9.0 RELEVANT SECTION 182 GUIDANCE- PREVENTION OF CRIME AND DISORDER

9.1 The following section shown below in italics is taken from the Home Office Section 182 Guidance that accompanies the Licensing Act 2003 and is included for the assistance of the Licensing Sub Committee, the applicant, responsible authorities, residents and any other interested parties to this hearing. They do not however form the totality of the guidance in relation to this licensing objective which should also be considered in its entirety. This is:

2.1 Licensing Authorities should look to the police as the main source of advice on crime and disorder.

10.0 RELEVANT SECTION 182 GUIDANCE –PLANNING AND BUILDING CONTROL

10.1 The following section shown below in italics is taken from the Home Office Section 182 Guidance that accompanies the Licensing Act 2003 and is included for the assistance of the Licensing Sub Committee, the applicant, responsible authorities, residents and any other interested parties to this hearing.

13.56 The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa.

13.57 There are circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law.

11.0 ASSOCIATED PAPERS

The following papers are attached as part of this agenda for Members of this Sub-Committee only:-

- (i) Application form and any supporting documentation.
- (ii) Location Plan.
- (iii) Representation/objection letters
- (iv) Applicant's Bundle

Copies of all documentation concerning this application are also available from Licensing Section upon request.

12.0 DECISION

- 12.1** Each application must be considered in its own right and on its own merits only as to how it might impact on the four licensing objectives which are the Prevention of Crime and Disorder, the Prevention of Public Nuisance, Public Safety and the Protection of Children from Harm.
- 12.2** The Licensing Sub Committee is therefore asked to determine this application taking into consideration the application in its own right and on its own merits and also all of the relevant information that has been submitted as part of this report and at the hearing itself.

PAUL PRICE
CORPORATE DIRECTOR [OPERATIONAL SERVICES]