

APPLICATION OF A NEW PREMISES LICENCE

REPORT OF: Tom Clark, Head of Regulatory Services
Contact Officer: Jon Bryant, Senior Licensing Officer
Email: jon.bryant@midsussex.gov.uk Tel: 01444 477076
Wards Affected: High Weald
Key Decision: No
Report To: Liquor Licensing Panel

Purpose of Report

- 1 To provide information in order that the Licensing Committee can determine an application for a Premises Licence.

Summary

- 2 An application, pursuant to Section 17 Licensing Act 2003, has been made by Mr Timothy Earley and Miss Claire Kacy for the grant of a Premises Licence at The Fox Eating and Drinking House, Highbrook Lane, West Hoathly, RH19 4PJ. Two of the Responsible Authorities and the freeholder of the premises have submitted representations objecting to the application on the grounds of Prevention of Crime and Disorder, the Prevention of Public Nuisance, and the promotion of Public Safety. There have additionally been a number of representations submitted in support of the application.
 - 3 It should be noted by the Panel that there is a Premises Licence currently issued in respect of the premises. This application is for the issue of an additional Premises Licence and is not a consideration of the current licence.
 - 4 The Committee is asked to determine the application in accordance with the Licensing Act 2003, MSDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations.
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Background

- 5 Mr Timothy Earley is the current Leaseholder at the premises. At this time has 13 years remaining on the lease which is a 20-year lease.
- 6 The Freeholder of the property is Mr Paul Lloyd; he is also the Premises Licence Holder for the current premises licence. Due to issues between Mr Earley and Mr Lloyd, Mr Lloyd resigned as the Designated Premises Supervisor (DPS) for the current licence and has not appointed a replacement DPS. It is a mandatory condition that no sales of alcohol can take place without a nominated DPS. This remains unresolved.
- 7 Mr Earley and Miss Kacy are therefore applying for a separate Premises Licence in their own names.

8 The application was correctly advertised at the site between 21st August 2021 and 17th September 2021 and in the Mid Sussex Times on 2nd September 2021.

9 The applicant seeks the following licensable activities and timings;

Licensable Activity	Timings	
Supply of Alcohol – On and Off Premises	Mon - Sat	10:00 - 23:00
	Sun	10:00 - 22:30

10 The proposed opening hours of the premises will be:

Mon - Sat 10:00 – 23:20
Sun 10:00 – 22:50

11 There have been representations made against this application which have been received from two of the responsible authorities, The Licensing Authority, and the Environmental Protection Team. The details of these representations are appended to the report.

12 A representation against the application has also been received from Mr Lloyd, the Freeholder, and current Premises Licence Holder.

13 The main points raised in the representations that are relevant relate to the licensing objectives of the Prevention of Crime and Disorder, Public Nuisance, and the Promotion of Public Safety.

14 This application has generated a large local interest in West Hoathly and the surrounding area. A total of 75 emails were received in support of the application. However, all representations, whether opposed or in favour of an application **must** be relevant to the Licensing Objectives. Therefore only 8 of these representations have been accepted as being relevant to the Licensing Objectives.

15 The Committee should be aware when reading the representations in favour of the application that some of the information contained therein is irrelevant for the purposes of the Licensing Act 2003.

16 The Committee must focus on the relevant parts only and disregard the irrelevant matters when determining this matter

17 The Police have agreed conditions with the applicants in respect of the application.

18 If the Committee decides to grant the licence, I request that a number of conditions offered in the operating schedule and agreed by the Police be attached. Full details are attached in the appendices.

19 The applicants have also offered further conditions to reduce any public nuisance arising from music and these are also included in the appendices.

Representations

Responsible Authority Representations

- 20 Representations have been received from the Licensing Authority and the Environmental Protection Team.

A) The Licensing Authority

Objections to the application have been received under the following grounds:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance

It is detailed that Paul Lloyd has been the Premises Licence Holder at The Fox since 19 May 2014, with Timothy Earley named the DPS up to January 2021. During this time, the Licensing Authority recorded the following concerns against the DPS Timothy Earley at the premises.

- On 3 July 2017, a licence inspection found the following contraventions: Insufficient training records for staff, no Age Verification Policy, no DPS Authorisation form, failure to display a summary of the premises licence, refusal/incident records not being kept, and no Fire Risk Assessment report.
- On 12 November 2018, a local resident complained of late-night noise until 01:00, beyond the licensing hours of 23:00. Timothy Earley admitted a 50th birthday at the site had continued until this time.
- On 3 July 2019, a local resident complained of loud music from the establishment until 00:15.
- On 11 October 2019, West Sussex County Council informed the Licensing Authority that Timothy Earley had pleaded guilty to food safety charges after serving food containing egg to a customer ordering an egg-free meal. The pub was also displaying a food hygiene rating of five when they only had a two rating at the time.
- On 20 January 2020, the Licensing Authority issued a warning letter to Timothy Earley, following complaints of noise emanating from the premises at 03:20, with the Temporary Event Notice in place finishing at 02:00.
- On 11 August 2020, a complaint was received that the establishment was not complying with COVID-19 social distancing requirements.
- On 27 May 2021, the Licensing Authority issued a warning to Timothy Earley following a complaint of a music event held in the area outside of The Fox, without a Temporary Event Notice to permit the event.

On 11 January 2021, Paul Lloyd removed Timothy Earley as DPS, stating that he had no confidence that Timothy Earley was promoting the licensing objectives.

On 10 August 2021, Timothy Earley applied to the Licensing Authority to transfer the Premises Licence to himself. The Licensing Authority rejected this application as Timothy Earley had not taken any reasonable steps to obtain the necessary consent from the current Premises Licence Holder, Paul Lloyd, despite him living adjacent to The Fox. Furthermore, having spoken to Paul Lloyd, he confirmed he did not consent to the transfer and was unaware of the application.

In conclusion the Licensing Authority had been made aware of repeated poor behaviour and insufficient control of activities occurring at The Fox. Consequently, on the balance of probability, the Licensing Authority does not have confidence that Timothy Earley will uphold the licensing objectives as a Premises Licence Holder or Designated Premises Supervisor and therefore objects to this application.

The applicants have replied to these particular representations and their response is attached to the appendices

B) Environmental Protection Team

Objections have been received on the grounds of Public Safety

They have stated that the applicants have demonstrated that they are not able to meet the prevention of public nuisance licensing objective. Over recent years there have been many complaints of noise brought to the attention of the Environmental Protection Team. In the past two years there have been 8 complaints of noise, predominantly loud music, from The Fox, even while there have been restrictions on The Fox's ability to open during the Covid pandemic. Visits by officers from the Environmental Protection Team have corroborated the noise complaints and the impact that the pub is having on the local community. Temporary event notices had been notified for 3 events at The Fox by Mr Earley on 26th June 2021, 3rd July 2021, and 24th July 2021 for music events. Following discussions with the applicant about the necessity to control music noise levels to prevent public nuisance, officer visits at the first 2 events demonstrated that insufficient control of noise levels were having a detrimental impact on nearby residents and it was clear that our advice had been disregarded. This was raised with Mr Earley and it was emphasised that future TENS would be opposed.

They have stated that the applicant has demonstrated that he has been unwilling to manage the activities to prevent local impacts. Back in early 2020, after a number of noise complaints had been received by the Environmental Protection Team, the Licensing Officer and an Environmental Protection Team Officer met with Mr Earley and discussed the complaints. Recordings of the noise from the pub that had been experienced by a nearby resident in the early hours of the morning were played back to Mr Earley. At the time Mr Earley accepted that that the noise level was unreasonable, and it was advised that future TENS would only be permitted if he could demonstrate that he could manage the activities at the pub in a way that prevented public nuisance. Subsequent to this meeting and to Mr Earley's agreement with this position, there have been further complaints of noise.

They have further stated that there have been a number of complainants who have indicated that they are scared to give their name and address for fear of reprisals and that the number of complainants that have expressed their concern is unusual. This has been evidenced by our own department's interaction with Mr Earley. In June 2021 he was rude to one of the support team staff and had been confrontational in an email to an officer about complaints from residents. As a result, the Team Leader considered it necessary at the time to put themself as the point of contact for Mr Earley on environmental protection matters to protect the team from being exposed to this abuse. The telephone conversations that triggered this action were in response to legitimate investigations into public nuisance on account of

excessive noise. Mr Earley's response was to counteract these investigations by making spurious complaints about noise from church bells, noise from people clapping for the NHS each week and noise from tree felling from an unknown location.

The applicants have responded to this representation and offered further conditions. The response is included in the appendices.

Interested Parties Representations

Mr Paul Lloyd

Mr Lloyd has made objections on the grounds of the Prevention of Crime and Disorder and the Prevention of a Public Nuisance.

He has detailed that he is the freehold owner of the property, a former Inspector of the Hong Kong Police and former PC in the Metropolitan police. He states that he has managed and owned public houses for over 30 years and is fully aware of the roles and responsibilities of the Licencing Act 2003. He is the Premises Licence Holder for the above premises and was the former Designated Premises Supervisor (DPS) until he stepped down from this role 16th August 2021 in part because Ms Kacy was making it difficult for him to perform this role.

He has stated that Mr Earley ignores the drinking up time rules, and as recently as 21st July he still had 10 to 12 people drinking in the pub. He has supplied a photograph and video to show this. The video is available for the panel to view.

He states that he has been harassed by both of the applicants and previously been sent abusive texts by Claire Kacy

He states that last summer there were complaints of noise and loud music, but Ms Kacy did not control the situation. In fact, she told him complaints had been made by local residents and when he suggested the musician should then be asked to play less loud, she did not see why they should and did not understand the problem.

He stated that he had I have witnessed Claire Kacy drunk on the premises during trading hours when he spent a night at the pub in 2019 and a band was playing. He stated that Mr Earley told him at the time that when she starts drinking she cannot stop.

He stated that he had been resistant to formally objecting to either Mr Earley or Ms Kacy being named Premises Licence Holder in order to preserve the peace and prevent more threats, intimidation, abuse and anti-social behaviour from either of them. In December 2020, Mr Early and I had a confrontation on the premises car park after he started filming him on his private property.

Interested Parties - Representations in Support

As stated, many emails were received in support of this application and the representations that were accepted are detailed below:

Claire Martin

She has stated that she has not witnessed any crime or disorder on many visits. The Fox have had bands play on various occasions, which do create some noise whilst they are playing. She has not found it to be a public nuisance in the 15 years they have lived there, and her back garden looks directly onto The Fox. The Pub observed Covid restrictions and put in place necessary protective measures.

Clive Martin

He has stated that his property is adjacent to 'The Fox'. He has lived there since 2006. In this time, he has never experienced anti-social behaviour or disorder by pub customers. They have not been disturbed by the day-to-day activities of the pub.

Dom Howard

Mr Howard was responsible for sound during a live event at The Fox on 3rd July. He states that Mr Earley was keen to emphasise that noise was kept at a reasonable level and he therefore monitored output levels with several different devices at differing times during the performance. He states that at all times my readings indicated sound from the band equipment confirmed to the 85db limit which he believes to have been in place due to COVID 19.

He adds that he has been involved in several similar events at The Fox over the years that Mr Earley and Ms Kacy have run the establishment and at all times they have been consistent that bands should play at reasonable volumes and finish promptly within set times.

He believes that this ably demonstrates a commitment from Mr Earley and Ms Kacy to their neighbour.

Joy and Alan Bannister

They have submitted a representation in support of the application which is relevant to the following licensing objective of the Prevention of Public Nuisance. They state that as residents of Hazelwood which is located some 50m from the Fox they are one of the closest houses to the Fox and are therefore well placed to comment on whether the running of the pub has caused a public nuisance. They have experienced no issues apart from the first instance of outdoor live music this Summer which was quite loud. The following live music events were much quieter, and none finished at a late hour.

Apart from this one event they do not consider that the running of the pub over the past few years has caused a nuisance to us, rather it has been run in a way that they have been able to enjoy having this amenity so close to our house.

Karen Kashdan

She has stated that confirming that she lives just across Finches Field and have never had any issues with noise etc. She states that she has not been disturbed by noise during licensing hours or at closing time and although she

has heard the bands on occasion, they do not disturb the enjoyment of her own garden and the events always finish at a respectful time so as not to cause disturbance into the night.

Poppy Berry

She has stated that she lives opposite the pub and The Fox has always given advanced warning when any live music was to be played. That post lockdown live music was brought forward in timings in consideration to neighbours and thus in effect has NOT been a nuisance. That before Covid, when live music was performed, advanced warning was given, and timings were kept to acceptable timings. She is aware of this because her young son's bedroom faces the pub, and he has never felt disturbed.

She further stated that she has been more disturbed by a neighbour's son who sits in his car, windows closed, listening to repetitive music than by the pub.

Sophie Abbott

She has stated that on the many occasions that she has attended The Fox there have been groups of young adults and they have always been very well behaved and respectable. I have seen bar staff ensuring they are over 18 before serving them.

She has further stated that The Fox is a safe and incredibly well-run establishment well respected by people of all ages. Claire and Tim welcome local bands and provide excellent entertainment. They adhere to the times set out to open and close and have music and they do all that they can to ensure people leave quietly and respect the local residents. I have also seen people refused drinks when they have had too much to drink and that she really respects them for this.

Susan Burrows

She has made comments that as far as she is aware, there has been no crime or disorder at this public house. She is unaware of any public nuisance and have good friends who live within 200 meters of the premises who have never had any issues or concerns and would indeed voice them if they had.

The full representations are appended to the report

Policy Context

21 Determination of Application for a Premises Licence

The Committee must determine the application in accordance with the Licensing Act 2003 (LA03), MSDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations.

22 Section 18 LA03 deals with the determination of the application:

Grant of premises licence

18. Determination of application for premises licence

(1) This section applies where the relevant licensing authority—

(a) receives an application for a premises licence made in accordance with section 17, and

(b) is satisfied that the applicant has complied with any requirement imposed on him under subsection (5) of that section.

(2) Subject to subsection (3), the authority must grant the licence in accordance with the application subject only to—

(a) such conditions as are consistent with the operating schedule accompanying the application, and

(b) any conditions which must under section 19, 20 or 21 be included in the licence.

(3) Where relevant representations are made, the authority must—

(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and

(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.

(4) The steps are—

(a) to grant the licence subject to—

(i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers appropriate for the promotion of the licensing objectives, and

(ii) any condition which must under section 19, 20 or 21 be included in the licence;

(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application.

(5) For the purposes of subsection (4)(a)(i) the conditions mentioned in subsection (2)(a) are modified if any of them is altered or omitted or any new condition is added.

(6) For the purposes of this section, “relevant representations” means representations which—

(a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives,

(b) meet the requirements of subsection (7),

(c) if they relate to the identity of the person named in the application as the proposed premises supervisor, meet the requirements of subsection (9), and

(d) are not excluded representations by virtue of section 32 (restriction on making representations following issue of provisional statement).

(7) The requirements of this subsection are—

(a) that the representations were made by a responsible authority or other person within the period prescribed under section 17(5)(c),

(b) that they have not been withdrawn, and

(c) in the case of representations made by a person who is not a responsible authority, that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

23 Relevant Representations

The Licensing Act 2003 requires representations to address the four licensing Objectives which are

1. Prevention of Crime and Disorder
2. Promotion of Public Safety
3. Prevention of Public Nuisance
4. Prevention of Harm to children and young persons

24 A representation is a ‘relevant representation’ if it is about the likely effect of the grant of the licence on the promotion of the licensing objectives. The objector must establish that such a consequence is a *likely* effect of a grant - (ie more probable than not)

25 Guidance Issued Under Section 182 of the Licensing Act 2003

8.16

“A person” in this context includes, for example, a business or a partnership. Licensing authorities should not require the nomination of an individual to hold the licence or determine the identity of the most appropriate person to hold the licence.

8.17

In considering joint applications (which is likely to be a rare occurrence), it must be stressed that under section 16(1)(a) of the 2003 Act each applicant must be carrying on a business which involves the use of the premises for

licensable activities. In the case of public houses, this would be easier for a tenant to demonstrate than for a pub owning company that is not itself carrying on licensable activities. Where licences are to be held by businesses, it is desirable that this should be a single business to avoid any lack of clarity in accountability.

8.18

A public house may be owned, or a tenancy held, jointly by a husband and wife, civil partners, or other partnerships of a similar nature, and both may be actively involved in carrying on the licensable activities. In these cases, it is entirely possible for the husband and wife or the partners to apply jointly as applicant for the premises licence, even if they are not formally partners in business terms. This is unlikely to lead to the same issues of clouded accountability that could arise where two separate businesses apply jointly for the licence. If the application is granted, the premises licence would identify the holder as comprising both names and any subsequent applications, for example for a variation of the licence, would need to be made jointly.

8.19

.... There is nothing in the 2003 Act which prevents an application being made for a premises licence at premises where a premises licence is already held.

9.3

Where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating schedule and it is relevant, the licensing authority's discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious. 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.

9.4

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. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives.

Other Options Considered

- 26 In order to lawfully provide licensable activities as applied for, they must be conducted under the authority of a Premises Licence.

Financial Implications

- 27 The final decision made by the Committee in this matter is subject to appeal in the Magistrates Court by any party to the proceedings.

Risk Management Implications

- 28 None

Equality and Customer Service Implications

- 29 None

Other Material Implications

- 30 Section 136 Licensing Act 2003 – A person commits an offence if he carries on or attempts to carry a licensable activity on or from any premises otherwise, than under and in accordance with an authorisation or he knowingly allows a licensable activity to be so carried on.
- 31 A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine or both.

Sustainability Implications

- 32 None

Background Papers

- Appendix 1 – Application Form and plan of premises
Appendix 2 – Map of area
Appendix 3 – Further submission submitted by Applicants
Appendix 4 – Photos of location

Representations opposed to Application

- Appendix 5 – Representation from Licensing Authority
Appendix 6 – Representation from Environmental Protection Team
Appendix 7 - Representation from Paul Lloyd

Representations in Support of application

- Appendix 8 – Representation from Claire Martin
Appendix 9 – Representation from Clive Martin
Appendix 10 – Representation from Dom Howard
Appendix 11 – Representation from Joy and Alan Bannister
Appendix 12 – Representation from Karen Kashdan
Appendix 13 – Representation from Poppy Berry
Appendix 14 – Representation from Sophie Abbott
Appendix 15 – Representation from Susan Burrows

Other Documents

- Appendix 16 – Schedule of proposed conditions