

## APPLICATION FOR A NEW PREMISES LICENCE

REPORT OF: Geoff Wild, Interim Corporate Solicitor  
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Wards Affected: East Grinstead  
Key Decision: No  
Report To: Liquor Licensing Panel

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### 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 Loungers UK Ltd for the grant of a Premises Licence at Unit E, Queens Walk, East Grinstead, RH19 4DW. Nine members of the public, referred to as 'Interested Parties' within the Act, have submitted representations objecting to the application on the grounds of the Prevention of Public Nuisance. The Interested Parties reside or are connected with the flats situated above the location.
  - 3 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

- 4 The applicant, Loungers Ltd are a national chain of café/bar establishments currently with in excess of 170 outlets throughout the country. They have submitted an application for the grant of a new Premises Licence for a café/bar to be located on Queen's Walk at Unit E, Queens Walk.
- 5 Unit E is one of a number of new commercial units situated on the ground floor of a newly completed development of flats known as Elizabeth House which is situated on Queens Walk, East Grinstead.
- 6 The applicant seeks the following licensable activities and timings:

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

- 7 The proposed opening hours of the premises will be:

Mon - Sat	08:00 – 23:00
Sun	09:00 – 23:00

- 8 It should be noted that these hours have been amended by the applicant from the original application. The hours have been amended as a response to the representations received.

The initial application was for the supply of alcohol 1000 – 2359 hours Monday – Sunday, together with Late Night Refreshment 23:00 – 00:30 hours Monday – Sunday.

The original opening hours were 08:00-00:30 hours Monday – Sunday.

These hours were amended by the applicant during the consultation period after considering representations made by the interested parties.

- 9 The application was correctly advertised at the site between 24<sup>th</sup> September 2022 to 21<sup>st</sup> October 2022 and in the East Grinstead Courier on the 30<sup>th</sup> September 2022.
- 10 A number of representations have been received from members of the public, referred to as 'Interested Parties'. The main points raised in these representations that are relevant relate to the licensing objective of the Prevention of a Public Nuisance.
- 11 The Applicant and their solicitor held a meeting with the interested parties at the site on the 28<sup>th</sup> October 2022 in an attempt to resolve the outstanding representations and concerns of the residents of the flats. This resulted in a number of representations being withdrawn, however at the time of writing the report nine representations still remain unresolved.
- 12 The Committee should be aware when reading the representations from the Interested Parties that some of the information relates to the original hours applied for. These have since been reduced by the applicant. All the interested parties have been advised of the revised Operating Schedule and hours, but some have not made further comment to these amendments made by the applicant. There are other comments relating to music. In the circumstances of this particular application live and recorded music is not considered as regulated entertainment but would be controlled through other legislation. There are other comments relating to the lease, planning, information provided during the sale of the flats to occupiers which are not relevant in the context of a licensing application. Issues mentioning fire safety would be addressed by the West Sussex Fire Brigade who are consulted as a Responsible Authority.
- 13 The Committee must focus on the relevant parts only and disregard the irrelevant matters when determining this matter
- 14 The Police and Environmental Protection Team have agreed conditions with the applicant and in addition the applicant has offered further conditions to address the representations.
- 15 If the Committee decides to grant the licence, I request that in addition to the Mandatory conditions, the conditions offered in the operating schedule by the applicant and agreed by the Police and Environmental Protection Team be attached. Full details are attached in the appendices.

## Representations

### Interested Parties Representations

#### **Aaron McDonald**

Aaron McDonald has made representations on the grounds of the Prevention of a Public Nuisance.

He has stated that:

*I would like to object to the application for a premises licence by Loungers UK Ltd for both the proposals - Sale of alcohol between the hours of 1000 and 2400 daily and Late-night refreshments between 2300 and 0030 daily.*

*I feel the late night serving of alcohol would cause many problems as mentioned in Prevention of Nuisance Guidance but most specifically in relation to noise levels.*

*I live directly above this premises, as do many others, and would be directly affected by the noise of customers arriving and leaving the premises.*

*I am told that they expect to play live music? I have two young children who go to sleep around 8pm and the idea of live music being played directly beneath our flat is frankly ridiculous.*

*The building work going on has been loud enough over the last few weeks, even illegally working on Sundays. It's not just drilling I can hear them moving materials which is a great concern as to how the noise of a live music late night alcohol bar will achieve.*

*As per the terms of our lease we are not even allowed the TV on past midnight yet we are expected to agree to a late night bar with music playing until late?*

*Frankly incredible the process has even got this far. I welcome you to attend our flat and listen to the noise that the builders are making and judge for yourself the suitability of having a 7 day a week late night bar beneath us.*

#### **Anna Coster**

Anna Coster has made representations on the grounds of the Prevention of a Public Nuisance.

She has stated:

*I would like to object to the application for a premises licence by Loungers UK Ltd for both the proposals - Sale of alcohol between the hours of 1000 and 2400 daily and Late night refreshments between 2300 and 0030 daily.*

*I feel the late night serving of alcohol would cause many problems as mentioned in Prevention of Nuisance Guidance but most specifically in relation to noise levels.*

*I live in the flats above this premises, as do many others, and would be directly affected by the noise of customers arriving and leaving the premises late at night. If doors and windows are open I would also be affected by noise from inside the establishment and depending upon adequate sound proofing this may be the case even when doors and windows of the establishment are closed.*

*The residents of the building are lease holders. The lease reads "not to play or use or permit to be played or used any musical instrument or television or radio or similar equipment of any kind between the hours of 12 midnight and 8 am nor at any time sing or carry on loud conversation in the Property so as to cause damage nuisance or annoyance to the Landlord or the Company or the tenants or occupiers of any other part of the Estate". I purchased the property on the understanding that all owners had signed this lease so there would be some protection against noise. Although I am not a legal expert I would hope that this also applies to the commercial units and so cannot see how a Loungers establishment would not cause noise annoyance particularly with the late hours requested.*

*The commercial unit requesting the licence is very close to one entrance to the residential building, smokers and those entering or exiting the commercial unit may potentially gather and particularly when intoxicated may purposely or accidentally intimidate those needing to exit or enter the residential area. This potential nuisance, particularly at night in a poorly lit area does not seem reasonable. The public lighting in Queens Walk has not ever been on as far as I am aware in the almost two years I lived here, this means that late at night it is very dark and already intimidating.*

*I also have concerns about smokers gathering outside the establishment and the smoke naturally travelling into surrounding residential properties. I am too far away for this to directly impact me but it would impact neighbouring properties. Would the establishment be responsible for cleaning cigarette ends and any other litter resulting from their business or would they just be left to negatively impact the area?*

*I would hope that at the very least a licence will not be granted for the requested very late opening hours. Whilst I welcome new businesses to the town and understand living in a town centre is not going to be silent surely consideration must be given to residents and their well-being.*

*I look forward to hearing from you.*

**Francois Conradie**

Francois Conradie has made representations on the grounds of the Prevention of a Public Nuisance.

They state:

*I would like to object to the application for a premises licence by Loungers UK Ltd for both the proposals - Sale of alcohol between the hours of 1000 and 2400 daily and Late night refreshments between 2300 and 0030 daily.*

*I feel the late night serving of alcohol would cause many problems as mentioned in Prevention of Nuisance Guidance but most specifically in relation to noise levels.*

*I live directly above this premises, as do many others, and would be directly affected by the noise of customers arriving and leaving the premises late at night. I work shifts and my sleep would be severely disrupted. I also have a daughter who is undertaking studies and exams and the late night gatherings and noise levels will be disturbing for her studies. Any gathering outside of the premises would also be audible as Queens walk arcade is like a sound chamber and any noise at night echoes up and down and is greatly amplified.*

**Guy Morris**

Guy Morris has made representations on the grounds of the Prevention of a Public Nuisance.

He has stated:

*My building manager, RoseTree Estates, has just informed me that a commercial tenant has been found for some of the space on our building. They have apparently applied for an alcohol and live music licence up until 1230am.*

*I object to the issuing of this licence. I have collaborated over a long time, with your Environmental team, to get the commercial users of the delivery bay (Iceland, Poundland, BRC etc) to comply more closely with the 11pm-7am quiet hours. They are much better recently and this has been noted by other residents. It would be extremely counter productive to that effort, and all of the council's work, to issue a licence that specifically grants the tenant permission to make a lot of noise at antisocial hours.*

*I was also told by Weston Homes, when they sold me the property, that the commercial units were available only for certain, non-noisy, activities. If this was true, I would hope the council will respect that aspect.*

*If it helps the objection, I would like to let you know that I am an airline pilot. A safety critical role that requires sleep as and when I can get it. I know of at least 1 other crew member and at least 2 doctors that live in this building that have, if not more important, safety critical jobs to do.*

*At the moment, I can reasonably guarantee quiet between 2130-0730 on most nights. A reasonable window to get sleep when my earliest early rise is a wake up time of 0210 and my latest planned late finish gets me home around 0400. If that quiet window is reduced, it may seriously affect the viability of me living here.*

*If you have any questions, please do let me know.*

**Julie Stacey**

Julie Stacey has made representations on the grounds of the Prevention of a Public Nuisance.

They have stated:

*I would like to object to the application for a premises licence by Loungers UK Ltd for both the proposals - Sale of alcohol between the hours of 1000 and 2359 daily and Late night refreshments between 2300 and 0030 daily.*

*I feel the late night serving of alcohol would cause many problems as mentioned in Prevention of Nuisance Guidance but most specifically in relation to noise levels.*

*I live directly above this premises, as do many others, and we would all be directly affected by the noise of customers arriving and leaving the premises late at night. I work from home and my partner works shifts. I feel that we already have to deal with the disruption from noise of deliveries during unsocial hours and this would amplify these issues. It would also disrupt my partners sleep.*

*Any gathering outside of the premises would also be audible as Queens walk arcade is like a sound chamber and any noise at night echoes up and down and is greatly amplified. We again deal with this already as once bars and establishments in town empty many people walk through Queens Walk and are very loud. There is no consideration for the 129 flats in the building.*

*It is worth noting that during the construction period now the noise we hear throughout the building of flats, not just those above but even those on the interior side of the building is insanely loud. Therefore once the construction has concluded the music will takeover and one can clearly assume the noise will still be disruptive.*

*Additionally as the premises have no alternative space many patrons will remain in Queens Walk smoking. It will immediately carry the fumes and smell into all flats which are located above.*

*Furthermore, there are many families that have young children. In the immediate flats which surround mine there have been 3 children have been born in the last two months alone. This establishment will cause disruption to many peoples lives and cause disruption in sleep patterns young and old.*

*Finally, the council should consider other establishments in town with designated smoking areas/ gardens close earlier and they have no residents above.*

*I hope the appropriate measures are considered when deliberations take place on the above mentioned application.*

**Karen Offord**

Karen Offord has made representations on the grounds of the Prevention of a Public Nuisance.

She has stated:

*I would like to strongly object to the application for a premises licence by Loungers UK Ltd for both the proposals - Sale of alcohol between the hours of 1000 and 2400 daily and Late night refreshments between 2300 and 0030 daily.*

*I feel the late night serving of alcohol would cause many problems as mentioned in Prevention of Nuisance Guidance but most specifically in relation to noise levels.*

*Queen's Walk is no longer just retail, it is now mostly residential, and I feel the opening hours to be completely unacceptable. Any gathering outside the premises would be very audible as Queens walk is like a sound chamber and any noise at night echoes up and down and is greatly amplified.*

### **Lucy Muggeridge**

Lucy Muggeridge has made representations on the grounds of the Prevention of a Public Nuisance.

She has stated:

*I have an objection to the opening of Lounge opening on Queens Walk.*

*I live on the side of the high street where anyone who leaves this place will be right outside my apartment. You can clearly hear whoever leaves and makes a noise.*

*I work shifts for a public service which can be any day of the week and these are 07:00-20:00. This includes me working this shift every other weekend. With this in place including the hours proposed there are going to be large amounts of people exiting this facility making a lot of noise.*

*I, and I know many other residents would be putting in a lot of noise complaints when this happens, which it will. This would ultimately end in action being taken anyway. Therefore, something should be done about this before anything else continues.*

*We are already hearing drilling coming from them building inside which is disrupting us and have contacted the sales company about this. So they are causing us issues before they have even opened.*

*Having a place like this is completely unfair to all residents who have bought their home here and is going to be a massive disruption to our lives and make our homes unbearable.*

*Please think about your residence who are already in the area and whose lives this will affect just for a business gain. Allowing a pub/restaurant/bar here is allowing anti social behaviour outside of a residence and this is not acceptable nor should be allowed. Please put yourself in our shoes and imagine that this was you, everyone wants to come home after a long day at work and chill and not be disturbed.*

*We were sold our properties under the impression that this would never happen and we are disgusted that it has.*

*I hope you go on to make a fair the correct decision about this. I have been a resident since I was young and please don't let us down as our own council.*

## **Mallesh Galli**

Mallesh Galli has made representations on the grounds of the Prevention of a Public Nuisance.

They state:

*I would like to object to the application for a premises license by Loungers UK Ltd for both the proposals - Sale of alcohol between the hours of 1000 and 2400 daily and Late night refreshments between 2300 and 0030 daily.*

*I feel the late night serving of alcohol would cause many problems as mentioned in Prevention of Nuisance Guidance but most specifically in relation to noise levels.*

*I live at Flat 49, Elizabeth Place, which is exactly above the premises and would be directly affected by the noise of customers arriving and leaving the premises late at night. I have 5 year old kid and 2 months old infant and my bedroom windows are just right above the proposed bar.*

*We already facing problems with people smoking on Queens walk and we are vulnerable to cigarette smoke. Just imagine how much cigarette smoke we would get if the bar is opened every night. I strongly object such bars right under my flat.*

Additionally upon receipt of the amended operating hours they state:

*Thanks for your email. I am happy to see the changes but not enough at all.*

*As I said I live exactly above the proposed bar and I have young children. Any noise after 6PM is not acceptable at Queens walk. I couldn't have bought the flat if that was the case. I don't think we can control people standing or sitting outside the bar smoking or talking loudly. So, any kind of bar or place of serving alcohol could lead to chaos.*

*I welcome you to my home and check how noise will be disturbing us and I mostly work from home these days. My work, software programming, needs enormous concentration. I don't I can do proper job having disturbed sleep.*

*I strongly object anything which makes noise and disturbance after 6PM. Please understand my situation with 2 kids and working from home with lots of noise downstairs and cigarette smoke directly coming to my bedrooms. Recently, I had to request few people smoking downstairs to move out of the place for smoking.*

## **Megan Knight**

Megan Knight makes representations on behalf of Rosetree Estates. They are the Managing Agent for the Queens Walk flats

They state:

*We have had concerns raised from almost 100% of the building as well as we feel this to be unsuitable going below such a large development.*

*The Main concerns are:*

- 1. Fire risk, we are already considered to be a high risk building for fire safety and having a kitchen below is simply not a reasonable thing to do.*
- 2. Noise – Residents worry about the noise this premises will bring being directly below half of their flats, there will be no rear access for a garden so a lot of people will be out on the street smoking, drinking, and socialising.*
- 3. Antisocial behaviour, we have had several issues with anti-social behaviour in the queens walk walk way and can only imagine this will heighten when there is alcohol involved.*

*Currently the residents of queens walk pay for the grounds surrounding, we are already cleaning up litter, drug paraphernalia. Human excrement and more this is without a bar being placed there, who would responsible to pay for these extra costs as the commercial unit are already causing issues with paying for their share of the service charge.*

*Overall, we feel the licence for the bar to be revoked. This will cause untold amounts of issues for the residents living there and our company, we can imagine a lot of our residents have individually made representation, but this representation is on behalf of the whole development.*

*I look forward to hearing from you with an update.*

These are the representations in full.

## **Policy Context**

### **16 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.

### **17 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.

## 18 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

19 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)

## 20 Guidance Issued Under Section 182 of the Licensing Act 2003

### 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.

### 9.37

As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but

they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.

9.38

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- Guidance issued under Section 182 Licensing Act 2003;
- its own statement of licensing policy.

9.42

Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

9.43

The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

### **Other Options Considered**

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

### **Financial Implications**

- 22 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**

- 23 None

### **Equality and Customer Service Implications**

- 24 None

### **Other Material Implications**

- 25 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.

- 26 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**

- 27 None

### **Background Papers**

Appendix 1 – Application Form and plan of premises

Appendix 2 – Ariel View and site plan of area

Appendix 3 – Photos of location

Appendix 4 – Schedule of proposed conditions and revised Operating Schedule

Appendix 5 – Licensing Committee – Procedure at hearings.