

Application to vary a Premises Licence – Licensing Act 2003

REPORT OF: Lucy Corrie, Assistant Director - Communities
Contact Officer: Jon Bryant, Senior Licensing Officer
Email: jon.bryant@midsussex.gov.uk Tel: 01444 477428
Wards Affected: Turners Hill
Key Decision No
Report To: Liquor Licensing Panel 10 February 2023

Purpose of Report

- 1 To provide information in order that the Licensing Panel can determine an application to vary a Premises Licence.

Summary

- 2 An application, pursuant to Section 34 Licensing Act 2003, has been made by Mr Paul Thornton of PT Licensing on behalf of BA Beare and Sons to vary a Premises Licence at The Pumpkin Farm, Tulleys Farm, Turners Hill Road, Turners Hill RH10 4PD. Representations against the application have been made by a Responsible Authority, the Environmental Protection Team at Mid-Sussex District Council (MSDC) and an Interested Party on the grounds of a Prevention of Public Nuisance.
 - 3 The substance of the variation application is to amend the name of the site, extend the times for the Performance of Live music, extend the times for the Performance of Recorded Music, extend the times for the sale by retail of alcohol and to add the licensable activity of the Performance of a Play.
 - 4 The Panel 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 of the Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations.
-

Background

- 5 BA Beare and Sons are the holder of a Premises Licence for the Pumpkin Farm (formerly known as The Maize Maze) at Turners Hill Road, Turners Hill, RH10 4PD. This is issued under Licence number PWA0456. The Licence has been issued since 29th March 2013. It is a separate location from the main Tulleys Farm site on Turners Hill Road
- 6 The Pumpkin Farm (Maize Maze) is currently licensed for the following licensable activities for a maximum of 20 days between 1st June and 30th September:

Licensable Activity	Timings
A performance of live music - Outdoors	Sunday 10:00 - 19:00
	Monday to Thursday 10:00 - 18:00
	Friday to Saturday 10:00 - 23:00
Any playing of recorded music - Outdoors	Sunday 10:00 - 19:00
	Monday to Thursday 10:00 - 18:00

	Friday to Saturday	10:00 - 23:00
Sale by retail of alcohol	Friday to Saturday	12:00 - 23:00
	Sunday to Thursday	12:00 - 18:00

It should be noted that there is a licence condition restricting the number of times that the Premises can be used for the performance of Live and Recorded music.

The premises may not be used for any more than 20 days between 1st June and 30th September for the licensable activities of live and recorded music.

- 7 There are no opening hours specified on the current licence
- 8 The conditions that are currently attached to this licence in addition to the Mandatory Conditions are:

All staff members engaged, or to be engaged, in selling alcohol on the premises shall receive full training pertinent to the Licensing Act, specifically in regard age-restricted sales, and the refusal of sales to persons believed to be under the influence of alcohol or drugs. Induction training must be completed prior to engaging in any sale of alcohol. Refresher training shall be conducted thereafter at intervals of no more than three months. All restricted sales training undertaken by staff members shall be fully documented and signed by the employee and the DPS. All training records shall be made immediately available upon request to officers of a Responsible Authority.

A refusals record must be kept at the premises which details all refusals to sell alcohol. This record must include the date and time of the incident, a description of the customer, the name of the staff member who refused the sale and the reason the sale was refused. All entries must be made within 24 hours of the refusal. The DPS must review and sign the record at intervals of no more than eight weeks. The record must be made immediately available upon request to officers of a Responsible Authority.

A documented risk assessment must be undertaken which identifies all the activities undertaken at the premises and the controls necessary to promote the licensing objectives. This will include but not be restricted to; deployment of SIA trained and licensed door supervisors the use of non-glass vessels both externally and internally, age restriction so as to protect children from harm, ticketing the event preventing off sales. It will include written emendations demonstrating what considerations have been made for any additional special events which may arise during the year. This document shall be immediately available for inspection by the Police and the Licensing Authority, upon request

The premises will adopt a 'Challenge 25' policy whereby any person attempting to buy alcohol who appears to be under 25 will be asked for photographic ID as proof of their age. The only ID that will be accepted are valid passports and UK driving licences with a photograph or proof of age cards bearing the 'PASS' mark hologram. The list of approved ID may be amended or revised with the prior written agreement of Sussex Police and the Licensing Authority without the need to amend the actual licence.

A written and maintained policy statement of all lost and found children will be kept to include actions taken by staff. Register to be made available to Sussex Police and/or authorised officers from the local Licensing Authority.

The noise management plan must be submitted annually to the Environmental Protection Team at Mid Sussex District Council and must be approved by them before any of the live or recorded music can take place. The noise management plan shall be submitted at least one month before the anniversary of the issue of the licence. No regulated entertainment will take place until the noise management plan has been approved by the Council.

Any additional external lighting installed for events shall be erected so as not to cause nuisance to residential properties.

No clean-up of external sites and marquees shall take place between 2300 and 0800.

The premises may not be used for any more than 20 days between 1st June and 30th September for the licensable activities of live and recorded music.

9 The application before the Panel is to change the name of the site, amend the times for the existing licensable activities and to add the licensable activity of a Performance of a Play.

10 The applied for variations to the current licence are detailed below:

a) Amend name of site as follows:

Delete 'The Maize Maze '

Replace with 'Pumpkin Farm'

b) Amend timings Live Music

Everyday 10:00-22:00

These timings valid between 1st Sept - 31st Dec

Outside of these dates – remain the same as current

c) Amend timings Recorded Music

Everyday 10:00-22:00

These timings valid between 1st Sept - 31st Dec

Outside of these dates – remain the same as current

d) Amend timings Sale by retail of alcohol

Monday to Sunday 10:00-2200

These timings valid between 1st Sept 31st Dec

Outside of this – remain the same as current

e) Add Licensable activity of Performance of a Play

Everyday 10:00-22:00

The application is appended to this report at Appendix 1 with the current premises licence and plan at Appendix 2 and site pictures at Appendix 3.

- 11 Representations have been received from a Responsible Authority, the Environmental Protection Team at MSDC, and a member of public, referred to as an Interested Party within the act. These representations have been made regarding the Licensing Objective of the Prevention of a Public Nuisance.
- 12 There are amendments to the current license conditions that have been agreed with the Police during the consultation period. If the Panel decides to grant the licence variation, I request that in addition to the current conditions and any other conditions felt necessary and proportionate by the Panel the amended and additional conditions agreed between the Police and applicant be attached to the varied licence.

Full details of these conditions are attached in Appendix 6.

- 13 The application was correctly advertised at the site between 17th December 2022 to 13th January 2023 and published in the local newspaper on 28th December 2022.

14 **Representations**

Responsible Authority Representations.

Environmental Protection Team

The Environmental Protection Team make representations in respect of the Licensing Objective of the Prevention of a Public Nuisance.

In summary they make representations on the Grounds of the Prevention of a Public Nuisance

They point out that the current licence restricts regulated entertainment to 20 days between 1st June and 30th September and that the variation seeks to extend this to expose residents to music noise potentially all year long and that music at the level predicted, all year round, will inevitably have an unacceptable impact on residents.

The applicant seeks to vary the timings for the sale of alcohol, for the provision of live and recorded music, and makes a new application for the performance of plays at this site to every day, 10:00 - 22:00, between 1st September and 31st December. Outside of these dates they wish to perform/play live and recorded music at the currently permitted times. This means that they could carry on licensable activities all year round, but with different timings.

Given the location of the premises in a very quiet rural location with nearby residential properties, Environmental Protection has concerns that noise from music will cause disturbance to people living in the vicinity. Environmental Protection therefore objects to this application.

They further state that without the provision of suitable structures on site to contain or shield the music, in Environmental Protection's opinion, the applicant will be unable to ensure that sound from these activities is controlled to a level that would be considered acceptable. The applicant has stated that the regulated entertainment will be "low key" however, these events will

involve an audience of more than 500 people, as a music event provided for fewer than 500 people would not be licensable.

Environmental Protection cannot negotiate an acceptable level for music without knowing the number of days when regulated entertainment will be provided each year. We would like to stress that unlimited days cannot be considered, as the acceptable noise level in this case is likely to be unachievable.

Their representation in full is attached to the report at Appendix 4.

Interested Party Representations

Mr Philip Tilbury has made representations on the grounds of the Prevention of a Public Nuisance.

There are parts of this representation relating the current Planning permission which would not be considered as relevant to this type of application.

I object to this license application on the basis that this is likely to substantially increase the potential of public nuisance.

The application anticipates a material expansion of activities, including late night entertainment which will be problematic to the nearby domestic dwellings. The license is intended to support live and recorded music which is to take place in the open air or within temporary structures, and attempts to prevent noise nuisance in such circumstances will be inadequate. In addition it can be anticipated nuisance arising from the arrival and departure of vehicles in an essentially rural area where no prevention measures are possible, inevitably extending the time span of nuisance.

Licensing to 11pm at any time of the year will require floodlighting with concomitant light nuisance as the site sits above the nearest domestic dwellings and will be clearly visible.

The operation of setting-up and subsequent cleaning-up of the site will again, because of the open-air nature of the site, present noise nuisance and extend the time span of disturbance.

Although the comments above are specifically related to this application, they have been informed by recent experience of effects under the current license.

Mr Tilbury's representations in full are attached at Appendix 5.

Policy Context

15 Determination of Application for the Variation of a Premises Licence

The Panel 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. The Hearing Procedure under which the panel operates is at Appendix 7.

- 16 Section 34 of the LA03 deals with applications for the variation of a premises licence.

Section 34 Application to vary premises licence

(1) The holder of a premises licence may apply to the relevant licensing authority for variation of the licence.

(2) Subsection (1) is subject to regulations under—

(a) section 54 (form etc. of applications etc.);

(b) section 55 (fees to accompany applications etc.).

(3) An application under this section must also be accompanied by the premises licence (or the appropriate part of that licence) or, if that is not practicable, by a statement of the reasons for the failure to provide the licence (or part).

(4) This section does not apply to an application within section 37(1) (application to vary licence to specify individual as premises supervisor).

- 17 Section 35 LA03 deals with the determination of the application:

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

(a) receives an application, made in accordance with section 34, to vary a premises licence, 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) and section 36(6) the authority must grant the application.

(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 modify the conditions of the licence;

(b) to reject the whole or part of the application;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

(5) In this section, “relevant representations” means representations which—

- (a) are about the likely effect of the grant of the application on the promotion of the licensing objectives and
 - (b) meet the requirements of subsection (6),
- (6) The requirements of are—
- (a) that the representations were made by a responsible authority or other person within the period prescribed under section 17(5)(c) by virtue of Section 34(5)
 - (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 Supplementary Provisions about determinations under Section 35

Supplementary provision about determinations under section 35

(1) Where an application (or any part of an application) is granted under section 35, the relevant licensing authority must forthwith give a notice to that effect to—

- (a) the applicant,
- (b) any person who made relevant representations in respect of the application, and
- (c) the chief officer of police for the police area (or each police area) in which the premises are situated.

(2) Where relevant representations were made in respect of the application, the notice under subsection (1) must state the authority's reasons for its decision as to the steps (if any) to take under section 35(3)(b).

(3) The notice under subsection (1) must specify the time when the variation in question takes effect.

That time is the time specified in the application or, if that time is before the applicant is given that notice, such later time as the relevant licensing authority specifies in the notice.

(4) Where an application (or any part of an application) is rejected under section 35, the relevant licensing authority must forthwith give a notice to that effect stating its reasons for rejecting the application to—

- (a) the applicant,
- (b) any person who made relevant representations in respect of the application, and
- (c) the chief officer of police for the police area (or each police area) in which the premises are situated.

(5) Where the relevant licensing authority determines for the purposes of section 35(6)(c) that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for that determination.

(6) A licence may not be varied under section 35 so as—

(a) to extend the period for which the licence has effect, or

(b) to vary substantially the premises to which it relates.

(7) In discharging its duty under subsection (2) or (3)(b) of that section, a licensing authority may vary a premises licence so that it has effect subject to different conditions in respect of—

(a) different parts of the premises concerned;

(b) different licensable activities.

(8) In this section “relevant representations” has the meaning given in section 35(5).

19 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

20 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)

21 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.

For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

9.5

It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

9.9

It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.

9.12

Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area⁵. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

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.

9.41

In the context of variations or minor variations, which may involve structural alteration to or change of use of a building, the decision of the licensing authority will not exempt an applicant from the need to apply for building control approval, planning permission or both of these where appropriate.

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.

9.44

Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

Other Options Considered

22 In order to lawfully provide licensable activities as applied for, they must be

conducted under the authority of a Premises Licence.

Financial Implications

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

Other Material Implications

- 24 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.
- 25 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

- 26 None

Background Papers

Appendix 1 – Application Form
Appendix 2 – Current Premises Licence and plan of premises
Appendix 3 – Site Pictures

Representations

Appendix 4 – Environmental Protection Team
Appendix 5 – Representations Mr Tilbury
Appendix 6 – Revised agreed conditions
Appendix 7 – Hearing Procedure