

APPLICATION TO VARY A PREMISES LICENCE – LICENSING ACT 2003

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Wards Affected: Cuckfield
Key Decision: No
Report To: Liquor Licensing Panel 6th April 2023

Purpose of Report

- 1 To provide information in order that the 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 Cuckfield Golf Centre Ltd to vary a Premises Licence at Cuckfield Golf Course, Staplefield Road, Cuckfield, Haywards Heath, RH17 5HY. A representation against the application has been made by an Interested Party on the grounds of a Prevention of Public Nuisance.
 - 3 The substance of the variation application is to vary the plan attached to the Premises Licence. Since the licence was issued the Club house has been remodelled and extended and therefore there is a requirement to amend the plan that forms part of the licence to correctly reflect the licensed area. The applicant does not wish to vary any of the licensable activities or times. The application and revised plan of the premises is at appendix 1. Additional comments from the applicant are at appendix 2. An area map is at appendix 3.
 - 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 Licensing Act 2003, whilst having due regard to the applicant's submissions and the relevant representation.
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Background

- 5 Cuckfield Golf Centre Ltd are the holder of a Premises Licence for the Cuckfield Golf Centre, at Cuckfield Golf Course, Staplefield Road, Cuckfield, Haywards Heath, RH17 5HY. This is issued under Licence number PWA0321. This Licence has been issued since 7th September 2006. There was a premises licence at the Golf Centre in an alternate building issued prior to this date under an earlier premises licence PWA0008.
- 6 The current premises licence and current plan are at appendix 4, with site photos at appendix 5. Cuckfield Golf Centre is currently licensed for the following licensable activities;

Licensable Activity	Timings
A performance of dance - Indoors	Friday to Saturday 18:00 - 01:00 Sunday to Thursday 18:00 - 00:00

A performance of live music - Indoors	Friday to Saturday 18:00 - 00:30 Sunday to Thursday 18:00 - 00:00
Late night refreshment - Indoors	Friday to Saturday 23:00 - 01:30 Sunday to Thursday 23:00 - 00:30
Any playing of recorded music - Indoors	Friday to Saturday 18:00 - 01:00 Sunday to Thursday 18:00 - 00:00
Sale by retail of alcohol For consumption on and off the Premises	Friday to Saturday 07:00 - 01:00 Sunday to Thursday 07:00 - 00:00

Non-Standard Timings

Live/Recorded music, Performance of Dance, Late Night Refreshments, Alcohol Supply and Hours Open:

- New Year's Eve from 0900 hours to the commencement of hours the following day.
- On 12 occasions per year the terminal hour may be extended to 0100 hours by providing a minimum of 10 days clear notice to Police, who will have a reasonable right of veto.

7 The current opening hours of the premises are:

Monday to Thursday 07:00 - 00:30
Friday to Saturday 07:00 - 01:30
Sunday 07:00 - 00:00

8 The additional Conditions that are currently attached to this licence in addition to the Mandatory Conditions are:

- Premises management shall be members of any local Pubwatch Scheme.
- Empty bottles and glasses shall be removed from the trading area to prevent accumulation.
- The placing of refuse into receptacles outside of the premises and re-stocking shall take place at times that will minimise disturbance to nearby premises.
- Customers leaving the premises shall be requested to respect the needs of local residents and to leave the premises quietly.

9 The application before the Panel is to amend the current plan of the licensed premises to reflect the new layout and area of the re-modelled Club House as shown on appendix 1. The variation does not request any changes to the current licensable activities or permitted hours. The applicant has supplied further information regarding the re-modelling of the premises shown at appendix 2.

- 10 It should be noted that no representations have been received from any of the Responsible Authorities.
- 11 One representation has been received from members of the public, referred to as an 'Interested Party' within the Act. The main points raised within the representation that are relevant relate to the licensing objective of the Prevention of a Public Nuisance. This representation has not been resolved.
- 12 The application was correctly advertised at the site between 16th February 2023 to 15th March 2023 and in the Mid Sussex Times on 23rd February 2023.
- 13 The hearing only concerns the likely effect of the variation on the licensing objectives and that the application cannot be used as a method of reviewing the current licence.

Representations

- 14 Interested Party Representation.

Gerard Conway

The representation in full is appended to the report at appendix 6, with the panel procedure attached at appendix 7. The Panel will note that there are a number of issues raised within the representation that are not considered -to be relevant to this application which relate to submissions and reports in connection with previous planning applications and decisions. The Panel acting as the Licensing Authority will disregard comments that are considered by the Panel as not relevant to applications made under the Licensing Act 2003.

Mr Conway makes his representations on the grounds of a public nuisance and in essence concerns the potential for increased public nuisance through the increased size of the club house building and that a larger building will lead to more noise from a greater number of people and vehicles attending the location.

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.

- 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 - (i.e., 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 (see paragraphs 9.4 to 9.10 below). 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.

9.37

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

- 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 and revised plan of premises
Appendix 2 – Applicant additional comments
Appendix 3 – Area Map
Appendix 4 – Current Premises Licence and current plan
Appendix 5 – Site Photos

Representations

Appendix 6 – Gerard Conway
Appendix 7 – Hearing Procedure