

Application to vary a Premises Licence – Licensing Act 2003

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Wards Affected: Burgess Hill - Victoria
Key Decision No
Report To: Liquor Licensing Panel – 23 January 2024

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 of the Licensing Act 2003, has been made by Mr Paul Thornton on behalf of Mr Simon Hancock, the holder of the Premises Licence at The Cricketers Public House, 23 West Street, Burgess Hill, RH15 8NY. Representations against the application have been made by five Interested Parties on the grounds of Prevention of a Public Nuisance.
 - 3 The substance of the variation application is to extend the times for the sale of alcohol by retail, the opening hours, remove outdated licence conditions and update and add new licence conditions.
 - 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.
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Background

- 5 The Cricketers Public House is situated in West Street at the junction with Fairfield Road, Burgess Hill. Mr Simon Hancock is holder of the Premises Licence issued under Licence number PWA0110. The Pub has held a Premises Licence since the introduction of the Licensing Act 2003 and previously under the earlier Act, the Licensing Act 1964.
- 6 The Cricketers is currently licensed for the following licensable activities:

Licensable Activity	Timings
Provision of facilities for dancing - Indoors	Everyday 11:00 - 23:30
The exhibition of a film - Indoors	Everyday 11:00 - 00:30
A performance of live music - Indoors	Everyday 11:00 - 23:30
Late night refreshment - Indoors	Everyday 23:00 - 00:30
Provision of facilities for making music - Indoors	Everyday 11:00 - 23:30
Ent similar to dancing/making music - Indoors	Everyday 11:00 - 23:30

An indoor sporting event - Indoors	Everyday	11:00 - 23:30
Any playing of recorded music - Indoors	Everyday	11:00 - 00:30
Sale by retail of alcohol	Everyday	11:00 - 00:00

There are further non-standard timings for all the activities which are:

Non Standard Timings

Sale of Alcohol:

- New Year's Eve - 11:00hrs to 01:00hrs
- Christmas Eve, Boxing Day, Bank Holiday Weekend (Friday, Saturday, Sunday, Monday) - 11:00hrs to 01:00hrs
- Up to 12 other events per annum at licensee discretion - 11:00hrs to 01:00hrs

Regulated Entertainment and Late Night Refreshment:

- When opening hours are extended on Bank Holidays and Event Days these hours follow the opening hours

7 The current opening hours of the premises are:

Everyday 07:00 - 00:30

8 There are a number of conditions currently attached to this licence in addition to the Mandatory Conditions. These are:

- Windows and doors to be closed at 23:00 hours and recorded music reduced to a background level.
- No outside drinking after 23:00
- No less than 10 days written notice to be given to Police of all event days.
- Management to be members of Local Pubwatch.
- A closed circuit television (CCTV) shall be provided to a specification agreed with Sussex Police.
The precise siting of each camera shall be agreed with the Police.
All cameras & recording equipment shall be maintained in good & efficient working order.
All images created shall be recorded with appropriate media, as agreed with Police and shall be retained for a minimum period of thirty (30) days.

9 The variation seeks to increase the licensing hours for Sale of Alcohol and Late Night Refreshment on three nights of the week- Thursday Friday and Saturday from midnight to 1am, to amend the current opening hours accordingly and to update and amend the current conditions.

10 The details of the variation to the current licence are detailed below:

- a) Amend Timings of Licensable Activities as follows:

Sale of Alcohol

Thursday, Friday, Saturday 1100-0100 hrs.

Late Night Refreshment

Thursday, Friday, Saturday 2300 -0100 hrs

All other timings for all other Licensable Activities will remain the same.

b) Under the Heading of Non Standard Timings:

Delete:

- i. Up to 12 other events per annum at licensee discretion - 11:00hrs to 01:00hrs
- ii. Regulated Entertainment and Late Night Refreshment: When opening hours are extended on Bank Holidays and Event Days, these hours follow the opening hour.

All other timings under this heading to remain.

c) Delete current conditions and replace with new conditions.

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

- 11 Representations have been received from five members of public, referred to as an Interested Parties within the Act. These representations have been made in respect of the Licensing Objectives of the Prevention of a Public Nuisance.
- 12 There are no representations from any Responsible Authority. Concerns have been resolved by minor amendments to the proposed new licence conditions and the agreement with an additional condition with the Environmental Protection Team. If the Panel decides to grant the licence variation, either in full or part, I request that in addition to any other conditions felt necessary and proportionate by the Panel the amended and additional conditions proposed by the applicant and agreed with the Police and the Environmental Protection Team be attached to the varied licence. Full details of these conditions are attached in Appendix 4. The comments made by the Environmental Protection Team are attached in Appendix 5.
- 13 The application was advertised at the site between 29th November 2023 and 26th December 2023 and published in the local newspaper on 7th December 2023.
- 14 **Interested Party Representations**
Lucy Chapman

Lucy Chapman has made a representation on the grounds of the Prevention of a Public Nuisance. The representation states:

The noise levels are already bad, especially during summer months. I have concerns about people Parking their cars in our close (which is already an issue as there isn't sufficient parking onsite) then driving home at 1.30 and causing a disturbance.

Devon Busby-Kelly

Devon Busby-Kelly has made representations on the grounds of the Prevention of a Public Nuisance.

I feel very concerned about this due to the potential noise of people leaving the pub later than they already do.

This is mostly due to the fact people are unable to mostly park in the car park of the pub due to the 2 parking spots not being able to be used for cars. The front car park is completely full of old cars and the back is mostly full of cut down logs, I'm assuming this is other business ' running in the pubs location. This means that people who visit the pub don't park there as there is only about 8 spaces which some are of course taken up by staff. Instead people park on main rds and in the closes that are nearest. Especially during the summer you always get woken up by cars leaving the pub or drunken people leaving. At least at the moment it's only midnight but the idea that it's going to be later is worrying. The pub is not in a town center or a location with no one around, it is surrounded by residential properties including flats, houses and a old people's home. Also though I appreciate the pub saying it will lower noise and not allow people outside but people will be going in and out as they do now , to smoke or talk and they will be heard as you can not control how loud they are going to be. And when they do open the doors , especially when in very hot weather people will want to go outside to cool down we will hear the music as we do now.

I have nothing against the pub but I know so many of my neighbours and others that live close are very concerned over this change. If something could be done about the car park so people who are visiting do not park by people's houses it would certainly help ease the worry but as it stands we already have enough trouble with people leaving and making noise at midnight please do not make this any later.

Debbie Ann Busby

Debbie Ann Busby has made representations on the grounds of the Prevention of a Public Nuisance.

Firstly I have nothing against the pub at one time my grandad use to serve there, the problem is it is not in the town or in the country ,it's in a residential area . The noise aspect worries me as you cannot stop people shouting ,laughing they have had a good time but unfortunately they park in the roads where we live ,in the summer our windows are open so we will be woken up in the early hours of the morning . Unfortunately there is no other place to park except outside our houses or even by our garages

Linda Steer

Linda Steer has made a representation on the grounds of Prevention of a Public Nuisance.

I can't see the need to be open later. The noise level when people leave is unacceptable especially in the summer when windows are open. We already have to put up with their customers parking outside our houses and leaving at all different times of the day and night.

Jane Davey

Jane Davey has made a representation on the grounds of Prevention of a Public Nuisance. The representation states:

With reference to the above with regard to increase licensing on Thursday Friday Saturday we have had numerous complaints over the years where I have been in touch with the licensing department due to noise and drinking outside every weekend people are drinking outside well after 23 hours even up to about 1230 am and outside in garden and front of pub quite often when I am on a late shift I get dropped in my taxi and people outside shouting and drinking well after 1200 am x as well as the music which can be so loud you have to close the windows if only the landlady would adhere to the rules and customers I would not be sending this email.

With reference to the above I can confirm that the comments I have made are on the grounds of potential public nuisance.

The extended hours will have a detrimental impact in this matter.

We have endured quite a lot of noise and nuisance over the years the only time we had any respite was during the pandemic.

I believe the extended hours would only make matters worse.

- 15 The Panel will note that comments surrounding parking issues in the locality could not be considered as relevant in respect of this application and the consideration of the Panel is in respect of the likely effect of the variation on the licensing objectives and is not a process to review the current licence.

Policy Context

16 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, relevant representations, and the Hearing Procedure under which the panel operates.

- 17 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).

18 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.

19 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).

20 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

21 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).

22 Guidance Issued Under Section 182 of the Licensing Act 2003:

Public nuisance

2.21

The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.27

Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

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 area. 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.

9.42

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.

23 Mid Sussex District Council – Statement of Licensing Policy

9.1

All applications will be considered on their individual merits. It is recognised that flexible licensing hours for the sale of alcohol can help to ensure that the concentrations of customers leaving premises simultaneously are avoided. The Authority needs to create a balance between the aspirations of the businesses and the concerns of the local community.

9.3

We recognise that businesses may wish to open later and diversify the range of entertainment they offer. The Authority and other Responsible bodies will consider applications for late night regulated entertainment on their merits but will seek safeguards through licence conditions to ensure the licensing objectives are upheld.

9.5

Future applicants for licensable activities beyond 23:00 hours will be expected to specifically demonstrate how they intend to address the licensing objectives of Crime and Disorder and Public Nuisance.

Other Options Considered

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

Financial Implications

- 25 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

- 26 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.
- 27 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

- 28 None

Background Papers

Appendix 1 – Application Form

Appendix 2 – Current Premises Licence and plan

Appendix 3 – Site Plan and Site Photos

Appendix 4 – Agreed revised conditions.

Appendix 5 – Application comments - Environmental Protection Team