



APPLICATION FOR A PREMISES LICENCE VARIATION

1 PURPOSE OF REPORT

- 1.1 To consider an application to vary a premises licence for the Bread and Cheese Public House – CPBC/LU0366 - 520 London Road, Benfleet, Essex, SS7 1AA.

2 LINKS TO COUNCIL'S PRIORITIES AND OBJECTIVES

- 2.1 This report relates to Economy and Growth, People and Place.

3 RECOMMENDATION

- 3.1 The decision of the Sub-Committee is required following proper consideration of the application and any representations made to the Sub-Committee.

4 INTRODUCTION

- 4.1 The Bread and Cheese Licensed Premises has applied to vary its Premises Licence CPBC LU0366; the full application is attached to this report at Appendix 1. The current premises licence is attached to this report at Appendix 2.
- 4.2 The main changes requested in the variation are to extend the red line boundary of the premises to include the outside areas, as indicated on the plan attached to the application contained at Appendix 1 to this report.
- 4.3 Secondly, the application outlines the intention for all licensable activities to take place in the outside garden area up to 9.30 pm each evening between April and September and then from October to March until 6.00 pm.
- 4.4 The application is also requesting the start time for licensable activity to change on the premises from 11.00 am to 8.00 am.
- 4.5 In 2016 a Sub-Committee hearing concerning this licensed premises was heard and resulted in a condition being applied restricting the use of the garden area to be used for permitted activities during the hours of 11.00 am to 6.00 pm for the sale of alcohol, performance of live music, playing of recorded music and performance of dance.

4.6 In 2019 a Sub-Committee hearing concerning this licensed premises was conducted and resulted in the sale by retail of alcohol in the garden being restricted to 9.30 pm between May and September and until 6.00 pm from October to April.

4.7 Due to the Bread and Cheese premises being sited amongst residential properties the Council's Environmental Health Department has made a representation against the granting of this application. The objection can be read in full and is contained at Appendix 3 to this report. There is also a representation from a local resident which is contained at Appendix 4 to this report.

5 REPRESENTATIONS

5.1 Environmental Health

The Council Environmental Health Team has served abatement notices under the Environmental Protection Act for likely occurrence of a statutory nuisance. The investigation of noise complaints is a duty which the team must undertake. In addition, if a statutory nuisance is found, the legislation states that action must be taken. To clarify, public nuisance under the Act is a significant and unreasonable emission of noise, which causes significant and unreasonable interference with the use and enjoyment of residents' homes. It does not include noise from everyday activities. It is greater than annoyance and is much greater than detection of a noise. The Nuisance Law applies to the everyday reasonable person and cannot cater for people with a specific sensitivity to noise or special circumstances.

5.2 The Chartered Institute of Environmental Health (CIEH) is always looking to raise the profile of how noise can impact on public health. Noise has a significant impact on people's health, wellbeing and quality of life. It has been linked to increasing the risk of cardiovascular disease and potential other cardiometabolic diseases, which include strokes and diabetes. The CIEH Noise Survey completed regularly provides valuable evidence that noise can profoundly and adversely impact on people's quality of life, productivity and peaceful enjoyment of their homes.

5.3 Environmental Health is of the opinion that the garden area of the Bread and Cheese premises should not be used for the licensable activity of Regulated Entertainment as the garden cannot be sound proofed in any way and, given the close proximity of the premises' location in relation to nearby residents, it is highly likely that they will experience a noise nuisance which could put them at risk of suffering health problems.

5.4 The Council's Environmental Health Team works to promote businesses in the Council area but is also required to ensure that public health is not affected by nuisance. The current risk will be in the summer months that, with the grant of this application, residents will be exposed to live and recorded music each day until 9.30 pm in the evenings and that could have a significant effect on health.

5.5 Residents

One representation was received from a local resident, Andrew Brown, who says that life for residents within the area of the Bread and Cheese has been adversely affected by the activities of the premises and in particular noise pollution. The full representation from Andrew Brown is contained at Appendix 4 to this report.

6 OPTIONS

6.1 Option 1

Grant the application on the terms and conditions applied for, as set out in Appendix 1.

6.2 Option 2

Reject the application.

6.3 Option 3

Grant the application on the terms and conditions applied for but modify the application to such an extent as considered necessary to uphold the four licensing objectives.

6.4 Preferred option is Option 3 to grant the variation but modify it to meet the needs of the business and to protect the local residents from noise pollution by permitting the licensable activity of the sale by retail of alcohol in the garden but denying the use of the garden area for regulated entertainment.

7 RISK IMPLICATIONS

7.1 The impact on local residents has been outlined at paragraphs 5.2 to 5.5 of this report and the full representation from Environmental Health can be found at Appendix 3 to this report.

8 CRIME AND DISORDER IMPLICATIONS

8.1 There have been no issues raised by Essex Police regarding this application.

9 ENVIRONMENTAL IMPLICATIONS

9.1 There are no environmental implications affected by this report.

10 FINANCIAL IMPLICATIONS

10.1 There are no financial implications outlined in this report; however, as in all cases that could lead to a Magistrates Court appeal which could be upheld, financial costs could then be incurred by the Council.

11 LEGAL IMPLICATIONS

11.1 The general duties of Licensing Authorities are set out in Section 4 of the Licensing Act 2003.

General duties of Licensing Authorities:

- (1) A Licensing Authority must carry out its functions under this Act with a view to promoting the licensing objectives.
 - (2) The licensing objectives are -
 - Prevention of Crime and Disorder
 - Public Safety
 - Prevention of Public Nuisance
 - Protection of Children from Harm
 - (3) In carrying out its licensing functions, a Licensing Authority must also have regard to:
 - (a) Its licensing statement published under section 5 and
 - (b) Any guidance issued by the Secretary of State under section 182.
- 11.2 Each Licensing Authority must, in respect of a set period - currently 5 years - determine its policy with respect to the exercise of its licensing functions and publish a statement of that policy before the beginning of that period. During each five-year period a Licensing Authority must keep its policy under review and make such revisions to it at such times as it considers appropriate.
- 11.3 A variation of a premises licence is made by way of application under section 34. The application is subject to regulations made under section 54 about the form of such an application. Section 35 deals with the determination of an application made under section 34. Under that section where the relevant Licensing Authority receives an application made in accordance with section 34, subject to section 35(3), it must grant that application unless there is a relevant representation.
- 11.4 Where relevant representations are made, the authority must hold a hearing to consider them and, having regard to the representations, take such steps by way of the modification of the conditions of the licence, or reject the application in whole or in part as it considers appropriate, for the promotion of the licensing objectives – section 35(3) and section 35(4).
- 11.5 In the stated case of *Hope and Glory Public House v City of Westminster Magistrates Court and Others* illustrated that licensed premises and the activities that can take place in those premises, exist in a dynamic environment and should not be looked at entirely in isolation. It also confirmed that it can include the impact that licensable activities have on a range of factors such as crime, the quality of life for residents and visitors to the area, and demand for licensed premises. This also sets out the approach that should be taken when making licensing decisions.

Lord Justice Toulson said:

“Licensing decisions often involve weighing a variety of competing considerations, the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance. Although such questions are in a sense questions of fact, they are not questions of the heads or tails variety. They involve an evaluation of what is to be regarded as reasonable accepted in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgement rather than a matter of pure fact. Responsible Authorities should be encouraged by this decision to make representations so that their information can be taken into account, and appropriate measures put in place for the licensing objectives to be promoted”.

- 11.6 In the stated case of Daniel Thwaites PLC v Wirral Magistrates Court & Others which is referred to as the Thwaites Case is important, because it emphasises the important role that responsible authorities have in providing information to decision makers to contextualise the issue before them. This case is sometimes misconstrued as requiring decisions to be based on real evidence and that conditions cannot be imposed until problems have actually occurred. This is wrong. The purpose of the Act is to prevent problems from happening, decisions can and should be based on well informed common sense. The case recognises that Responsible Authorities are experts in their fields, and that weight should be attached to their representations. It is most relevant opposing grant applications.

The Honourable Mrs Justice Blackwell said:

“Drawing on local knowledge, at least the local knowledge of local Licensing Authorities is an important feature of the Act’s approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgement, they must measure their own views against the evidence presented to them. In some cases, the evidence presented will require them to adjust their own impression. This is particularly likely to be so where it is given by a Responsible Authority such as the Police”.

12 HUMAN RESOURCES IMPLICATIONS

- 12.1 There are no human resource implications affected by this report.

13 EQUALITY AND DIVERSITY IMPLICATIONS

- 13.1 An Equality Impact Assessment has been completed and found there to be no Impacts (positive or negative) on protected groups as defined under the Equality Act 2010

Janette Parker-East

Assistant Director Environmental Health, Licensing and Community

Background Papers:-

- Licensing Act 2003
- CPBC Statement of Licensing Policy
- Environmental Health Act 1990

Appendices:-

- Appendix 1 – Premises Licence CPBC LU0366 – The Bread and Cheese Variation application.
- Appendix 2 - Existing Premises Licence CPBC LU0366 – The Bread and Cheese.
- Appendix 3 – CPBC Environmental Health representation to application for a Premises Licence Variation.
- Appendix 4 – Resident representation – Andrew Brown.
- Appendix 5 – Aerial view of the Bread and Cheese Licensed Premises and surrounding dwellings.
- Appendix 6 – Detailed plan of the area of the Bread and Cheese and surrounding dwellings.

For further information please contact Steve Wilde - Licensing on:-

Phone: 01268 882200
Email: swilde@castlepoint.gov.uk