

TEWKESBURY BOROUGH COUNCIL

Report to:	Licensing Sub-Committee (Licensing Act 2003 and Gambling Act 2005)
Date of Meeting:	5 August 2019
Subject:	Application for a Variation of a Premises Licence
Report of:	Senior Licensing Officer
Corporate Lead:	Deputy Chief Executive
Lead Member:	Lead Member for Clean and Green Environment
Number of Appendices:	6

Executive Summary:

An application has been received for the variation of a Premises Licence under section 34 of the Licensing Act 2003 ("the Act"). No representations were received from responsible authorities. Three representations were received from other people and, as such, the matter is referred to the Licensing Sub-Committee for determination.

Recommendation:

To DETERMINE the application by:

- **granting the application;**
- **modifying the conditions on the licence; or**
- **refusing the application.**

Reasons for Recommendation:

The Sub-Committee is under an obligation to promote the four licensing objectives when determining applications for premises licences under the Licensing Act 2003. The licensing objectives are:

- The prevention of crime and disorder.
- The prevention of public nuisance.
- The protection of children from harm.
- Public safety.

Resource Implications:

If any party to the hearing were successful in appealing any decision taken by the Sub-Committee at a Magistrates Court, the Licensing Authority may be liable to having costs awarded against them.

Legal Implications:Rights of Appeal

(i) In accordance with the provisions of Part 1 of Schedule 5 of the Act, where a Licensing Authority rejects in whole or in part, an application for grant or variation of a premises licence, the applicant may appeal against the decision to a Magistrates' Court within 21 days of being notified of the decision.

(ii) Similarly, where a person who made relevant representations in relation to the application contends that the licence ought not to have been granted, or that different or additional conditions should have been imposed on the licence, he may appeal against the decision to the Magistrates' Court within 21 days of being notified of the decision.

Human Rights

The Human Rights Act 1998 incorporates the key articles of the European Convention on Human Rights into domestic law. Decisions on licensing matters are actions of a public authority and must be compatible with Convention rights. Consequently Members of the Panel must be aware of the rights contained in the Convention (particularly those set out below) when making licensing decisions.

In particular Members should conduct the hearing in a fair and proper manner (Article 6: Right to a Fair Trial) and in accordance with the relevant hearing regulations. Members should also consider any decision in light of Article 8: Right to Respect for Private and Family Life, Article 10: Freedom of Expression, Article 14: Prohibition of Discrimination and Article 1 of the First Protocol: Protection of Property.

Rights under the Human Rights convention can only be breached where it is necessary and proportionate to do so.

Other legal implications are as set out elsewhere in the report.

Risk Management Implications:

None

Performance Management Follow-up:

If the application is granted a revised licence – incorporating any new conditions that have been determined to be appropriate for the promotion of the licensing objectives – will be issued. If the application is refused, the applicant and all interested parties will be notified of the decision in writing.

In either case, the applicant and all interested parties will be provided with details of their right to appeal against the decision.

Environmental Implications:

Potential noise pollution.

1.0 INTRODUCTION/BACKGROUND

1.1 The New Dawn Inn, Tewkesbury Road, Norton, Gloucester GL2 9LR, has been licensed continuously under the Licensing Act 2003 since the Act came into effect in 2005. It formerly traded as the King's Head. The licence was transferred to the current licence holder in 2017.

- 1.2 The licence holder, Martin John Hand, has applied to vary the licence in order to:
1. approve new plans of the premises following changes to the internal layout; and
 2. amend the conditions applicable to the licence.

1.3 The existing premises licence authorises the following licensable activities at the times shown. The applicant has not applied to change any of the licensable activities or the times.

(a) Performance of Plays	Friday and Saturday	11:00 - 01:00
(a) Performance of Plays	Sunday to Thursday	11:00 - 00:00
(b) Exhibition of Films	Friday and Saturday	08:00 - 01:30
(b) Exhibition of Films	Sunday to Thursday	08:00 - 00:30
(c) Indoor Sporting Events	Friday and Saturday	09:00 - 01:30
(c) Indoor Sporting Events	Sunday to Thursday	09:00 - 00:30
(e) Performance of Live Music	Friday and Saturday	11:00 - 01:00
(e) Performance of Live Music	Sunday to Thursday	11:00 - 00:00
(f) Performance of Recorded Music	Friday and Saturday	08:00 - 01:30
(f) Performance of Recorded Music	Sunday to Thursday	08:00 - 00:30
(g) Performance of Dance	Friday and Saturday	11:00 - 01:00
(g) Performance of Dance	Sunday to Thursday	11:00 - 00:00
(h) Ent. similar to (e) (f) or (g)	Friday and Saturday	11:00 - 01:00
(h) Ent. similar to (e) (f) or (g)	Sunday to Thursday	11:00 - 00:00
Late Night Refreshment	Friday and Saturday	23:00 - 01:30
Late Night Refreshment	Sunday to Thursday	23:00 - 00:30
Sale by Retail of Alcohol	Friday and Saturday	08:00 - 01:00
Sale by Retail of Alcohol	Sunday to Thursday	08:00 - 00:00

1.4 The existing premises licence is subject to the following conditions:

Annex 2 – Conditions consistent with the Operating Schedule

- A tamper-proof noise-limiting device is to be installed at the premises by 31 May 2011, set to levels agreed with the Environmental Health Department of Tewkesbury Borough Council.
- The Premises Licence holder is to ensure that all external doors and windows are closed within the designated function room when amplified musical entertainment is taking place, except to allow entry and egress.
- The outside garden area at the rear of the function room shall not be used by customers.

Conditions Agreed with Police and Environmental Health

- A CCTV system to the following specification shall be installed within 6 weeks of the grant of the varied licence:
 1. Minimum 4-camera colour digital CCTV system.
 2. Minimum 25 frames-per-second recording on the two ID cameras and minimum of 12 frames- per-second on remainder.

3. A camera situated so as to capture an ID image (head & shoulders view) of customers entering the premises at each of the two main entrances.
 4. A camera situated behind the Bar, so as to capture the faces of customers standing at the Counter.
 5. A monitor screen behind the main Bar servery that will enable staff to view the entrances and the remaining camera footage.
 6. Facility to download onto DVD.
 7. Signage shall be clearly displayed to the effect that CCTV is in operation to enhance customer safety.
- CCTV shall be maintained in good working order, shall record at all times the premises are open. Recordings shall be kept for a minimum of 14 days and shall be produced within a period of 72-hours on request of the Police or Council Officers.
 - The Bar shall incorporate a display headed 'Driver's Drinks' that includes Alcohol-free Beer(s) and/or Alcohol-free Cider(s) and/or Alcohol-free Wine(s) and/or soft drinks. Similarly, any Drinks Menu for restaurant use shall incorporate these drinks options.
 - The DPS shall maintain active membership of Tewkesbury Pubwatch (or successor Pubwatch body).
 - All regulated entertainment shall cease by 2330hours, and all doors and windows shall remain closed after 2300hrs whenever regulated entertainment is occurring (except for actual entry & egress by customers through the two main entrances or in the event of emergencies).

General

- Staff will be trained on the requirements of the Licensing Act 2003 when they are recruited.
- No new steps have been identified by my risk assessment in relation to the four licensing objectives.

The Prevention of Crime and Disorder

- Customer requiring entry after 23:00 will be challenged by the duty manager to avoid over-consumption. The Kings Head has operated a "closed door" approach for many years, successfully. Car park lighting is installed.
- Due to the pub's location, the licensee will be fully aware all local concerns as regard to this objective, and be able to work with the local community to minimise such issues.

Public Safety

- On certain occasions the risk assessment indicates a risk of crowding and, on those occasions, the capacity of the whole premises (including staff and performers) will be restricted. At such times DPS will agree in advance with the Police the most effective means for control of numbers and behaviour, depending on the circumstances.

The Prevention of Public Nuisance

- Recorded music volume will be reduced to background level during the wind down period to create a mood change. Near neighbours will be made aware of events in advance, and consulted with to prevent public nuisance.
- Phone numbers of taxi service providers are always available.

The Protection of Children from Harm

- The restrictions set out in the Licensing Act 2003 will apply.
- Photographic proof of age will be required to be shown by anyone seeking to purchase alcohol who appears to be under 18 years of age.
- When plays and dance activities are designed to include children, children may only attend when accompanied by an adult, who will be made aware that they have primary responsibility for the protection of the child from physical or mental harm.
- Apart from occasions when the Temporary Events Notices are used, only PRIVATE PARTIES are permitted (in relation to the application for Recorded Music (Discos and Karaoke's), Facilities for Making Music (Disco), Facilities for Dancing & Entertainment). ie for a closed audience, e.g. 25th Birthday Parties, Wedding Receptions, Retirement Parties, etc, and the Public are not admitted by payment or otherwise. (The DPS would be expected not to encourage Dancing in the premises other than this). (The provision of Registered Doorstaff at these private parties would be at the discretion of the DPA).
- The Live Music facility in the Public areas be restricted to Two in a Bar.
- Alcoholic drinks will not be discounted (below the tariff in place for a minimum of one week) after 6pm on Friday and Saturday nights (until the start of trading the following day). Friday and Saturday nights are peak-demand time for the police during the whole week.
- Non-alcoholic/Low-alcoholic drinks will be promoted, especially to designated drivers of groups.
- That a closed-door policy will be operated on New Year's Eve from 23:00 until 04:00hrs New Year's Day.

1.5 For comparison, the new conditions that the applicant proposes to add to the licence to replace the ones above are set out below at Paragraph 2.3.

2.0 THE APPLICATION

2.1 The application to vary the premises licence was received on 14 June 2019, at which time a 28-day consultation period commenced. During the consultation period, the application was publicised in accordance with the relevant regulations by the positioning at the premises of a public notice and by the publication of that notice in a local newspaper.

2.2 A copy of the application is attached at **Appendix A**. The new layout plan of the premises is at **Appendix B**. The location of the premises in relation to neighbouring roads and buildings is illustrated at **Appendix C**. A copy of the current premises licence is at **Appendix D**.

2.3 The new conditions that are proposed for the premises licence are as follows:

1. An incident book shall be maintained at the premises in which shall be recorded the time, date and circumstances of all refusals of entry, refusals of sale or removal of persons from the premises, along with the name or a description of the individual.
2. All windows and doors at the premises shall be kept closed, other than for normal or emergency access and egress, for the duration of any period in which live music or recorded music (other than incidental, background music) is being played.
3. A CCTV system will be maintained at the premises operating throughout the opening times of the premises and with a facility to digitally download footage. Recordings will be kept for a minimum of 14 days and will be available to authorised

officers upon reasonable request.

4. A Challenge 25 policy shall be operated at the premises at all times. All staff shall require identification of all customers who appear to be less than 25 years old and wish to purchase alcohol. Acceptable proof of age will be a PASS approved proof of age card, passport or a photographic driving licence.
5. The licence holder will submit and maintain a noise management plan (NMP) setting out how noise from the premises and customers will be mitigated. The plan shall be maintained thereafter and updated as necessary to reflect any changes likely to impact on the acoustic environment.
6. All fixed external lighting should be positioned in such a way as to not cause nuisance to neighbours.
7. In relation to the outside area marked on the plan as GRASSED AREA AT THE FRONT OF THE PREMISES:
 - This area will be vacated by 22:00 hours.
 - Clear and legible notices will be displayed in this area reminding customers to keep noise to a minimum and to respect the neighbours.
 - A maximum of 5 tables and 20 chairs will be positioned in this grassed area. Where a picnic-style bench table is being used, this shall count as 1 table and 4 chairs. Furniture in this area will be positioned within a distance of 4.2 meters from the wall of the premises.

2.4 Responsible Authorities

2.4.1 A full copy of the application was sent to the following responsible authorities identified in the Act as statutory consultees. Their responses to the consultation, if any, are also shown.

- Environmental Health Authority – “I can advise that I have considered the above application and do not have any objections.”
- Chief Officer of Police – No comment made.
- Fire and Rescue Authority – No comment made.
- Health and Safety Enforcing Authority – No comment made.
- Planning Authority – No comment made.
- Body with responsibility for Child Protection – No comment made.
- Public Health Authority – No comment made.
- Trading Standards – No comment made.
- Home Office Immigration Enforcement – No comment made.

2.5 Other Persons

2.5.1 In addition to responsible authorities, the Act permits any other person to make a representation if it is relevant to the application and relates to the licensing objectives.

2.6 Three representations were made from other people in relation to the application: one supporting the application and two objecting to it. These are reproduced at **Appendix E**.

3.0 GUIDANCE AND POLICY

3.1 Statutory guidance

3.1.1 The Licensing Act 2003 states that, in carrying out its functions, a Licensing Authority must 'have regard to' guidance issued by the Secretary of State under section 182 of the Act. The guidance is therefore binding on all licensing authorities to that extent; however, it is recognised that each case must be decided on its own merits and the guidance should not fetter the discretion of the Licensing Authority to make decisions in individual cases. Any decision that the Licensing Authority makes should be supported by full reasons.

3.1.2 The following extracts from the guidance are relevant to this application.

3.1.3 Licence conditions – general principles

Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as "must", "shall" and "will" is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met;
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

3.1.4 Each application on its own merits

Each application must be considered on its own merits and in accordance with the Licensing Authority's Statement of Licensing Policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

3.1.5 Public nuisance

- 3.1.5.1** 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.
- 3.1.5.2** Public nuisance is given a statutory meaning in many pieces of legislation. It is, however, not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include, in appropriate circumstances, the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.
- 3.1.5.3** Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate; however, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 3.1.5.4** As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises, but the approach of licensing authorities and responsible authorities should be one of prevention and, when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.
- 3.1.5.5** Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11pm and 8am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.
- 3.1.5.6** Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.

3.1.5.7 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.

3.1.6 Crime and disorder

3.1.6.1 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers, but any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

3.1.6.2 The inclusion of radio links and ring-round phone systems should be considered an appropriate condition for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. These systems allow managers of licensed premises to communicate instantly with the police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises.

3.1.6.3 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the Licensing Authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety

3.2 Licensing policy

Tewkesbury Borough Council's Licensing Act 2003 Statement of Licensing Policy was revised and adopted in 2014, is attached at **Appendix F**, and includes the following:

3.2.1 General principles

3.2.1.1 Every application received by the Licensing Authority will be considered on its own individual merits.

3.2.1.2 If an application for a premises licence or club premises certificate has been made lawfully and there have been no representations from responsible authorities or other persons, the Licensing Authority must grant the application, subject only to conditions that are consistent with the operating schedule and any relevant mandatory conditions.

- 3.2.1.3** The Licensing Authority will aim to carry out its licensing functions in a way that promotes tourism, increases leisure and culture provision and encourages economic development within the borough; however the Licensing Authority will also always try and balance the needs of the wider community, local community and commercial premises, against the needs of those whose quality of life may be adversely affected by the carrying on of licensable activities, particularly within residential areas.
- 3.2.1.4** In particular the Licensing Authority will attempt to control any potential negative impacts from the carrying on of licensable activities, such as increased crime and disorder, anti-social behaviour, noise, nuisance, risks to public safety and harm to children.
- 3.2.1.5** The Licensing Authority's aim is to facilitate well run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents.
- 3.2.1.6** The Licensing Authority acknowledges that licensing law is not the primary mechanism for the general control of anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business holding the authorisation concerned. As a matter of policy, however, the Licensing Authority expects every holder of an authorisation to be responsible for minimising the impact of their activities and anti-social behaviour by their patrons within the immediate surroundings of their premises.

3.2.2 Representations

- 3.2.2.1** When an application is made for the grant, variation or review of a premises licence or club premises certificate, representations about the application can be made by responsible authorities or other persons.
- 3.2.2.2** Representations must be made to the Licensing Authority within the statutory period of 28 days beginning on the day after the relevant application is received by the Licensing Authority. Representations must be made in writing.
- 3.2.2.3** Representations can be made either be in support of an application or to express objections to an application being granted; however, the Licensing Authority can only accept "relevant representations." 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.
- 3.2.2.4** For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation.
- 3.2.2.5** Whilst the Licensing Authority expects representations to be evidence based, there is no requirement for a responsible authority or other person to produce a recorded history of problems at a premises to support their representations, and it is recognised that in fact this would not be possible for new applications.

3.2.3 Representations from other persons

- 3.2.3.1** Relevant representations about applications can also be made by any other person, regardless of their geographical position in relation to the relevant premises; however the Licensing Authority will usually give greater weight to representations that are made by people who can demonstrate that they would be directly affected by the carrying on of licensable activities at the premises concerned.

3.2.4 Conditions on licences and certificates

3.2.4.1 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The Licensing Authority will ensure any conditions that are imposed on a premises licence or club premises certificate:

- are appropriate for the promotion of the licensing objectives;
- are precise and enforceable;
- are unambiguous and clear in what they intend to achieve;
- do not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- are tailored to the individual type, location and characteristics of the premises and events concerned;
- are not to be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- do not replicate offences set out in the 2003 Act or other legislation;
- are proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);
- do not seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- are written in a prescriptive format.

3.2.4.2 Although the Licensing Authority may use standardised forms of wording in conditions to cover commonly arising situations and circumstances, “blanket conditions” will not be applied to licences and specific conditions may be drawn up and applied to meet local need and circumstances.

3.2.5 Reviews

3.2.5.1 At any stage following the grant or variation of a premises licence or club premises certificate, a responsible authority or any other person, may apply to the Licensing Authority for a review of the licence or certificate because of a problem arising at the premises in connection with any of the four licensing objectives.

3.2.5.2 In every case the application for review must relate to a particular premises for which a licence or certificate is in force and must be relevant to the promotion of the licensing objectives.

3.2.5.3 Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant Licensing Authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons; however, the Licensing Authority will not normally act as a responsible authority in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so.

- 3.2.5.4** The Licensing Authority also expects other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder. Likewise, where there are concerns about noise nuisance, it is expected that environmental health will make the application for review.
- 3.2.5.5** Where responsible authorities have concerns about problems identified at a premises, the Licensing Authority considers it good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns.
- 3.2.5.6** A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. The Licensing Authority believes that co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.
- 3.2.5.7** If the application for a review has been made by a person other than a responsible authority (for example, a local resident, residents' association, local business or trade association), before taking action the Licensing Authority will first consider whether the complaint being made is relevant, frivolous, vexatious or repetitious.
- 3.2.5.8** A review application might 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. Frivolous applications are essentially categorised by a lack of seriousness. Frivolous applications would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate.
- 3.2.5.9** The Licensing Authority considers a repetitious ground for review to be one that is identical or substantially similar to:
- a ground for review specified in an earlier application for review made in relation to the same premises licence or certificate which has already been determined; or
 - representations considered by the Licensing Authority when the premises licence or certificate was granted; or
 - representations which would have been made when the application for the premises licence was first made and which were excluded then by reason of the prior issue of a provisional statement; and, in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or grant.
- 3.2.5.10** The Licensing Authority is aware of the need to prevent attempts to review licences merely as a further means of challenging the grant of the licence following the failure of representations to persuade the Licensing Authority on an earlier occasion.
- 3.2.5.11** The Licensing Authority believes that more than one review originating from a person other than a responsible authority in relation to a particular premises should not normally be permitted within a 12 month period on similar grounds save in compelling circumstances or where it arises following a closure order.
- 3.2.5.12** The exclusion of a complaint on the grounds that it is repetitious does not apply to responsible authorities which may make more than one application for a review of a licence or certificate within a 12 month period.
- 3.2.5.13** Guidance on applying for a review of a licence or certificate, along with the necessary forms, can be found on the Council's website.

3.2.6 Relationship with the local planning authority

3.2.6.1 Planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing Committees are not bound by decisions made by a Planning Committee, and vice versa.

3.2.6.2 There is no legal basis for the Licensing Authority to refuse a licence application because the relevant premise does not have planning permission, or where there are conditions on the relevant planning permission.

3.2.6.3 There are circumstances when as a condition of planning permission; a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law.

4.0 DECISION

4.1 Representations

4.1.1 Members should take into consideration only those representations that relate to one or more of the licensing objectives and should disregard representations that do not relate to the licensing objectives or are otherwise not relevant to this application.

4.1.2 In relation to the representations received in connection with this application, Members' attention is brought to the following matters that have been brought up in the representations and the Officers' advice below.

4.2 Planning conditions

4.2.1 A respondent has made reference to potential inconsistencies between planning conditions and the conditions and times applicable to the premises licence. Members are advised that such considerations are not relevant as explained in the council's adopted licensing policy:

“Planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa.

There is no legal basis for the Licensing Authority to refuse a licence application because the relevant premise does not have planning permission, or where there are conditions on the relevant planning permission.

There are circumstances when as a condition of planning permission; a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law.”

4.3 Activities and times permitted by the licence

4.3.1 A respondent has said that the scope of the application should be extended to include changes to the permitted licensable activities and times. This is not within the scope of the application, because those activities and times are already permitted by the existing licence and no application has been made to review the licence.

4.3.2 Members are advised that the Council's adopted policy states:

"For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation."

4.3.3 In this case the subject matters of the variation are the submission of a new layout plan and the replacement of conditions. All other considerations are not relevant to this application and it would be outside of the Sub-Committee's remit to make changes to activities and times permitted by the licence. The activities and times can only be altered if the applicant applies to vary them, or if the licence is surrendered or lapses, or if an application is made to review the licence.

4.4 Smoking and floodlights as public nuisance

4.4.1 A respondent has referred to customers smoking, and also to a floodlight, and has suggested that they cause a nuisance to neighbours. Members are advised that public nuisance is not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Therefore smoking and light pollution may be considered a public nuisance and may be relevant to this application, if Members are satisfied that those problems will be caused by the subject matter of the variation, i.e. the changes to the conditions and the plan.

4.4.2 Members are further advised that, since the end of the consultation period, the applicant has informed the Licensing Officer that the floodlight has been moved.

4.5 Potential for nuisance in the future

4.5.1 Reference has been made that "it is not clear" whether a public nuisance will happen in the future if the variation is granted. Members are advised that supposition is not a relevant basis for applying conditions to the licence and are reminded that any person can apply for a review of a premises licence at any time if a nuisance does occur. The Environmental Health Authority, as a statutory consultee under the Act with specific responsibility for noise nuisance, has been consulted and has not objected to the variation.

4.6 Determination

4.6.1 In determining the application, the Sub-Committee must have regard to the statutory guidance issued by the Secretary of State, the Council's adopted policy statement, the representations made and the evidence it hears. In particular, the Sub-Committee must seek to promote the four licensing objectives, which are:

- The prevention of crime and disorder.
- The prevention of public nuisance.
- The protection of children from harm.
- Public safety.

4.6.2 The Sub-Committee, having regard to the all of the above, must take such steps as it considers appropriate for the promotion of the licensing objectives which can include:

- granting the application as requested;
- modifying the conditions of the licence; or
- rejecting all or part of the application.

5.0 OTHER OPTIONS CONSIDERED

5.1 None. The Act requires that all applications for a premises licence or the variation of a premises licence must be determined by the Licensing Authority's Licensing Sub-Committee where relevant representations are received.

6.0 CONSULTATION

6.1 A 28 day consultation was carried out in accordance with regulations.

7.0 RELEVANT COUNCIL POLICIES/STRATEGIES

7.1 Tewkesbury Borough Council's Licensing Act 2003 Policy Statement (**Appendix F**).

8.0 RELEVANT GOVERNMENT POLICIES

8.1 Statutory guidance issued by the Home Office under section 182 of the Licensing Act 2003. <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

9.0 RESOURCE IMPLICATIONS (Human/Property)

9.1 None

10.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

10.1 No implications identified.

11.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)

11.1 No implications identified.

12.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

12.1 None

Background Papers: Licensing Act 2003

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Appendices:

Appendix A	Application form
Appendix B	Revised layout plan of the premises
Appendix C	Location
Appendix D	Current premises licence
Appendix E	Representations
Appendix F	Tewkesbury Borough Council's Statement of Licensing Policy