

# TEWKESBURY BOROUGH COUNCIL

<b>Report to:</b>	Licensing Sub-Committee (Licensing Act 2003 and Gambling Act 2005)
<b>Date of Meeting:</b>	12 November 2019
<b>Subject:</b>	Application for a Premises Licence – 9 Church Road, Bishop's Cleeve
<b>Report of:</b>	Senior Licensing Officer
<b>Corporate Lead:</b>	Deputy Chief Executive
<b>Lead Member:</b>	Lead Member for Clean and Green Environment
<b>Number of Appendices:</b>	4

## **Executive Summary:**

An application has been received for a Premises Licence under the Licensing Act 2003 (“the Act”). No representations were received from responsible authorities. Five representations were received from other people and, as such, the matter is being referred to the Licensing Sub-Committee for determination.

## **Recommendation:**

**To DETERMINE the application by:**

- **granting the licence as applied for;**
- **granting the licence with modified licensable activities, times or conditions; 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 it.

**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 premises licence – incorporating any 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** An application has been made by Mr Peter Trowse for a new premises licence at 9 Church Road, Bishops Cleeve, Cheltenham, Gloucestershire, GL52 8LR.

**1.2** The applicant seeks to authorise the following licensable activities and opening hours:

The sale by retail of alcohol            Every day        10:00-23:00

The opening hours of the premises    Every day        10:00-23:00

Non-standard timings:

On the days of the spring and autumn meetings at Cheltenham racecourse - known as The Showcase (October), the Festival (March) and the November Meeting – the opening hours of the premises will be extended to 08:00 - 23:00. This extension applies only to the opening hours, not the sale of alcohol.

## **2.0 THE APPLICATION**

**2.1** The application for a new premises licence was received on 26 September 2019, at which time a 28 day consultation period commenced. The consultation process finished on 24 October 2019.

**2.2** A copy of the application is attached at **Appendix A** and a layout plan of the premises is attached at **Appendix B**.

**2.3** As part of the application process, the applicant provided an operating schedule setting out the steps he intends to take to promote the four licensing objectives. Those steps are set out below. If a licence is granted, it will be subject to conditions consistent with the operating schedule.

- A staff training scheme will be implemented and records will be updated on a regular basis.
- CCTV will be maintained in good working order and recordings will be kept for 28 days.
- The alarm system will be maintained in good working order.
- Acrylic glasses will be used at the outdoor tables and no glass bottles will be allowed at the outside tables.
- Staff will ensure litter generated by the outside seating area is cleared away on a regular basis.
- Challenge 25 will be operated so that any person who appears to be under 25 will be required to provide a relevant photo ID [to prove that they are over 18].

## **2.4 Responsible Authorities**

**2.4.1** In addition to Tewkesbury Borough Council as the Licensing Authority, 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:

- The environmental health authority – “No adverse comment from EH.”
- The chief officer of police – No comment made.
- The fire and rescue authority – No comment made.
- The health and safety enforcing authority – No comment made.
- The planning authority – No comment made.
- The body with responsibility for child protection – No comment made.
- The 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.

**2.5.2** Five representations were made from other people in relation to the application. These are reproduced at **Appendix C**.

## **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 D**, 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.

## **4.0 DECISION**

### **4.1 Representations**

**4.1.1** Five representations were received during the consultation process. Members should take into account the following comments in relation to the representations.

## **4.2 Each application on its own merits**

**4.2.1** Members are reminded that each individual application is to be determined on its own merits and should not be considered cumulatively with other premises. Comments relating to other licensed premises and whether it is necessary to have another one in the vicinity, are therefore not relevant. Likewise comments relating to noise generated at other premises are not relevant because the applicant cannot be responsible for activities at other premises.

## **4.3 Supposition**

**4.3.1** Members should be mindful that because the premises have not yet begun trading, there is no specific evidence that the licensing objectives will be compromised. Some objectors have stated that granting a licence will inevitably lead to nuisance or antisocial behaviour, but members should consider whether there is evidence to support that assumption.

**4.3.2** Members are reminded that, should a licence be granted, the Act provides for any person to apply for the licence to be reviewed at any time if the activities at the premises cause public nuisance, crime and disorder, risk public safety or risk harm to children.

## **4.4 Use of the outside area**

**4.4.1** Members are advised that the applicant has not applied to carry out licensable activities in the outside area. The licensable activity – the sale of alcohol – will take place indoors only, however patrons may use the outside area for eating and drinking if the applicant chooses to place furniture there for that purposes.

**4.4.2** If Members are satisfied that there is evidence that the use by customers of the outside area will cause a public nuisance, they have the option of applying conditions to the licence (for example restricting the use of that area to particular times, or stating that no drinks will be permitted outside after a certain time, or that the furniture must be brought indoors after a certain time). However, Members should be mindful that conditions need to be reasonable and enforceable. For example, smoking legislation means that customers may use the outside area for that purpose and it would be difficult for the licence holders to prevent that.

**4.4.3** Some comments have been made regarding the outside area being a public right of way and that using it for customer seating would compromise free and easy passage. Members are advised that the applicant does not need the Licensing Authority's permission to place furniture on the highway. He may need a landowner's permission or permission from Gloucestershire County Highways to obstruct the highway, but it would be his responsibility to make those enquiries.

**4.4.4** In relation to this application, the Sub-Committee is concerned only with how licensable activities – in this case the sale of alcohol – will affect the four licensing objectives. Other matters such as obstruction of the highway are not within the Sub-Committee's remit.

## **4.5 Determination**

**4.5.1** 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 licensable activities, times or conditions applied for; 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 D**).

## **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

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**Background Papers:** Licensing Act 2003

**Contact Officer:** Senior Licensing Officer  
01684 272271 [licensing@tewkesbury.gov.uk](mailto:licensing@tewkesbury.gov.uk)

**Appendices:**

Appendix A	Application form
Appendix B	Layout plan of the premises
Appendix C	Representations
Appendix D	Tewkesbury Borough Council's Statement of Licensing Policy