

REPORT TO LICENSING PANEL SUB COMMITTEE

CONSIDERATION OF APPLICATION FOR A PREMISES LICENCE UNDER THE LICENSING ACT 2003

LICENSING PANEL SUB COMMITTEE: 19th November 2009

OFFICER REPORTING: Alan Barwise, Team Leader, Licensing

A) THE APPLICATION

APPLICANT: Tesco Limited

PREMISES: 134 Horton Road, Datchet, Slough

Licence Application

This application is for a new premises licence under the terms of the Licensing Act 2003. The premises have been licensed previously and for many years. Most recently, the premises were used as a fish restaurant known as Mulligans. The existing licence does not allow for off-sales and consequently, a new licence is required.

Relevant licensable activities:

Supply of alcohol only

Hours of licensable activities

06:00 – 23:00

Other times, premises proposes to be open:

06:00 – 23:00

Designated Premises Supervisor:

At this stage, the DPS will be Mr Greg Bartley, Licensing Manager for the applicant

Supply of Alcohol is for consumption on or off the premises

Off the premises only

Steps to promote licensing objectives

- a) Crime and Disorder
See attached application

- b) Public Safety
See attached application

- c) Public Nuisance
See attached application

- d) Child Protection
See attached application

B. RELEVANT REPRESENTATIONS

Responsible Authorities:

- a) Police
None

- b) Environmental Health
None

- c) Fire Officer
None

- d) Planning Officer
None

- e) Child Protection Agency
None

Interested Parties

1. Attached are the objections from local residents.

Chontelle Clarke, 8 Brookfield House, Penn Road, Datchet
Karuna Kakaria, 129 Horton Road, Datchet
Anil Kakaria, 129 Horton Road, Datchet
Mr Robert Gathergood, 136 Horton Road, Datchet
Mrs Barbara Rees, Orchard Lodge, 65 Horton Road, Datchet
Sheila Russell, 228 Horton Road, Datchet
Mrs A Ford, 61 Horton Road, Datchet
Mrs Vera Merby, 40 Holmlea Walk, Datchet
Mr P Beamand, 83 Horton Road, Datchet
Mrs T A Woods, 274 Horton Road, Datchet
Mrs J K Mason, 8 Linchfield Road, Datchet
Mr & Mrs Lockwood, 91 Horton Road, Datchet
Mr Robert Softely, 4 The Lawn, Horton Road, Datchet
Mr D Thomas, Parkview House, Horton Road, Datchet
Mr D Makweale, 5 Penn Road, Datchet
Capt Maurice Seddon, Datchet Cottage, 138 Horton Road, Datchet
Mr & Mrs Boase, 132 Horton Road, Datchet
Mr & Mrs John Wilson, 56 Rann Close, Datchet

The objections letters are reproduced in full. However, Members are respectfully reminded that they can only take into account information relating to the four licensing objectives. They should ignore any other information contained such as the number of licensed premises in the area or issues such as traffic/parking. Members must decide how much weight to add to each objection received. Members should note that no objection has been received from Thames Valley Police on the grounds of crime and disorder.

C) IT IS CONSIDERED THAT THE FOLLOWING POLICIES HAVE A BEARING UPON THE APPLICATION

The following is taken from the Council's Licensing Policy:

The Council maintains that licensing is about the control of licensed premises, qualifying clubs and temporary events with the terms of the 2003 Act and any terms and conditions attached to licences will be focused on matters which are within the control of individual licensees and other granted relevant permissions, centring on the premises and their vicinity. In addressing the issue of "vicinity", the Council will primarily focus on the direct impact of the activities at the premises on members of the public living, working or engaged in normal activities in the area concerned".

Licensing is not the primary mechanism for controlling anti-social behaviour away from premises and beyond the control of operators. However, it is a key aspect of such control and the licensing law is part of the holistic approach to the management of the evening and night-time economy in town and city centres.

The Council will only grant a licence or extend the hours of operating of an existing licence where this would not result in unreasonable disturbance to neighbours.

In considering the affect on neighbours, the Authority will take into account:

1. The nature of the activity
2. The character of the surrounding area
3. Measures for limitation of noise emissions from the premises. This may include as appropriate;
 - Noise limitation devices,
 - Sound insulation,
 - Whether windows are to be opened
 - The installation of acoustic lobbies
 - Double glazing
 - Measures to deal with queuing, where necessary
 - Use of outdoor areas
 - Measures to deal with dispersal of customers from the premises as necessary, including the employment of door supervisors, use of dedicated Hackney Carriage/Private Hire firms, notices in the premises requesting customers to respect neighbours.
 - Winding down periods, particularly in public houses and night clubs, etc.

The licensing authority will normally expect to see proven protective measures included in the operating schedule. Applicants are encouraged to consider the measures set out in this policy and the schedule in forming their operating schedules.

D) NATIONAL GUIDANCE

National guidance regarding public nuisance is as follows:

- 2.32 The 2003 Act requires licensing authorities (following receipt of relevant representations) and Responsible Authorities, representations, to make judgments about what constitutes public nuisance and what it is necessary 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 impact of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- 2.33 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 is important to remember that the prevention of public nuisance could, therefore, include low-level nuisance, perhaps affecting a few people living locally as well as major disturbance affecting the whole of the community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.

- 2.34 Conditions in relation to noise nuisance will normally concern steps necessary to control the levels of noise emanating from the premises. This might be achieved by a simple measure such as ensuring that windows and doors are kept closed after a particular time in the evening to a more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions necessary to promote the prevention of public nuisance should be tailored to the style and characteristics of the specific premises. Licensing Authorities should be aware of the need to avoid unnecessary or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden on small venues.
- 2.35 As with all conditions, it will be clear that conditions relating to noise nuisance may not be necessary in certain circumstances where the provisions of the Environmental Protection Act 1990, the Noise Act 1996, or the Clean Neighbourhood & Environment Act 2005 adequately protect those living in the vicinity of the premises. But as stated earlier in this guidance, 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 necessary.
- 2.36 Where applications have given rise to representations, any necessary or appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. Under these circumstances, conditions relating to noise in the immediate vicinity of the premises may also prove necessary to address any disturbance anticipated as customers enter and leave.
- 2.38 In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or Club. Conditions relating to public nuisance caused by the anti social behaviour of customers once they are beyond the control of the licence holder, Club or premises management cannot be justified and will not serve to promote the licensing objectives.
- 2.39 Beyond the vicinity of the premises, these are matters of the personal responsibility of the individual 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 exit of the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.
- 2.40 The cumulative effects of litter in the vicinity of premises carrying on licensable activities can cause public nuisance. For example, it may be appropriate and necessary for a condition on a licence for premises serving

E) OBSERVATIONS

The Sub Committee is obliged to determine this application with a review to promoting the licensing objectives which are:

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

In making its decision, the Committee is also obliged to have regard to national guidance and the Council's own Licensing Policy.

Of course, the Committee must have regard to all of the representations made and the evidence it hears.

The Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- a) grant the application as asked
- b) modify the conditions of the licence, by altering or omitting or adding to them
- c) Reject the whole or part of the application