

REPORT TO LICENSING PANEL SUB COMMITTEE

CONSIDERATION OF APPLICATION TO VARY A PREMISES LICENCE UNDER THE LICENSING ACT 2003

LICENSING PANEL SUB COMMITTEE: 8 September 2009

OFFICER REPORTING: A G Barwise – Team Leader, Licensing

A) THE APPLICATION

APPLICANT: Marston's Plc

PREMISES: Que Pasa, 85-93 King Street, Maidenhead SL6 1PJ

Licence Application

To extend the terminal hour for regulated activities, including the retail of alcohol of Friday and Saturday evenings to 0.300 hours

To enable the sale of alcohol for extended hours on Christmas Eve and Year's Eve.

To enable regulated entertainment in the form of film and indoor sporting events in addition to the existing entertainment to be provided when the premises are open for the sale of alcohol.

Films, indoor sporting events, live music, recorded music, provision of facilities for making music, provision of facilities for dancing, late night refreshments, supply of alcohol or anything of a similar description to the above.

Monday 10.00 – 00.30
Tuesday 10.00 – 00.30
Wednesday 10.00 - 00.30
Thursday 10.00 – 02.00
Friday 10.00 – 03.00
Saturday 10.00 – 03.00
Sunday 10.00 – 01.00

The terminal hour of regulated activities shall be extended on Christmas Eve until 02.00. Should the 24th December fall on Monday, Tuesday, Wednesday or Sunday, trading shall be permitted from 10.00 on 31st December until the specified terminal hour on the 2nd January without interruption.

Alcohol will be supplied on and off the premises.

Supply of Alcohol is for consumption on or off the premises

The Licence currently allows permitted regulated activities on Friday and Saturday until 01.30

Steps to promote licensing objectives

No new steps have been identified in relation to the four licensing objectives

B. RELEVANT REPRESENTATIONS

Responsible Authorities:

a) Police

Following discussion between the Police Licensing Officer and the applicant's solicitors the following conditions have been agreed:

- 1) The provision of door supervisors at the premises will be based on the management's assessment of the risk save that the premises intend to provide licensable activity beyond 01.00. On evenings when the premises intend to provide licensable activity after 01.00, one door supervisor per 100 person will be employed from 23.00 until the close of the premises. Any individual employed to carry out a security activity must be licensed by the Security Industry Authority, wear high visibility clothing and display SIA badges at all times.
- 2) The premises shall operate a 'last entry' policy at 0.200 on Friday and Saturday evenings.

If Members are minded to agree with the application to vary, then they are requested to impose these conditions.

b) Environmental Health

Nil

c) Fire Officer

Nil

d) Planning Officer

Please see attached note dated 28th July 2009 together with the relevant planning information.

- e) Child Protection Agency

Nil

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 customers on take-aways and fast food outlets from 11pm to provide litter bins in the vicinity of the premises in order to prevent the accumulation of litter. Such conditions may be necessary and appropriate in circumstances where customers late at night may have been consuming alcohol and be inclined to carelessness and anti social behaviour.

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