

LICENSING SUB-COMMITTEE

29th September 2021

LICENSING ACT 2003

Application for: Premises Licence Review Application
Premises: The Three Tuns , 124 Bath Road, Slough, SL1 3XL
Applicant: Amar Rajpoot
Reason for Referral: Review application on the grounds of public nuisance

1. CURRENT POSITION

1.1 An application to review the premises licence for The Three Tuns has been made on the grounds of public nuisance by;

Amar Rajpoot

1.2A copy of the premises licence and premises plan are attached at **appendix A & B**. The licensable activities and timings are;

Live music - Indoors

Recorded music - Indoors

Anything of a similar description - Indoors

Monday to Wednesday: 10:00 - 23:30 hours

Thursday: 10:00 - 00:30 hours

Friday to Saturday: 10:00 - 01:30 hours

Sunday: Noon – 22:30 hours

New Year's Eve – From the commencement of licensable activities on 31st December until the commencement of licensable activities on 1st January.

Supply of alcohol consumption ON & OFF the premises

Monday to Wednesday: 10:00 - 23:30 hours

Thursday: 10:00 - 00:30 hours

Friday to Saturday: 10:00 - 01:30 hours

Sunday: Noon – 22:30 hours

New Year's Eve – From the commencement of licensable activities on 31st December until the commencement of licensable activities on 1st January.

2. BACKGROUND INFORMATION

- 2.1 On 5th August 2021 Mr Rajpoot, a resident who lives within the vicinity of the premises, submitted an application to review the premises licence. The review application details a log of incidents made by Mr Rajpoot commencing from 12th January 2019. The date of the last entry is 21st July (year unspecified). The full review application is attached at **appendix C**.
- 2.2 Mr Rajpoot submitted a noise complaint relating to The Three Tuns via a My Council form on 23rd November 2018. **Attached at appendix D**.
- 2.3 On 17th December 2018 a further complaint made by Mr Rajpoot was forwarded to Licensing and the Resilience and Enforcement team. **Attached at appendix E**.
- 2.4 Kurt Henney from the Resilience and Enforcement team wrote to Mr Rajpoot on 14th January 2019 advising that he would be investigating his complaint and requested a noise diary be completed. Letter and completed noise diary attached at **appendix F**.
- 2.5 A meeting was held on 6th February 2019 with the premises licence holder, designated premises supervisor (DPS), Licensing and Resilience and Enforcement. A copy of the letter dated 15th February 2019 sent to premises following that meeting is attached at **appendix G**.
- 2.6 On 24th June 2019, the premises were served with Community Protection Warning letter by Kurt Henny. The warning advised the premises to take steps to control and monitor the car park at the rear of the premise. **Attached at appendix H**.
- 2.7 A meeting was held on 25th September 2020 with the DPS, a representative from Green King, TVP, Licensing and Resilience and Enforcement. Meeting notes were completed by Debie Pearmain from TVP and are attached at **appendix I**. Several issues were discussed during that meeting, including the noise complaints and reports of Anti-Social Behaviour (ASB) in the car park. The premises were advised to take steps to secure the car park, install additional lighting and CCTV in order to deter ASB from occurring in the car park.
- 2.8 A further meeting was held with the premises on 1st June 2021 to discuss the complaints. Meeting notes are attached at **appendix J**.
- 2.9 On 1st June 2021, the premises were served with another Community Protection Warning letter by Stephen Crundwell from the Resilience and Enforcement team. Again, the warning advised the premises to take steps to secure the car park to prevent unauthorised access. **Attached at appendix K**.

3. REPRESENTATIONS RECEIVED

- 3.1 Two representations to the review application have been received by the following responsible authorities:
- Thames Valley Police (TVP) - **Attached at appendix L**
 - Resilience and Enforcement Team (SBC) - **Attached at appendix M**

3.2 Any person may make representations in relation to review applications. Representations must relate to one or more of the licensing objectives and cannot be frivolous or vexatious.

3.3 The representations detail concerns under the Licensing Objective as follows:

- **The Prevention of Public Nuisance**

In summary:

- The Resilience and Enforcement team have detailed their investigation into Mr Rajpoot's complaints since 19th August 2020. Noise recording equipment was installed at Mr Rajpoot's property, however once downloaded and reviewed there was insufficient evidence to state that there was a statutory noise nuisance.
- Thames Valley Police have detailed their involvement with the premises since 28th June 2019. Debie Pearmain notes that since the 1st June 2021 some works have been carried out to the car park however the noises complaints have continued.
- Debie Pearmain states that on a visit to the premises on 20th August 2021, there was no CCTV in the external area which is a condition of the premises licence.

4. RELEVANT GUIDANCE

4.1 The committee must have regard to the amended Secretary of States guidance issued in April 2018 under Section 182 of the Licensing Act 2003 and in particular, Chapters 9 (Determining applications) and 10 (Conditions attached to Premises Licences). Particular regard should be had to paragraphs 9.31 – 9.41 (Hearings) and 9.42 – 9.44 (Determining actions that are appropriate for the promotion of the licensing objectives).

4.2 With regards to Relevant, Frivolous or Vexatious Representations the relevant sections of the Section 182 Guidance state the following:

9.4 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. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

9.5 It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may 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 or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

9.6 Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate.

9.7 Any person who is aggrieved by a rejection of their representations on either of these grounds may lodge a complaint through the local authority's corporate complaints procedure. A person may also challenge the authority's decision by way of judicial review.

9.8 Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This may be difficult for councillors who receive complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub-committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.

9.9 It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.

9.10 Licensing authorities should consider providing advice on their websites about how any person can make representations to them

- 4.3 The committee must also have regard to the Council's Statement of Licensing Policy 2014-2019.

Principles for making decisions

- 4.4 As quasi-judicial body the Sub Committee is required to consider this matter on its merits and must act reasonably and rationally. The Sub Committee can only take into account relevant factors and must ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of the relevant facts, or the likelihood or the unlikelihood of some future event, the occurrence of which

would be relevant. The Sub Committee must give fair consideration to the contentions of all persons entitled to make representation to them.

- 4.5 The Sub Committee can only consider matters within the report.
- 4.6 Members should note that the Sub Committee is meeting on this occasion solely to perform the role of Licensing Authority. As such Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the licensing law, guidance and the Council's related policies and guidance.
- 4.7 Members will be aware of the Council's Code of Conduct which requires them to declare interests. The Code applies to members when considering licensing issues. In addition, as a quasi-judicial body, Members are required to avoid both actual bias and the appearance of bias.

Human Rights & Equality Act Duties

- 4.8 In determining the case, the Sub Committee should be aware of and take into account any implications that may arise from the Human Rights Act 1998 and section 149 Equality Act 2010. The legislation makes it unlawful for a public authority to act in a manner which is incompatible with the European Convention of Human Rights.
- 4.9 When determining the case and considering imposition of conditions the Sub Committee must be satisfied that any decision which interferes with the rights of the Applicant or of others, only does so insofar as it is necessary to protect the rights of others and that no alternative decision would be appropriate.
- 4.10 The Sub Committee is specifically referred to the following Convention rights:
 - (i) Article 6 (the right to a fair trial),
 - (ii) Article 8 (the right to respect for private and family life)
 - (iii) Article 1 of the First Protocol (the protection of property)

5. DETERMINATION – OPTIONS AVAILABLE TO THE COMMITTEE

- 5.1 Following the hearing, having had regard to the representations made by all parties, the committee must consider appropriate action for the promotion of the licensing objectives. Where the Sub Committee considers action is appropriate the statutory options available are:
 - (1) Modify the conditions of the Premises Licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - (2) Exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);

- (3) Remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- (4) Suspend the licence for a period not exceeding three months;
- (5) Revoke the licence.

APPENDICES

Appendix 'A' – Copy of premise licence

Appendix 'B' – Copy of premises plan

Appendix 'C' – Copy of review application

Appendix 'D' – Copy of complaint dated 23rd November 18

Appendix 'E' – Copy of complaint dated 16th December 18

Appendix 'F' – Copy of letter from Kurt Henny dated 14th January 19 & completed noise diaries

Appendix 'G' – Copy of letter to premises dated 15th February 2019 following meeting

Appendix 'H' – Copy of Community Protection Notice dated 24th June 2019

Appendix 'I' – Copy of meeting notes dated 25th September 2020

Appendix 'J' – Copy of notes dated 1st June 2021

Appendix 'K' – Thames Valley Police Representation

Appendix 'M' – Resilience and Enforcement Representation

Background papers

- The Licensing Act 2003
- Guidance issued under Section 182 of the Licensing Act 2003 (April 2018)
- Regulations (cited as the Licensing Act 2003 ([Various]) Orders 2005
- Slough Borough Council Statement of Licensing Policy – January 2019-2024

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