

TRAFFORD COUNCIL

Report to: Licensing Sub-Committee
Date: 26th March 2019
Report for: Decision: Determination of Application
Report of: Head of Regulatory Services

Report Title

APPLICATION TO VARY A PREMISES LICENCE UNDER S34 OF THE LICENSING ACT 2003

Summary

Under S35 of the Licensing Act 2003, Members are requested to determine an application for a full variation to a premises licence in respect of **Carters Arms, 367 Northenden Road, Sale, Cheshire, M33 2PG** having regard to representations received and the requirement to promote the four licensing objectives.

Recommendation(s)

Having regard to the representations, the Licensing Sub-Committee may take such steps (if any) as it considers appropriate for the promotion of the licensing objectives.

The steps are;

- (i) to modify the conditions of the licence;
- (ii) to reject the whole or part of the application;

For this purpose the conditions of the licence are modified if any condition is altered or omitted, or any new conditions is added.

Contact person for access to background papers and further information:

Name: Keiran Hinchliffe, Senior Licensing Officer.
Extension: 2593

Background Papers: None.

Appendices: A) Application to vary a premises licence.
B) Current Premises Licence.
C) Representations received.
D) Amendment to application following correspondence with Environmental Health Officer.

1.0 APPLICATION

1.1 A premises licence is required in respect of any premises where it is intended to conduct one or more of the four licensable activities, these being:

- The sale of alcohol
- The supply of alcohol (in respect of a club)
- Regulated entertainment
- The provision of late night refreshment

This application was submitted by John Gaunt & Partners on behalf of Marston's PLC, in respect of Carters Arms, 367 Northenden Road, Sale M33 2PG.

2.1 The variation applied for is as follows:

These premises have the benefit of premises licence PL000012, which contains a condition imposed prior to the smoking restrictions:

- "Use of beer garden or outside area should not be permitted beyond 21:00 or dusk (whichever is sooner)"

The application seeks to amend the condition to the following wording:

- Customers shall not be permitted to consume alcohol in external areas after 22:00

The proposal is therefore principally (i) to remove reference to 'dusk' in order to be more precise and unambiguous as to the terminal hour throughout the year, (ii) to allow alcohol to be consumed in external areas until 22:00, which is still moderate and reasonable in respect of a terminal hour and (iii) to clarify that smokers can use the external areas when required.

It is not anticipated the proposed change would have an adverse impact on the licensing objectives and the operating schedule has been completed on that basis.

In that no change is proposed to the licensable activities of licensed hours, Boxes A – J have not been completed.

Please note that there is no intention to change the layout at these premises and therefore no plans are included.

2.2 The application has been properly made and all procedures correctly followed. The application has been attached as **Appendix A**.

3.0 BACKGROUND AND HISTORY OF PREMISES

3.1 The premises is currently licensed. There has been a fairly recent change to the Designated Premises Supervisor in November 2018. The current Premises Licence is attached as **Appendix B**.

4.0 OPERATING SCHEDULE

- 4.1 The operating schedule is completed by the applicant and contains additional measures to illustrate how they propose to promote the four licensing objectives as required by provision of the Licensing Act 2003.

The measures proposed in the application and subsequent amendment by the applicant are listed in paragraphs 4.2 to 4.6 (inclusive) and will be attached as conditions to any licence as may be granted, where this is either an enforceable condition or does not repeat a provision of any other legislation. Conditions have been highlighted in bold italics for the avoidance of doubt.

Anything in non-italics is a direct quote from the application and will not form conditions on any licence. The proposed conditions (in bold italics) have been re-worded in accordance with the Council's Statement of Licensing Policy so as to ensure they are enforceable.

4.2 The prevention of crime and disorder

No new steps have been identified which need to be addressed.

4.3 Public safety

No new steps have been identified which need to be addressed.

4.4 The prevention of public nuisance

No new steps have been identified which need to be addressed.

4.5 The protection of children from harm

No new steps have been identified which need to be addressed.

5.0 STATEMENT OF LICENSING POLICY

- 5.1 The following extracts from the Council's statement of licensing policy are brought to the general attention of members:

5.2 (1.8) Every application considered by the Council under this policy will be considered on its merits, and regard will be given to the Guidance issued under Section 182 of the Licensing Act 2003 and any supporting regulations..

5.3 (1.9) Nothing in the policy will undermine the right of any person to make representations on an application or seek a review of a licence or certificate where provision has been made for them to do so in the Act. Appropriate weight will be given to all relevant representations. This will not include those that are frivolous, vexatious or repetitious.

5.4 (1.12) The licensing process can only seek to control those measures within the control of the licensee, and 'in the vicinity' of a premises. The conditions

attached to various authorisations will, therefore, be consistent with operating schedules and will mainly focus on:

- Matters within the control of individual licensees and others who are granted any relevant authorisations;
- The premises and places being used for licensable activities and their vicinity; and
- The direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.

5.5 (5.6) When considering applications for later closing times in respect of premises licences, where relevant representations have been made, the Council will take the following into consideration in accordance with Government Guidance:

- Whether the premises is located in a predominately commercial area
- The nature of the proposed activities to be provided at the premises
- Whether there are any arrangements to ensure adequate availability of taxis and private hire vehicles and appropriate places for picking up and setting down passengers
- Whether there is an appropriate amount of car parking, readily accessible to the premises, and in places where the parking and use of vehicles will not cause demonstrable adverse impact to local residents
- Whether operating schedule indicates that the applicant is taking appropriate steps to comply with the licensing objective of preventing public nuisance
- Whether the licensed activity, particularly if located in areas of the highest levels of recorded crime, may result in a reduction or increase in crime and anti-social behaviour
- Whether the licensed activities are likely to cause adverse impact especially on local residents, and whether, if there is a potential to cause adverse impact, appropriate measures will be put in place to prevent it
- Whether there will be any increase in the cumulative adverse impact from these or similar activities, on an adjacent residential area
- Any representations from a responsible authority or interested party that identify the premises as a focus for disorder and disturbance.

5.6 (5.8) As far as premises in residential areas are concerned, these may be subject to stricter controls with regard to opening hours to ensure that disturbance to local residents is minimised. The Council considers that it is self-evident that the risk of disturbance to local residents is greater when licensable activities continue late at night and into the early hours of the morning. For example the risk of residents' sleep being disturbed by patrons leaving licensed premises is obviously greater at 2 a.m. than at 11 p.m. It is, therefore, the policy of the Council to strike a fair balance between the benefits to a community of a licensed venue and the risk of disturbance to local residents. In predominantly residential areas, therefore, it may not be appropriate to allow closing times later than midnight. It may be acceptable to open later on a limited number of occasions, for example up to 15 times a year. This would allow licensees to extend opening beyond midnight for special occasions such as New Year. However, every application will be determined on its merits, and applicants wishing to operate beyond midnight will need to demonstrate to the satisfaction of the Council, in their operating schedule, that there will be no significant disturbance to members of the public living, working or otherwise engaged in

normal activity around the premises concerned. This policy is aimed at the fulfilment of the licensing objective of “prevention of public nuisance”.

5.7 (6.4) Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained with the intention of preventing crime and disorder. Such measures may include:

- The capability of the person who is in charge of the premises during trading hours or when Regulated Entertainment is provided to effectively and responsibly manage and supervise the premises, including associated open areas
- The steps taken or to be taken to ensure that appropriate instruction, training and supervision is given to those employed or engaged in the premises to prevent incidents of crime and disorder, and where appropriate any relevant qualifications.
- The measures taken or to be taken to raise staff awareness and discourage and prevent the use or supply of illegal drugs on the premises
- The features currently in place or planned for physical security at the premises, such as lighting outside the premises
- Policies adopted to meet appropriate best practice in accordance with existing guidance (e.g. Home Office: Selling Alcohol Responsibly, Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other recognised codes of practice, e.g. British Beer and Pub Association Partnerships Initiative.
- Any appropriate additional measures taken or to be taken for the prevention of violence or public disorder.

5.8 (6.7) Where additional measures have been identified as likely to have an impact on the prevention of crime and disorder at any premises, the Council would expect applicants to detail such measures to be taken in their operating schedules. Such measures may include:

- Provision of effective CCTV with recording facilities both within and outside certain premises
- Crime prevention design, including adequate lighting and supervision of car parks
- Metal detection and search facilities
- Procedures for risk assessing promotions and events such as ‘happy hours’ for the potential to cause crime and disorder, and plans for minimising such risks
- Measures to prevent the use or supply of illegal drugs
- Employment of Security Industry Authority licensed door supervisors and other appropriately trained staff
- Participation in an appropriate Pubwatch Scheme or other similar scheme
- Promotion of safe drinking
- The control of glass and the provision of plastic containers or toughened glass
- Use of radio net system (where available)
- Provisions for dealing with prostitution or indecency

- Provisions for discouraging drinking in public places in the vicinity of the premises
- Policies on dress and music
- Appropriate additional staff training.

5.9 (6.8) All premises applying for licensing beyond 00:00hrs must demonstrate that its customers will be capable of leaving the area without causing a disruption to local residents or impact upon crime and disorder. For example, where appropriate and relevant an assessment of the availability of late night transport, and the likely flow of pedestrian traffic away from the premises, could be included in the operating schedule.

5.10 (6.10) Where either prescribed and/or premises-related conditions have not been adhered to in the past, the Council will expect applicants to have considered and taken action to rectify those issues. Applications are likely to be refused where there are significant outstanding issues.

5.11 (7.5) In considering applications, the Council will expect to see evidence that the applicant has identified matters that impact on the likelihood of public nuisance and that these matters have been addressed in the operating schedule. Such measures may include:

- Measures taken or proposed to be taken to prevent noise and vibration escaping from the premises or in the immediate vicinity of the premises and including any outside areas (including smoking areas) bearing in mind the location of premises and proximity to residential and other noise sensitive premises (e.g. hospitals, hospices and places of worship); This would include music, ventilation equipment noise and human voices, whether or not amplified;
- Measures taken or proposed for management and supervision of the premises and associated open areas to minimise unreasonable disturbance by customers and staff arriving or departing from the premises and delivery of goods and services.
- Control of opening hours for all or part (e.g. garden areas) of the premises
- Measures taken to control light to ensure that it does not stray outside the boundary of the premises such as to give rise to problems to residents in the vicinity
- Steps taken to lessen the impact of parking in the local vicinity
- Measures taken to prevent someone who has consumed excess alcohol from entering the premises and to manage individuals on the premises who have consumed excess alcohol
- Management arrangements for collection and disposal of litter and refuse, and the control of pests
- Arrangements for ensuring that adequate and suitably maintained sanitary provision and washing facilities are provided for the number of people expected to attend any premises or events
- A 'wind down time' after the last service of alcohol, during which time the venue may offer for sale non-alcohol beverages
- A 'last admission time' policy
- Management arrangements for any proposed use of bonfires, fireworks and other pyrotechnics.

- 5.12** (11.7) Standardised conditions will be avoided, although ‘pools of conditions’ will be used from which necessary and proportionate conditions may be drawn in particular circumstances.
- 5.13** (11.8) Conditions attached to licenses and certificates will be tailored as appropriate to reflect the individual style and characteristics of the premises and events concerned.
- 5.14** (11.9) Conditions will not be imposed which are beyond the responsibility or control of the licence holder.
- 5.15** (14.1) “Cumulative impact” means the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. For example, the potential impact on crime and disorder or public nuisance on a Town Centre of a large concentration of licensed premises in that part of the local authority licensing area. In certain circumstances the number, type and density of premises selling alcohol for consumption on the premises may be such that there are serious problems of nuisance and disorder arising or beginning to arise outside or some distance from licensed premises. It is possible that the impact on surrounding areas of the behavior of the customers of all premises taken together is greater in these circumstances than the usual impact from customers of individual premises.
- 5.16** (14.4) When such a special saturation policy is adopted, each application will still be considered properly and on their own individual merit, and licences and certificates that are unlikely to add to the cumulative impact on the licensing objectives will be granted. Following receipt of representations in respect of a new application for or a variation of a licence or certificate, the Council will consider whether it would be justified in departing from the special policy in the light of the individual circumstances of the case. The impact can be expected to be different for premises with different styles and characteristics. It will be for the Council to show that the grant of the application would undermine the promotion of one of the licensing objectives and if it would, that necessary conditions would be ineffective in preventing the problems involved.
- 5.17** (14.5) In considering such applications the Committee will have particular regard to:
- The occupancy figure for the proposed premises.
 - The proximity of the premises to others in the Area licensed for similar activities and the occupancy figures for those other premises.
 - Whether the proposed premises will act as a replacement for others in the Area that no longer have a licence.
 - The proposed methods of management outlined in the applicant’s operational plan.
 - The proposed hours of operation.
 - Transport provision for the Area.

6.0 **CONSULTATION**

- 6.1** All responsible authorities have been consulted. The responsible authorities are; Licensing, Greater Manchester Police, Greater Manchester Fire & Rescue,

Environmental Health & Pollution Control, Health and Safety Team, Home Office Immigration Enforcement, Planning Department, Safeguarding Children Team, Trading Standards and Public Health.

- 6.2** There have been two valid representations from other persons. Both of these representations are concerned with the nuisance associated to the external area including car park. The representations in full have been attached as **Appendix C**.
- 6.3** One Representation was submitted by a Responsible Authority of Pollution Control. This representation was satisfied with a proposed amendment to the application as follows:
- 6.4** “Customers should not be permitted to use the beer garden / outside area beyond 21:00hrs except for the purposes of smoking, however, no food or drink shall be taken into the area after 21:00hrs.”
A copy of this correspondence between Environmental Health Officer and the Applicants Solicitors is included as **Appendix D**.
- 6.5** A copy of the report and all representations received have been sent to the applicant.
- 6.6** Those that have made representations have been informed of the time and date of the Licensing Sub-Committee meeting and have been informed of their right to attend.

7.0 LEGAL CONSIDERATIONS

- 7.1** Conditions may only be attached to a Premises Licence where they are deemed appropriate for the promotion of the licensing objectives. They must be proportionate and not duplicate any existing provisions contained in other legislation. The justification behind a refusal or the attachment of conditions must be given to the applicant.
- 7.2** There is a right of appeal to the Magistrates Court by any party aggrieved by the decision of the Licensing Sub-Committee.