

# Licensing Sub-Committee report



milton keynes council

## Application for a New Premises Licence

Premises	Ousebank House, Ousebank Street, Newport Pagnell
Date of Application	11 June 2020
Application Reference	155650
Report Author	<b>Adam Ward</b> Licensing Officer 01908 252431

Exempt / confidential / not for publication

**No**

### 1. Purpose

- 1.1 To determine a New Premises Licence application submitted under Section 17 (of the Licensing Act 2003 (“the Act”) by Mr Jim Campbell and Ms Susan Greenwood (“the applicant”). The application is attached at **Annex A** to this report.
- 1.2 The application has undergone the prescribed statutory consultation process of being given to the specified responsible authorities, advertised by the positioning of a blue notice on/near to the premises and advertised in the local newspaper. In addition to the statutory process, the Licensing Team additionally notified the relevant parish council, ward councillors and all properties within 50 metres of the proposed site.
- 1.3 As the relevant local Licensing Authority, Milton Keynes Council (“The Council”) has had its discretion engaged following the receipt of relevant representations from local residents and the application, therefore, requires determination by a Licensing Sub-Committee. The representations received are attached at **Annex B**.
- 1.4 One further representation was received from the Licensing Authority itself in its role as a responsible authority, attached at **Annex C(i)**. The conditions proposed by the authority were agreed by the applicant, attached at **Annex C(ii)** and refer to the plan submitted with the application at **Annex C(iii)**

specifying where consumption of alcohol may take place outside the premises. No other representations were made by any other responsible authority in respect to the application.

## **2. Actions and Options**

- 2.1 Section 4 of the Act requires the Council, as the Licensing Authority for its area, to carry out its functions with a view to promoting the four licensing objectives. These objectives are:
- (a) the prevention of crime and disorder;
  - (b) public safety;
  - (c) the prevention of public nuisance; and
  - (d) the protection of children from harm.
- 2.2 Each objective is of equal importance and no issue that is not related to either of the above objectives can be considered by the Sub-Committee when making its determination.
- 2.3 Under section 17 of the Act the Sub-Committee has available to it, the following options:
- (a) to grant the licence as applied for subject to:
    - (i) the mandatory conditions required to be imposed under the Act<sup>1</sup>;
    - (ii) the conditions consistent with the applicants operating schedule as may be modified as the Sub-Committee consider appropriate for the promotion of the licensing objectives.<sup>2</sup>;
  - (b) to exclude from the licence any of the licensable activities applied for or to amend the times in which they occur;
  - (c) refuse to specify the individual proposed in the application as the designated premises supervisor; or
  - (d) reject the application in its entirety.

## **3. Issues**

### **3.1 History**

The premises were previously known as the Royal British Legion (RBL) and a Club Premises Certificate (CPC) held by the RBL currently has effect in relation

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<sup>1</sup> These are stated at Section 19 and 19A of the Licensing Act 2003.

<sup>2</sup> Modification means the addition of new conditions or the removal or amendment of existing conditions.

to the premises. A copy of the certificate is attached at **Annex D** to allow comparison with the new application. The relationship between the RBL and the club is coming to an end and a community interest company has been set up to acquire the lease for Ousebank House and to continue to operate the premises. An application for a New Premises Licence has therefore been applied for.

The hours and activities of the new application are predominantly the same as those of the CPC.

### 3.2 Comparison with Current CPC

The CPC permitted alcohol to be sold Monday to Saturday 10:30 - 01:00 and Sunday 11:00 - 00:00. Live music and recorded music is permitted Monday to Friday 11:00 - 23:00, Saturday 11:00 - 00:30 and Sunday 11:00 - 22:30. The terminal hour by which the premises must be closed each day is Monday to Saturday 01:30 and on a Sunday 00:30.

The new application requests that alcohol is permitted Monday to Thursday 11:00 - 00:00, Friday 11:00 - 01:00, Saturday 11:00 - 01:30 and Sunday 11:00 - 23:00. Recorded music is requested Monday to Thursday 12:00 - 22:00, Friday 12:00 - 00:00, Saturday 11:00 - 00:00 and Sunday 11:00 - 22:00. Live music is requested on a Friday 20:00 - 23:59, Saturday 12:00 - 00:30 and Sunday 12:00 - 22:00.

The application did not state any opening/closing times (effectively drinking up time) for any day other than a Saturday. The Licensing authority (as a responsible authority) therefore suggested, and the applicant agreed, to a condition that the last sale of alcohol will be 20 minutes before the terminal hour for alcohol applied for Sunday to Friday.

The application, if granted as it has been applied for, would result in the times that alcohol can be sold Monday to Thursday being 1 hour and 20 minutes less than currently permitted and 70 minutes less on a Sunday. Alcohol will also be sold 20 minutes less than currently permitted on a Friday. The application however requests an additional 30 minutes on a Saturday (until 01:30 - closing at 02:00).

If granted, a new licence would result in no Live Music other than on a Friday, Saturday and Sunday, whereas presently this is permitted seven days a week from 11:00 to 23:00 Monday to Friday, 00:30 Saturday and 22:30 Sunday (22:30). Whilst Live music is requested for an overall duration of less than is currently applied for on the Friday from 20:00 until 23:59 (59 minutes longer than current); Saturday Noon to 00:30 (same as currently permitted) and Sunday until 22:00 (30 minutes less than permitted).

### 3.3 General difference between Premises Licence and CPC

The significant difference is that a CPC can only be held by a bona fide members club. A “designated premises supervisor” is not needed in a club premises and alcohol does not need to be authorised by a personal licence holder.

In order to qualify for holding a CPC a club must have at least 25 members and its own written rules. 48 hours must elapse between a member joining a club and being permitted to drink within the club. However, guests of a member are permitted to drink within the club with no waiting period and there is no statutory limit on the number of guests a member can sign in.

Licensing Officers and Police officers have limited rights of access to enter and inspect club premises than those premises that hold a premises licence.

Due to the relationship with the RBL ceasing the applicants have applied for a premises licence which does not tie them to the requirement that they are open only to members and can therefore operate more as a pub with less regulation over the conduct of patrons. Whilst the applicant has stated that they do not intend to depart radically from what they currently do the possibility of the operation being radically different remains a concern for residents.

### 3.4 Complaints

There have been a number of complaints made in respect to the premises over the last ten years. These mainly relate to noise nuisance from entertainment carried out in the club, nuisance caused by patrons at the rear of the premises and nuisance caused by patrons at the front of the premises.

These are included at **Annex E** which further details the area to which the complaint relates (i.e. front) and whether the Council found either a breach, no breach or the complaint was not verified<sup>3</sup>.

There are cases where breaches of the licensing objectives have been found and prior to the implementation of a noise limiter an Environmental Health Officer was of the belief that a statutory nuisance was affecting the occupants of the adjoining property.

A previous Sub-Committee in respect to a variation to the old CPC imposed some conditions in recognition of this (a noise limiter) and imposed additional conditions in respect to the use of the outside area.

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<sup>3</sup> Not verified simply means that the Council did not visit the premises at the time of the complaint and could not verify that a breach occurred.

Whilst there were still complaints after the imposition of those conditions, they appear to have had the consequential effect of moving patrons to the front of the premises. Complaints from the adjoining property therefore ceased and complaints began to be received by the Council from residents affected at the front of the property.

The concerns in respect to the application can be summarised as follows:

- (a) Noise disturbance from regulated entertainment. Both in terms of its effect on the adjoining property and residential homes across the street.
- (b) Noise from the front of the premises, patrons seated at the tables smoking.
- (c) Noise and smoking from the rear of the premises.
- (d) Persons leaving the premises in the evening.
- (e) General Anti-social behaviour of individuals in the area who may or may not be patrons of the premises.

### 3.5 Evidence

It is evident from the complaints that activities at the premises have, at times, undermined the licensing objectives. In some instances, these have been established as an actionable nuisance, in other's there is difference of opinion as to the cause.

Since 2005 the CPC has, under the provisions of the Act, been capable of being reviewed by any resident if they considered that the licensing objectives were being undermined. Whilst there have been a number of complaints over the last 10 years an application for review has never been made and the complaints made to the Responsible Authorities have not appeared sufficient in either their nature or frequency to indicate that there is a substantial problem.

The conclusion that would ordinarily be drawn from this is that the premises does not undermine the licensing objectives for carrying out licensable activities for the times it currently holds a licence for. Based on this evidence it would be difficult for a Sub-Committee not to grant this application where the hours and activities are the same as currently operated under the CPC.

However, the Sub-Committee must consider this application on its own merits. It appears that the residents are of the opinion that they are affected more frequently and more severely than the complaints made to the Council would suggest.

Residents believe that patrons outside the premises cause a nuisance by smoking and drinking outside and when leaving the premises late in the evening. The applicants believe that this is not caused by patrons of their premises but those who have been to other premises on the Newport Pagnell High Street.

The adjoining property has reported urination by patrons along their fence and people drinking and smoking outside in the rear part of the garden. The Club has stated that this is not done by their customers but other people who take alcohol and drink in Ousebank gardens late at night.

The Licensing Authority has no evidence to confirm if it is, or is not, the patrons of the club that are causing the problems alleged, nor how severe these issues are. Included at **Annex F** is a list of all premises licensed in the area of the Newport Pagnell Town Centre, the area and the walking distance from the premises.

If this licence is granted as applied for, with the last sale of alcohol as being 01:30am on a Saturday and closing at 2am, it would have a later licence than most in the area. There would however be two premises licensed to operate until later - the Swan Revived Hotel/ Frog and Nightgown (last sale 2am closed to the public at 02:30) and Newport Pagnell Kebabs (closing at 3am).

Both the Swan Revived and Newport Pagnell Kebabs are the closest two premises to Ousebank House - the Swan 123 metres and 2 minutes away and Newport Kebabs less than 1 metre and 1 minute away. In addition to this all the premises listed at **Annex F** are less than 10 minutes' walk from the area outside the front of Ousebank house and Ousebank gardens.

Whilst this does not mean that the problems affecting residents are not caused by patrons of Ousebank house, the possibility remains that they are caused by patrons from other establishments. It is likely to be a case of both but it is difficult for the Licensing team to sufficiently enforce and resolve this issue.

Whilst tables and chairs are provided outside the front of Ousebank House by the club they are currently left in a useable position for members of the public even when the club is closed. In addition to this, there is a public bench directly outside the club that can be used and which the club has no control over.

Without sufficient evidence provided to the Sub-Committee that Ousebank House is responsible for these problems the possibility remains that any action taken in respect to this application will not resolve the issues.

### 3.6 Proposed Conditions

The operating schedule submitted by the applicant was sparse in terms of its detail and did not include any of the conditions that were applicable to the current CPC. Officers consider this to be due to the inexperience with filling out such application forms rather than any intent to depart radically from the conditions currently imposed on the CCP. Some additional conditions were agreed with the Licensing Authority in its role as a responsible authority.

Once the level of concerns from residents had been raised, the Case Officer sought to resolve these by discussing further conditions with the applicant. The Licensing Act and its guidance encourages a collaborative approach to licensing to resolve issues informally. As Officers do not have the power to refuse an application or to impose conditions, discussions over conditions rely on what an applicant is prepared to offer and what an objector is willing to accept.

The Case Officer believes that the conditions are a good compromise given that the evidence available does not prove that the applicant's premises are responsible for all the concerns raised. However, if they are, the conditions would allow them to be identified and for action to be taken. If complaints continue to be made and the premises are compliant with the conditions, it would enable the Licensing Team to look more widely at other causes of the issues.

These additional conditions were sent to each of the residents that objected to the grant of the application. No formal agreement was made by any resident and as such the application still needs to be determined. The conditions proposed are contained in **Annex G**.

The Sub-Committee however are not bound by any condition proposed and may disregard all or some of them, based upon the evidence that they hear and whether they think the conditions are appropriate for the promotion of the Licensing Objectives.

## 4. Implications

### 4.1 Policy

Section 4 of the Act requires the Licensing Authority, when carrying out its licensing functions, to have regard to its statement of licensing Policy. A link to the full Policy is at the end of this report. Extracts which may be of relevance to the determination of this application can be found at **Annex H**.

### 4.2 Statutory Guidance

Section 4 of the Act requires the Licensing Authority, when carrying out its licensing functions, to have regard to the Guidance issued by the Home

Secretary under Section 182 of the Act. A link to the full Guidance is at the end of this report but extracts which may be of relevance to the determination of this application can be found at **Annex I**.

#### 4.3 Legal

The Sub-Committee is required to determine each application on its own merits having regard to the licensing objectives; the guidance issued under Section 182 of the Act and the Council's statement of licensing policy. Where it is appropriate for the sub-committee to depart from its Policy or the Guidance clear reasons must be given for doing so.

The decision that the Sub-Committee can make is restricted to the options set out in Section 18 of the Act (see paragraph 2.1 above).

#### **Background Papers:**

Statement of Licensing Policy: <https://www.milton-keynes.gov.uk/assets/attach/16458/Milton%20Keynes%20Council%20Adopted%20Licensing%20Policy%20Statement%202018-2023.pdf>

Section 182 Guidance:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705588/Revised\\_guidance\\_issued\\_under\\_section\\_182\\_of\\_the\\_Licensing\\_Act\\_2003\\_April\\_2018\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf)