

Report of Application:

Crauford Arms, 59 Stratford Road, Wolverton

Application Reference No: 142723

1. Summary of Application

1.1 This is a variation application to an existing premises licence held by Punch Taverns. The existing licence is provided at **Annex 1**. The application detailing the changes sought is provided at **Annex 2**. Please note that some of the application has been modified in light of representations. A table of what is now sought is provided at **Annex 3**. In effect the application seeks in the main to increase the hours for certain types of regulated entertainment to match the hours in place for supply of alcohol.

2. Background Information

2.1 This licence has become very detailed in terms of conditions and restrictions because of the history of the premises. In summary the premises have held a premises licence since 2005 and before that were licensed by the Magistrates. In 2005 the premises were granted permission for alcohol and entertainment until 2am. In 2011 some of the restrictions in terms of entertainment in place were lifted by a further application. In 2012 the premises were subject to a review application following noise and compliance issues and the entertainment was restricted to 11pm and alcohol to midnight. In 2014 an application was granted to restore the alcohol hours back again to 2005 levels and this latest application seeks to restore certain elements of entertainment to the same (but not Live music). The cumulative effect of these applications has led to a large number of licence conditions most of which remain as part of this latest application although there is an element of tidying up

2.2 Currently the premises have established itself as a 'gig' venue hosting bands etc. in a rear function room. The building along with most of the houses in the area appears Victorian. It is a large premises with three distinct areas although one part (The Windsor Bar) remains out of use and will not be affected by this application

2.3 The premise is situated on the main road through Wolverton and has houses to the side and rear. Photographs are provided at **Annex 4**. Plans are provided at **Annex 5** that shows the proximity to other premises as well as those locally who have made representations. There is a premises plan at **Annex 6**. Larger versions will be provided at the hearing.

- 2.4 There is some dedicated parking on site, as well as street parking in the area albeit limited as this is a residential area.
- 2.5 This latest application seeks to restore some elements of entertainment but Live Music will remain restricted to 11pm on most occasions. Opening hours are largely unaltered but it's what can take place within those hours that is changing.
- 2.6 An examination of the Council's Environmental Health and Licensing records indicate there have been a history of complaints against this premises and for information records are provided later in this report. The premises have previously been subject to a Review application and a noise abatement notice was served in 2012. Whilst occasional complaints have continued the Environmental Health Dept have not substantiated a nuisance. As part of the application process the Licensing Officer inspected the premises in respect of compliance with the existing conditions. The premises were largely compliant and a letter at **Annex 7** was produced
- 2.7 During the last two years the premises has had a number of extensions under the TENs procedure. These appear to have passed off without complaints although the committee should bear in mind that a lack of complaints does not prove there is a lack of a problem. Details of TENs (and hours concerned) and complaints received are produced at **Annex 11**.

3. **Promotion of Licensing Objectives**

- 3.1 You will note from one of the representations that there is a concern about noise from late night customers attending / leaving and also about music noise. The existing conditions on the licence should be sufficient to prevent music noise causing disturbance and there is a noise management plan aimed at minimising customer noise. However, the representation against the application suggests these are not adequate or not always being complied with. It could be expected that the background noise on the Stratford Road will decrease into the early hours of the morning and so any additional noise caused by this application may worsen the levels of disturbance.
- 3.2 Those who have provided representation against the application have been asked for more details on existing disturbance.
- 3.3 The Sub-Committee should be aware that the condition 2.13 requiring that entertainment noise be inaudible is unenforceable following case law judgement but remains on the licence as no application has been made to remove it by the applicant

4. **Responsible Authorities**

- 4.1 There is no representation from responsible authorities but a condition was agreed with the Police that '*The Police and Milton Keynes Council be notified a minimum of 14 days in advance of any boxing / wrestling (or similar) event.* This should be applied to any grant.
- 4.2 The Environmental Health Officer has made comments to the applicant but made no representation (see **Annex 8**).

5. Other Persons

- 5.1 The Licensing Authority received a total of 33 representations on this application. Three were withdrawn after dialogue between them and the applicant (leading to changes to the hours for sporting events and retention of a taxi condition).
- 5.2 Five were rejected as being out of time or failing to provide an address.
- 5.3 Of the remaining 25, one raises concerns in respect of public nuisance. The other 24 are positive representations that the application should be granted (one person made a double person representation as a business and a resident).
- 5.4 **Annex 9** lists the positive representations; **Annex 10** details the resident who raises concern.
- 5.5 The Licensing Act allows representation from most persons and vicinity is no longer a test as for it to be accepted. Neither is there anything to prevent 'positive' representations being submitted.
- 5.6 However the Sub-Committee may wish to consider the location of those making representations when considering the public nuisance objective in terms the weight they can give them. Those making representations living in Wolverton are shown on a plan at **Annex 5** and are not all living close to the venue. Other representations have come from people as far afield as Caldecotte, Hartwell; Two Mile Ash; New Bradwell; Monkston; and Yardley Gobion

6. Policy Considerations

Relevant sections of the Guidance issued under Section 182 of the Licensing Act 2003.

- 1.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:
 - protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
 - giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;• recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;
 - providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to

make and enforce decisions about the most appropriate licensing strategies for their local area; and

- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them

1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions: must be appropriate for the promotion of the licensing objectives; must be precise and enforceable; must be unambiguous and clear in what they intend to achieve; should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation; must be tailored to the individual type, location and characteristics of the premises and events concerned; should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case; should not replicate offences set out in the 2003 Act or other legislation; should be proportionate, justifiable and be capable of being met; cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and should be written in a prescriptive format.

2.14 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate 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 effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.15 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 may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

2.18 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by

unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping..... In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave

- 2.20 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals 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 exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.
- 8.36 It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises in close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application.
- 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..... In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives.....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.
- 9.9 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.
- 9.36 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation.

9.37 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties; this Guidance; its own statement of licensing policy.9.42 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

9.43 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination

10.14 Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.

Licensing Authorities Statement of Licensing Policy 2013 - 2018

3.2 The following will also be relevant:

Each application will be determined on its own merits having regard to the licensing objectives; relevant guidance including that issued under Section 182 of the Licensing Act 2003, and local criteria.

The Council's Legal officer will ensure that the rules of 'natural justice' will be applied at all times during hearings or reviews.

The right of any individual or body to apply for a variety of permissions is not undermined.

The statutory right of any responsible authority or other person to make appropriate representations to an application or to seek a review in respect of a granted authorisation where appropriate is accepted.

The impact of the activities taking or proposed to take place at a licensed premises or businesses or individuals who are likely to be affected by it.

There is no presumption of grant under the Licensing Act.

5.3.3 The licensing authority is likely to impose stricter conditions regarding noise control for those premises that are situated close to residential areas if relevant representations are received. In these situations the licensing authority will expect the applicant to have scoped the potential for public nuisance including noise and/or vibration nuisance, and to have factored in suitable control measures within their operating schedule.

5.3.9 All persons including businesses, groups and individuals who are likely to be affected by any application have equal rights to make observations both for or against an application for a premises licence / club premises certificate, as do members of the licensing authority and other organisations that fulfil the definition. However, the licensing authority will disregard irrelevant, frivolous and vexatious representations.

10.2 When considering contested applications the licensing sub-committee must have regard to the licensing objectives this could include reference to the following information:

The occupancy figure for the proposed 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 applicants operating schedule

The proposed hours of operation

The proposed licensable activities

The impact on the emergency services

The views of police, including crime and disorder statistics along with the seriousness and nature of previous incidents occurring at similar premises in the locality

Compliance history of the applicant.

17.1.6 Conditions will accurately reflect the individual style, location and characteristics of the particular premises, and be clear, unambiguous, and proportionate.

17.5.1 The licensing authority wishes to protect the amenity of residents and businesses in the vicinity of licensed premises and for these purposes 'in the vicinity' is taken to mean the immediate area around licensed premises without any stated distance criteria. Matters of concern will be dealt with on an individual basis

17.5.4 The licensing authority will also consider representations made by relevant persons or responsible authorities on the adequacy of measures proposed to deal with the potential for nuisance and/or anti-social behaviour having regard to all the circumstances of the application. These could include the steps taken or proposed to be taken by the applicant regarding the following issues:

Excessive noise and vibration escaping from the premises, including music, noise from mechanical ventilation equipment and human voices.

Disturbance by customers, staff, delivery vehicles or contractors arriving at or leaving the premises. This will be of greater importance between 11p.m. and 7a.m.

Queuing either by pedestrian or vehicular traffic on land under the applicant's control.

Arrangements made or proposed for parking by patrons, and the effect of parking by patrons on local residents.

Use of gardens and other open-air areas within the curtilage of the premises.

Siting of external lighting.

Increase in refuse storage or additional littering in the vicinity of the premises.

Previous history of nuisance complaints.

Potential for odour nuisance.

Confidence in the management to deliver the control measures proposed.

2.3 Variations of Licences

2.3.1 Applications to vary a premises licence will be dealt with in a similar manner to applications for a new premises licence. If relevant representations are not received the application for variation will be granted.

2.3.2 If relevant representations are made and not withdrawn the licensing authority will hold a hearing and at that hearing the licensing authority may:

- modify the conditions of the application; or
- reject the whole or part of the application.

2.3.3 The licence will not be varied so as to:

- extend the period for which the licence has effect; or
- vary substantially the premises to which it relates.

2.3.4 The licensing authority may vary a premises licence so that it has effect subject to different conditions in respect of:

- different parts of the premises concerned; and
- different licensable activities.

7. **Officers Observations**

7.1 This is an unusual application because it has received so many representations in favour and only one raising concerns. The only issue of contention surrounds public nuisance should the application be granted. Those making representations do not generally live close by although many are in the area.

8. **Associated Papers**

None.

Contact Officer For further information on this application please contact Ed Fisher on telephone 01908 252409 or e-mail: eddie.fisher@milton-keynes.gov.uk.