

# Licensing Sub-Committee report



26 November 2020

## DETERMINATION OF LICENCE CONDITION FOR NEW PREMISES LICENCE FOR OUSEBANK HOUSE, OUSEBANK STREET, NEWPORT PAGNELL.

Application                      **155650**

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publication

**No**

### 1. Purpose

- 1.1 To determine a condition to be imposed on a new premises licence granted by the Licensing Sub-Committee.

An application, submitted by Mr Jim Campbell and Ms Susan Greenwood (“the applicants”) under Section 17 (of the Licensing Act 2003 (“the Act”) in respect to Ousebank House, was considered by a Licensing Sub-Committee on 19 October 2020. That Sub-Committee determined that the application should be granted subject to conditions. One of these conditions related to the occasions when the rear door could be open, and the Sub-Committee directed the Licensing Officer and Legal Officer to word a condition to be agreed by the applicant and objector. Should the applicant and objector be unable to agree the matter was requested to return to the Sub-Committee. The initial report and the decision notice can be read on the Council’s website:

<https://milton-keynes.cmis.uk.com/milton-keynes/Calendar/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/6774/Committee/1361/Default.aspx>

### 2. Actions and Options

- 2.1. Section 4 of the Act requires the Licensing Authority to carry out its licensing functions with a view to promoting the four licensing objectives:

- (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. On 19 October 2020, the Sub-Committee had options to grant the application as applied for or subject to conditions or to take steps to exclude activities, reduce hours or refuse the application<sup>1</sup>: The Sub-Committee granted the application subject to the conditions consistent with the operating schedule as modified by the Sub-Committee.
- 2.3. The conditions consistent with the operating scheduled were those in Annex G of the initial report and the modifications made by the Sub-Committee were:
- (a) an amendment to condition 3 to clarify that off-sales related only to the consumption of alcohol at the tables to the front of the premises;
  - (b) adding a condition that a smoking area be created at the front of the premises; and
  - (c) an amendment in principle to condition 18, in respect to the rear door of the premises, to either be agreed by both parties or to return to a Sub-Committee.
- 2.4. As a decision in principal has been made, the option available to the Sub-Committee at this hearing (26 November 2020) is limited to determining the appropriate condition(s) or action(s) in respect to resolving the concerns raised in respect to the rear door (condition 18).

### 3. Issues

- 3.1. The report before the 19 October Sub-Committee detailed that the premises, previously known as the Royal British Legion (RBL), had operated for a number of years and had, in that time, been subject to complaints. The complaints related to noise nuisance from entertainment carried out in the club and noise nuisance caused by patrons at the rear and front of the premises.
- 3.2. Not all of the complaints made about the premises had been verified or made with significant frequency. The Licensing Authority and the other responsible authorities had no current concerns and there was not sufficient evidence for the authorities to consider that the licensing objectives were being undermined.

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<sup>1</sup> Under Section 18 of the Licensing Act 2003 see para 2.2 of the initial report.

- 3.3. The Sub-Committee resolved all matters other than the wording in relation to condition 18 of Annex G (the conditions offered by the applicant). This condition stated that the rear door would be closed at all times but at the hearing the applicants asked if this could be amended so that the door could be opened during hot weather for the purpose of allowing fresh air into the building.

#### The Applicants' Issue

- 3.4. A plan is attached as an **Annex** to this report and shows the layout of the premises<sup>2</sup>. On the left hand side of the ground floor, members will note that between "the pool room" and the "main bar" there is a lobby - this leads onto the rear door in question (labelled as the emergency exit).
- 3.5. The applicants believe that in order to resolve concerns raised by neighbours in the past they have limited their options on bringing fresh air into the building. The windows facing Ousebank gardens (to the left of the rear door) are double glazed and closed at all times and the air vents filled with insulation to prevent noise escape. When the rear door is closed the lounge bar area has no fresh air coming into it and the club have stated that on hot days, patrons have passed out as a result.

#### The Objectors' Concern

- 3.6. The concern that Mr and Mrs Marsh have is not the rear door itself but nuisance associated with its use which results in the following:
- (a) patrons using the door for access and egress creating noise;
  - (b) patrons using the rear area to smoke and congregate causing noise and odour nuisance'
  - (c) noise escape from patrons talking within the premises; and
  - (d) noise escape from entertainment held within the premises;
- 3.7. Due to these concerns, a previous Sub-Committee attached to the Club Premises Certificate the following conditions:
- (a) the rear door shall be closed at all times;
  - (b) the fire door at the rear of the lounge shall be closed at 10pm; and
  - (c) the shutters on the windows facing Ousebank gardens be drawn at 10pm.

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<sup>2</sup> This plan is from the original application submitted in 2005 and is not the current plan.

- 3.8. It may be the case that despite the above conditions, in hot weather the RBL opened the rear door to cool the premises. There has not been any complaint recorded on the Council's system about the rear outside area since 2013. The Sub-Committee may therefore wish to examine the extent of the problem, the volume, frequency and time to determine if the door should be permitted to open at all or if there is an alternative option, such as the already imposed condition that a smoking area be created at the front.

#### Temperature

- 3.9. At the 19 October hearing the Sub-Committee proposed that the licence be granted subject to a suitably worded condition that would set a temperature restriction as to when the door was permitted to be open to cool the premises. The best guidance that could be found on an appropriate temperature was in reference to Health and Safety Legislation.
- 3.10. However, the effect of an indoor temperature on a person is subjective and dependent upon one's own tolerances. For this reason, there is no maximum temperature for an indoor workplace. A number of UK guidance documents refer to World Health Organisation research stating that the maximum temperature for working in comfort in an office should be 24 ° (degrees Celsius). Temperatures 25° and above start to become uncomfortable -albeit that does not necessarily effect health.
- 3.11. There has also been suggestion by a number of trade unions, and also the subject of a private members bill, that a maximum temperature of 30° should be set in British workplaces. However, it is also noted by unions that 30° is the absolute maximum, and work places regularly hitting 27° would be endangering health.

#### Discussion regarding Conditions

- 3.12. The Licensing Officer felt that the best temperature to refer to was 25° and proposed a condition that the door could be open when the temperature was 25° or above but must be closed in any event at 10pm. The applicants however do not wish for the door to close at 10pm if the temperature remains above 25°.
- 3.13. The drafted condition referencing the 25° temperature and 10pm cut off was proposed to Mr and Mrs Marsh. They felt that the 25° temperature was too low and feared the door would be open continually throughout the spring and the summer. They felt that the applicants should consider other measures to ventilate the premises prior to opening the door, such as fans and air conditioning etc. A further condition was proposed with 30° as being acceptable to them for the door being open. They also suggested that the applicants should open the sash window at the rear and not the door.

- 3.14. The applicants also wish for the door to be open on their annual duck hunt event, but this would end at 6pm and Mr and Mrs Marsh did not wish to object to the door being open on that event. As both parties were some distance apart in respect to the temperature the issue needs to be resolved by a Licensing Sub-Committee.

Choices of Condition

- 3.15. The first condition proposed to, and agreed by, the applicants was set around the 25° temperature and is as follows:

- 18. The rear door of the premises (fire exit) shall not be used by patrons to enter or exit the premises at any time and the door shall remain closed at all times, except for:**

- (a) on any occasion between 10:00am and 10pm when the natural ambient temperature (i.e. without the use of any heaters, radiators etc.) inside the public area of the premises is measured at, or above, 25 degrees Celsius. The premises licence holder shall take reasonable steps to monitor the internal temperature and to close the door as soon as practicable after the temperature is below 25 degrees Celsius;**
- (b) on the occasion of the annual duck race event, which shall occur only once in any one period of 12 months, and unless condition (a) applies, shall be closed at 6pm; and**
- (c) in the event of an emergency.**

- 3.22 As the above condition did not address the concerns of the objector, Mr and Mrs Marsh proposed the following condition (set around 30°)

- 18(1) The rear door of the premises (fire exit) shall not be used by patrons to enter or exit the premises at any time and the door shall remain closed at all times, except for:**

- (a) any occasion between 10:00am and 10pm when it is reasonably necessary for health and safety reasons in line with Condition 18(2);**
- (b) on the occasion of the annual duck race event in line with condition 18(3); and**
- (c) in the event of an emergency.**

**18(2)**

- (a) it will be reasonably necessary for the health and safety of customers to open the rear door where the internal ambient temperature (i.e. without the use or operation of any heaters, radiators etc.) inside the public area of the premises is measured at, or above, 30 degrees Celsius;**
- (b) it is expected that the premises licence holder shall, prior to opening the rear door and in line with its statutory required health and safety at work risk assessment, take other reasonable steps to manage the internal temperature between 25 and 29 degrees Celsius by using other means such as fans or portable air conditioning units; and**
- (c) when the door is open in line with this condition, a record shall be taken by the premises licence holder of the time and the temperature recorded. Further checks of the temperature will be taken at reasonable intervals during the period that the door is open and promptly in the event of obvious temperature or weather changes. Each temperature check shall also be recorded noting the time and the temperature. A record shall be kept of the time the door was closed and the temperature recorded at that time. The record of the times and temperatures shall be kept at the premises and maintained for inspection by a Licensing Officer.**

- 18(3) The Rear Door shall be permitted to open when the Annual Duck race event is held. This shall be on one occasion in a 12 month period only and the door shall be closed promptly at 6pm unless the provisions of condition 18(1)(a) apply.**

**Further consideration for the Sub-Committee in respect to the Conditions**

- 3.23. Health and safety legislation requires a business to assess dangers to their employees and other persons and to take action where a risk is identified. If the Council set an arbitrary temperature limit that is too high, it could result in a licence holder having to choose between breaching their licence conditions or their lawful health and safety obligations. For instance, if the temperature is set at 30° but for several days the internal temperature is 29° and the door is not open, there could be an impact on individuals health.
- 3.24. It is unlikely that the Council could take action against a licence holder for breaching a condition if the result of compliance would have resulted in injury to another person. In effect, a condition, with the temperature set too high, could be unenforceable and a condition with the temperature set too low could result in it not having any practical effect.

- 3.25. The Sub-Committee may impose any condition they consider appropriate for the Licensing objectives. The Home Office guidance to Licensing Authorities states that conditions “should be proportionate, justifiable and be capable of being met.<sup>3</sup>” What is proportionate and justifiable depends on the extent of the problem complained of balanced with how reasonable it is for the premises to comply.
- 3.26. If the Sub-Committee is satisfied that a nuisance exists to such extent, frequency and duration and can be controlled in no other way, it may condition the door to be closed at all times. The applicants would have to make a commercial decision as to what changes would need be made to operate in that situation. This could be the installation and cost of air conditioning units or ceasing to trade. If the problem is less frequent or severe a condition that could put the applicant out of business or cost significant amount to comply would not be proportionate. Conditions could perhaps instead focus on the times that are more noise sensitive (the guidance suggest 11pm to 8am).
- 3.27. If the Sub-Committee is not satisfied that a condition is proportionate to the evidence of the problem before it, the benefit of the doubt should be given to the applicant. It is a licence holders’ obligation to always promote the licensing objectives and, in this sense, they are always on “probation.” If after the grant of a licence it is clear that a measure imposed has not worked, or the licence holder not able to sufficiently manage an issue, the licence can be reviewed, and a stricter condition imposed, or the licence revoked.
- 3.28. In determining the appropriate condition, the Sub-Committee may wish to look at the evidence of the problem and the likelihood of it occurring and what other control measures can be used (if any). For instance, is the problem more related to people entering and exiting the premises, the noise of entertainment escaping, people talking inside the premises or people congregating outside?
- 3.29. The issue of people smoking outside may be resolved by the condition already imposed by the committee requiring a smoking area at the front of the premises. An additional condition stating that “Customers shall not be permitted to use the rear fire door to either enter or exit the premises, nor to smoke, drink or otherwise congregate outside that door” could also revolve part of the issue.
- 3.30. To this end, it was suggested at a site visit that occurred on Friday 13 November, that a stable door (bottom permanently closed) could be installed inside the premises which would prevent access/egress but would

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<sup>3</sup> 1.16 of section 182 guidance.

not necessitate the rear door to be closed and allow air into the premises. A sign could also be posted stating no entry.

3.31. Other options that could be considered are:

- (a) the rear door to be closed when regulated entertainment occurs;<sup>4</sup>
- (b) a time set where the door is permitted to open and when it has to be closed (regardless of temperature) such as being closed every day at 6pm, 8pm, 10pm or 11pm;
- (c) the windows facing Ousebank gardens to be opened instead of the door;
- (d) insulation to be removed from the air vents; and
- (e) licence holder to install air conditioning.

3.32 If the Sub-Committee is satisfied that a nuisance will be caused to the objectors it would not be right to allow this to occur, just because it is too hot inside the premises. However, if other control measures could resolve the issue, it may not be necessary to stipulate a specific temperature exemption at all, for when the rear door can be open and control the concern in another way.

3.33 If, after considering all the issues, the sub-committee believe that it is not proportionate or justifiable to require the premises to have the rear door closed on extremely hot days, it should consider which of the conditions outlined in paragraphs 3.21 and 3.22 to apply, subject to such modification that the Sub-Committee may wish to make and having considered what other measures may be reasonably available to the applicants to cool the premises.

3.34 If the Sub-Committee find that no condition is appropriate to resolve the issues and that without such a condition the licensing objectives will be undermined, the normal response would be to consider refusing the application. Given that an initial decision has been made subject to a condition, it is recommended that should the Sub-Committee find itself in this position, the hearing be adjourned and the whole matter considered afresh.

## 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 but extracts which may be of

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<sup>4</sup> This would not apply to entertainment activities that are de-regulated.



relevance to the determination of this application can be found at Annex H of the original report.

#### 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 of the original report.

#### 4.3 Legal

The Licensing 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.

### 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)