

ITEM 3

Licensing Sub-Committee

8 November 2006

Report of: Licensing Officer
Application: Frosts Garden Centre, Newport Road, Woburn Sands
Application 091895
Reference No:

1. APPLICATION

Summary of application

Application for new premise licence to permit live music, recorded music and the supply of alcohol for consumption on and off the premise

Existing Activities & hours

None

Proposed Hours

Regulated Entertainment:

Monday to Sunday 10.00 to 20.00

Alcohol

Monday to Saturday 09.00 to 23.00

Sunday 12.00 to 23.00

2. BACKGROUND INFORMATION

This is an application for a retail garden centre with restaurant. The restaurant part of the premise has an existing premise licence in place for the supply of alcohol, recorded music and late night refreshment.

A copy of the application is provided in Annex A.

Details of licence reviews:

None

3. PROMOTION OF LICENSING OBJECTIVES

General

None

The Prevention of Crime and Disorder

None

Public Safety

None

The Prevention of Public Nuisance

None

The Protection of Children from Harm

None

4. RESPONSIBLE AUTHORITIES

The Local Safeguarding Children Board and Trading Standards as responsible authorities have made representations copies of these are included in Annex B. Both representations relate to the Protection of Children from Harm objective.

5. INTERESTED PARTIES

No interested parties have made representations.

6. POLICY CONSIDERATIONS

The following paragraphs of the Licensing Authorities Statement of Licensing Policy apply to this application:

3.2 The following factors will also be given due weight: -

- Each application will be determined on its own merits having regard to guidance issued under Section 182 of the Licensing Act 2003, and local criteria. The former will take precedence;
- The rules of natural justice will be applied at all times.
- The right of any individual, or body to apply for a variety of permissions is not undermined.
- The statutory right of any interested party or responsible authority to make appropriate representations or to seek a review in respect of an application where appropriate is accepted.
- The direct impact of the activities taking place at the licensed premises on members of the public living, working, or engaged in normal activity at or in the vicinity of the premises. (Note “ in the vicinity” will be decided upon by officers and members of the Licensing Authority as considered appropriate

when considering an application, having regard to the characteristics of the neighbourhood) will be given due weight.

5.3.1 As a consequence of the Section 182 guidance, the Licensing Authority will not establish zones in particular areas where premises will be either required, or coerced into having fixed or predetermined closing times. Further, the Licensing Authority will not require a Licensee to make use of the licensed hours granted.

5.3.2 Any restriction on trading hours will be considered only where it is necessary to meet the licensing objectives

5.3.4. The Licensing Authority may set an earlier closing time where after representations having been made, it considers this appropriate having regard to the nature of the licensable activities, the amenity of the area, and the impact on the licensing objectives.

5.3.5 Shops, stores and supermarkets will be permitted to sell alcohol for consumption off the premises during their trading hours. However, in the case of an individual shop known to be the focus of crime, disorder, disturbance or anti-social behaviour, then subject to relevant representations being made a limit may be imposed on the licensing hours by the Licensing Authority.

5.3.7 All residents living in the vicinity of any licensed premises have equal rights to make observations concerning applications for premises licences and hours of trading, and to receive appropriate consideration to their representations as an interested party. However, the Licensing Authority will disregard irrelevant, frivolous and vexatious representations.

7.3 Crime and Disorder

7.3.1 Under Section 17 of the Crime and Disorder Act 1998, local authorities must have regard to the likely effect of carrying out of their functions on crime, disorder and anti-social behaviour; doing all they reasonably can to prevent these matters occurring.

7.3.2 The Licensing Authority will have particular regard to the likely impact on these matters when considering the location, operation and management of all proposed licence or certificate applications, renewals and variations.

9.7.3. The Licensing Authority supports the Proof of Age Standards Scheme ((PASS) which aims to approve and accredit proof of age schemes to assist in preventing underage access to unsuitable premises and the purchasing of alcohol. This scheme introduced by the British Retail Consortium and audited by the Trading Standards Institute, identifies reliable and secure proof of age schemes with the same hologram mark in order that retailers can easily distinguish accredited cards from forgeries or cards issued under unreliable schemes. However the only way to verify a person's age accurately is with reference to a:-

- Passport,

- Photo card driving licence
- Official identity card issued by HM forces or a European Union country bearing the photograph and date of birth of the holder.

9.7.5 Licensees will be expected to have in place satisfactory arrangements to demonstrate that their staff receive regular and adequate training on the law and practice relating to age restricted sales (including challenging purchasers, and checking identification. The training provided should be properly documented so that there is an adequate audit trail and records are available for inspection.

9.7.6 Registers of refused sales should be maintained where appropriate e.g. off licences and made available for inspection.

13.2 The locality within which licensed premises are, or may be located is a major consideration in determining whether a licence should be granted and what conditions should be attached to it. Primary consideration will be given to the direct impact of the licensed activity on those living, working or enjoying the local environment.

13.3 Licensing law is not a mechanism for the general control of any anti-social behaviour being displayed by patrons once they have left the curtilage of the licensed premises, other more specific legislation should be used.

13.10.2 In considering contested applications the Licensing sub 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 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.

13.13 Other mechanisms for controlling cumulative effect

13.13.1 The Licensing Authority is keen to stress that as well as the licensing function there are a number of other mechanisms available to deal with the problem of unruly behaviour that occurs away from licensed premises. These include:-

- Planning controls.
- On-going measures to provide a safer and cleaner environment in partnership with local businesses and others.

- Powers to designate areas of the Borough as “Drinking Control Areas” where alcoholic drinks in containers may be confiscated.
- Police enforcement of the law with regard to disorder and anti-social behaviour.
- The power of the police, local businesses and residents to require a review of a premises licence or certificate.
- Enforcement action against those who knowingly sell alcohol to people who are already drunk or underage.

The Licensing Authority will address a number of these issues through the on-going work being undertaken by the Council’s Crime and Community Safety Partnership.

14.7 The Licensing Authority recognises that balancing the interests of owners, employees, customers and neighbours of pubs, clubs and off-licences will not always be straightforward, but it will always have regard to the licensing objectives.

17.3 The Licensing Authority will have particular regard to representations received concerning premises where there is substantiated evidence that:-

- There have been convictions for serving alcohol to minors
- The premises have a reputation for underage drinking
- The premises have been associated with the taking or dealing in illegal drugs
- There is a substantial element of gambling taking place in the premises
- Entertainment of an adult or sexual nature takes place
- Where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises
- There is a history of acts of violence, and incidents involving serious crime

In such circumstances if relevant representations are received then restrictions as licence conditions may be imposed to promote the licensing objective of the protection of children from harm.

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

19.5.1 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

19.5.3 In considering licence applications, the Licensing Authority will consider representations made by interested parties 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:-

- (a) excessive noise and vibration escaping from the premises, including music; noise from mechanical ventilation equipment and human voices.
- (b) disturbance by customers, staff, delivery vehicles, or contractors arriving at or leaving the premises. This will be of greater importance between 11p.m. and 7am.
- (c) queuing either by pedestrian or vehicular traffic on land under their control.
- (d) arrangements made or proposed for parking by patrons, and the effect of parking by patrons on local resident's at large events e.g. National Bowl.
- (e) use of gardens and other open-air areas within the curtilage of the premises.
- (f) siting of external lighting,
- (g) increase in refuse storage or additional littering in the vicinity of the premises.
- (h) previous history of nuisance complaints.

20.5.4 When determining applications the Licensing Authority will have regard to any Guidance issued by the Department for Culture, Media and Sport (DCMS).

23.5 The Licensing sub committee will determine each case on its individual merits whilst taking into consideration the terms of this Policy document. Where the Licensing sub committee determines that it is appropriate to attach conditions to a licence or certificate it will ensure that those conditions are focused on the direct impact of the activities taking place at the premises concerned on members of the public living, working or engaged in normal activity in the area or in the premise concerned. Such conditions will be proportionate to the activity to be controlled and will only be imposed in the interests of the licensing objectives.

The Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life.

The following paragraphs of the Licensing Act 2003 apply to this application

Sections 34 – 36 apply to this application

The following paragraphs of the Secretary of States Guidance apply to this application

3.28 Once away from the licensed premises, a minority of consumers will behave badly and unlawfully. To enable the general public to appreciate the breadth of the strategy for addressing these problems,

statements of policy should also indicate the other mechanisms both within and outside the licensing regime that are available for addressing such issues. For example:

- planning controls;
- positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority;
- the provision of CCTV surveillance in town centres, ample taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols;
- powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly;
- police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices;
- the prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk;
- the confiscation of alcohol from adults and children in designated areas;
- police powers to close down instantly for up to 24 hours any licensed premises or temporary event on grounds of disorder, the likelihood of disorder or noise emanating from the premises causing a nuisance; and
- the power of the police, other responsible authorities or a local resident or business to seek a review of the licence or certificate in question.

These should be supplemented by other local initiatives that similarly address these problems.

3.29 With regard to licensing hours, the statement of policy should generally emphasise the consideration which will be given to the individual merits of an application. The Government strongly recommends that statements of policy should recognise that longer licensing hours with regard to the sale of alcohol are important to ensure that the concentrations of customers leaving premises simultaneously are avoided. This is necessary to reduce the friction at late night fast food outlets, taxi ranks and other sources of transport which lead to disorder and disturbance. The Government also wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time local economies which are important for investment and employment locally and attractive to domestic and international tourists without compromising the ability to resource local services associated with the night-time economy. Providing consumers with greater choice and flexibility is an important consideration.

5.49 The steps to be taken should be both realistic and within the control of the applicant and management of the premises. If a licence is granted with conditions attached requiring the implementation of such steps, the conditions will be enforceable in law and it will be a criminal offence to fail to comply with them (under section 136 of the 2003 Act). As such, it would be wholly inappropriate to impose conditions outside the control of those responsible for

the running of the premises.

5.50 In respect of some premises, it is entirely possible that no measures will be needed to promote one or more of the licensing objectives, for example, because they are adequately dealt with by other existing legislation. It is however important that all operating schedules should be precise and clear about the measures that it is proposed to take to promote each of the licensing objectives and in particular, the protection of children from harm.

5.68 5.68 Where a representation concerning the licensing objectives is lodged by a responsible authority about a proposed operating schedule it is relevant and the licensing authority's discretion will be engaged. It will also be engaged if an interested party makes relevant representations to the licensing authority, i.e. those which are not frivolous or vexatious and which relate to the licensing objectives (see paragraphs 5.70 – 5.77 below). A hearing will be required for the licensing authority to consider the representations, at which the parties should be invited to comment upon the representations made and if necessary, to provide clarification of their own representations. The need for a hearing can only be dispensed with by the agreement of the licensing authority, the applicant and all of the parties who made relevant representations.

5.68A Responsible authorities should try to conclude any discussions with the applicant in good time before the hearing. If the application is amended at the last moment, the licensing committee should consider giving interested parties time to address the revised application before the hearing commences. The Regulations require that representations must be withdrawn 24 hours before the first day of any hearing. If they are withdrawn after this time, the hearing must proceed. Applicants should be encouraged to contact responsible authorities before formulating their applications so that the mediation process may begin before the statutory time limits come into effect after submission of an application.

The hearing process must meet the requirements of regulations made by the Secretary of State and which may be viewed on the DCMS website.

5.68B There is no requirement in the Act for responsible authorities that have made representations to attend, but it is generally good practice and assists committees to reach more informed decisions. Where several responsible authorities within a local authority have made representations on an application, a single local authority officer may represent them at the hearing if the responsible authorities and the licensing authority agree.

5.68C As a matter of practice, licensing authorities should seek to focus the hearing on the steps needed to promote the particular licensing objective which has given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or interested party may choose to rely on their written representation which gave rise to the hearing. They

may not add further representations to those disclosed to the applicant prior to the hearing, but they may amplify their existing representation. 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 representations (including supporting information) presented by all the parties;
 - . • this Guidance;
 - . • its own statement of licensing policy; and
- the steps that are necessary to promote the licensing objectives.

5.71 With regard to applications to vary the hours during which alcohol may be sold in shops, stores and supermarkets, the Secretary of State recommends that the norm should be for such premises to be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are very good reasons for restricting those hours. Where representations are received from the police, for example, in the case of some shops known to be a focus of disorder and disturbance because youths gather there, a limitation may be necessary.

5.74 After a premises licence has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre would generally not be regarded as relevant if it cannot be positively tied or linked by a causal connection to particular premises which would allow for a proper review of its licence. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house. In this context, it should be noted that the “cumulative impact” on the licensing objectives of a concentration of multiple licensed premises may only give rise to a relevant representation when an application for the grant or variation of a premises licence is being considered: it cannot give rise to a relevant representation after a licence has been granted or varied when a review of a licence may be sought. A review must relate specifically to a particular premises licence relating to an individual premises, and by its nature “cumulative impact” relates to the indirect effect of a concentration of many premises. Identifying one for a review by reason of cumulative impact on the licensing objectives would inevitably be arbitrary.

5.77 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application for the grant or variation of a premises licence.

Reviews

5.99 The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. It is the existence of these procedures which should, in general, allow licensing authorities to apply a light touch bureaucracy to the grant and variation of premises licences by providing a review mechanism when concerns relating to the licensing objectives arise later in respect of individual premises.

6.2 It is recommended that shops, stores and supermarkets selling alcohol should generally be permitted to match the hours during which they may sell alcohol with their normal trading hours during which other sales take place, unless there are exceptional reasons relating to the licensing objectives, in particular the prevention of crime and disorder and public nuisance. Accordingly, if the law permits the shop to open for 24 hours or limits such opening, for example, on Sundays, the licensing authority should generally permit the sale of alcohol during those hours unless there are very good reasons as to why it is necessary not to do so.

6.3 Some shops may however be known to be a focus for disturbance because youths congregate there and engage in nuisance and anti-social behaviour, including trying to pressurise shop staff to make unlawful sales of alcohol. Where relevant representations are made by an interested party or a responsible authority (particularly, the police) concerning applications for premises licences for such places, or in connection with existing licences, licensing authorities should consider a restriction on opening hours as one mechanism of combating such problems if this would be necessary.

Principle of flexibility

6.6 The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through longer opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided. We will monitor the impact of the 2003 Act on crime and disorder and the other licensing objectives. If necessary in the light of these findings, we will introduce further legislation with the consent of Parliament to strengthen or alter any provisions.

6.8 In relation to the prevention of public nuisance, in each individual case that arises following representations, the licensing authority should consider the potential for nuisance associated with the style, characteristics and activities of the business to be carried on at the premises in order to examine the potential steps which could be taken to reduce the risk of nuisance occurring. This will

particularly apply in areas of residential accommodation. The licensing authority should consider restricting the hours of trading only where this is necessary because of the potential impact on the promotion of the licensing objectives from fixed and artificially-early closing times.

6.9 Above all, licensing authorities should not fix predetermined closing times for particular areas.

7.19 Licensing authorities and responsible authorities should also have proper regard for the history of certain events and activities. If over a significant period of time, regular events of a particular kind have not given rise to problems of disorder and nuisance or concerns about safety or children, responsible authorities will be expected to have regard to this when scrutinising an application in respect of the activities involved, and not make representations unless there are new issues which could cause them to do so. For example, since 1961 events involving up to two musicians performing live music in premises licensed for the sale of alcohol under the Licensing Act 1964 have enjoyed a disapplication from the requirements for a public entertainment licence. Local authorities will be aware of premises where this freedom has caused local nuisance for residents and where it has not. This local knowledge is important. Where premises have not caused such problems, the provision of small-scale live music should not normally give rise to the need to attach any conditions to the premises licence or club premises certificate other than those which are mandatory under the 2003 Act. On the other hand, where in the minority of cases problems have occurred, the application for the new licence or certificate will afford an opportunity for responsible authorities and interested parties to raise the issue through representations and for conditions addressing any nuisance previously caused to be attached following a hearing where necessary. The views of local residents will be important in establishing the extent of any history of problems.

7.23 The essential purpose of the licence or certificate in this context is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives. As has been said above, conditions attached to licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and his staff or agents, but can directly impact on the behaviour of those under the licensee's direction when on his premises or in the immediate vicinity of the premises as they seek entry or leave.

7.25 Conditions are best targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television cameras both inside

and immediately outside the premises can actively deter disorder, nuisance and anti-social behaviour and crime generally. Some licensees may wish to have such cameras on their premises for the protection of their own staff and for the prevention of crime directed against the business itself or its customers. But any condition may require a broader approach, and it may be necessary to ensure that the precise location of cameras is set out on plans to ensure certain areas are properly covered and to ensure that there is no subsequent dispute over the terms of the condition. Similarly, the provision of requirements for door supervision may be necessary to ensure that people who are drunk or drug dealers or carrying firearms do not enter the premises, reducing the potential for crime and disorder, and that the police are informed of such instances where the knowledge about certain premises, its style or characteristics give rise to a need for such requirements.

Public nuisance

7.38 Annex G provides examples of conditions which relate to public nuisance, and could be used where necessary in the particular circumstances of any individual premises. These should be treated as a pool of conditions from which appropriate and necessary conditions for premises licences and club premises certificates may be drawn to tailor a licence or certificate to particular premises. It is important that they should not be treated as standard conditions.

7.39 The 2003 Act requires licensing authorities following receipt of relevant representations and, through the making of representations, responsible authorities to make judgements about what constitutes public nuisance and what is necessary, in terms of conditions attached to specific premises licences and club premises certificates to prevent it. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

7.40 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 for the Act's purposes. The prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.⁶

⁶ It should also be noted in this context that it remains an offence under the 2003 Act to sell or supply alcohol to a person who is drunk. This is particularly important because of the nuisance and anti-social

behaviour which can be provoked after leaving licensed premises.

7.43 Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise may also prove necessary to address any disturbance anticipated as customers enter and leave the premises and therefore, in the immediate vicinity of the premises.

7.45 In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises. Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in his own right. However, it would be perfectly reasonable for a licensing authority to impose a condition it considered necessary following relevant representations from a responsible authority or interested party 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 and to respect the rights of people living near-by to a peaceful night. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate.

13.26 Where this part of the application concerns a major variation (for example, in connection with hours of trading) the application will need to include an operating schedule, to be copied to responsible authorities and advertised for the benefit of interested parties. As is normal, if there is no relevant representation by either a responsible authority or an interested party, the application must be granted and there should be no hearing. If a relevant representation is made, there must be a hearing (unless all parties have agreed this is not necessary) when the licensing authority will consider the representations. Following the hearing, the licensing authority would determine the application to vary and grant the application with or without additional conditions or refuse the variation as it considers necessary for the promotion of the licensing objectives. The licensing authority may not however do anything to reduce the effect of the rights guaranteed under the first part of the application to convert the existing licence(s) authorisations to a new premises licence. So, for example, it could not reduce the hours of trading to less than

the permitted hours under the Licensing Act 1964.

7. OFFICERS OBSERVATIONS

Further details requested of the applicant:

1. Details on how you will promote the protecting children from harm licensing objective.
2. After consideration of the representations received any additional measures you can propose or consider necessary to ensure the licensing objectives are promoted.

8. ASSOCIATED PAPERS

None

Contact Officer

For further information on this application please contact Claire Affleck on telephone 01908 252372 or e-mail: Claire.affleck@milton-keynes.gov.uk