

10 September 2020

Licensing and Appeals Committee

**Licensing Sub-Committee Hearing in respect of an
Application to Vary a Premises Licence – Licensing Act 2003**

DUSK, ONGAR ROAD, PILGRIMS HATCH CM15 9SS

Report of: Dave Leonard – Licensing Officer

Wards Affected: Pilgrims Hatch

This report is: Public

1. Executive Summary

- 1.1 An application has been received by Sisu Enterprises Ltd. to vary the premises licence of **Dusk, Ongar Road, Pilgrims Hatch, CM15 9SS**. They seek to remove two conditions attached to the current, add the supply of alcohol for consumption on the premises and amend their opening hours. Sixteen relevant representations have been received. Members are requested to determine the application having regard to the operating schedule, the representations received, the Council's Statement of Licensing Policy and the four Licensing objectives.

2. Recommendation(s)

- 2.1 That the Sub Committee:

Considers this report and appendices together with any oral submissions at the hearing and determines the application in line with the options open to the sub-committee under the Licensing Act 2003: However, the available options are:

- i) To grant the application in full on the terms and conditions contained in the operating schedule along with any applicable mandatory conditions;
- ii) To grant the application, modified to such extent as considered appropriate in order to satisfy any relevant representations and to promote the licensing objectives; or
- iii) To refuse the application in whole or in part

3. Introduction and Background

3.1 An authorisation is required in respect of any premises where it is intended to conduct one or more of the four licensable activities, these being:

- Sale of alcohol
- Supply of alcohol (in respect of a club)
- Regulated Entertainment
- Provision of Late-Night Refreshment

3.2 An appropriate authorisation is either, a premises licence, a club premises certificate or a Temporary Event Notice.

3.3 Licence holders are required, when offering any licensable activity, to ensure that they promote the licensing objectives at all times. The operating schedule of the application contains details of the activities applied for and the control measures that the applicant will have in place in order to promote these objectives. Such measures will, where appropriate, be converted into enforceable conditions on any licence issued.

3.4 The four licensing objectives are;

- Prevention of crime and disorder
- Prevention of public nuisance
- Public safety
- Protection of children from harm

3.5 Any representation must be able to demonstrate that on the balance of probability the application in its current form will fail to adequately promote one or more of the licensing objectives. No other matters may be considered.

4. The Application

4.1 This application was received on 3rd July 2020 from Mr Kaizad Cassady on behalf of Sisu Enterprises Ltd. in respect of ***Dusk, Ongar Road, Pilgrims Hatch, CM15 9SS***. A copy of the application is attached at ***Appendix 1***.

4.2 This premise is a multi-cuisine, fine dining restaurant and lounge, with function room. The current premises licence together with a set of OS Street Maps and images to better identify the location are attached at ***Appendix 2***.

- 4.3 The applicant seeks to remove two conditions attached to Annex 3 of the current premises licence granted following a Licensing Sub-Committee hearing on 1 October 2019, namely;
- There should be a second interior door at the front entrance (3/1), and
 - Noise limiters shall be installed in the outside space in discussion and agreement of the Licensing Department of the Council (3/7)

Additionally, the applicant seeks the provision to supply alcohol for consumption on the premises from;

Sunday-Thursday 1200hrs-2330hrs & Friday & Saturday 1200hrs-0130hrs

The hours of opening have also been amended to;

Sunday-Thursday 1200hrs-0000hrs & Friday & Saturday 1200hrs-0200hrs

- 4.4 One valid representation has been received from the Responsible Authorities.
- 4.5 Mr David Carter, Environmental Health manager at Brentwood Borough Council has concerns relating to noise nuisance. He maintains that, since Dusk's opening, there has been a substantial increase in the number of complaints received, largely as a result of the use of the lounge area, which as it is designed to comply with the smoking legislation is required to be at least 50% open, which significantly reduces any noise attenuation from the structure and, effectively, operates as an outside area, with associated noise from customers and any amplified music played in the area. Mr. Carter's representation is attached at **Appendix 3**.
- 4.6 There have been 15 representations against the application received from Other Persons. The concerns raised by local residents generally relate to the noise nuisance being caused by the playing of late-night music in the outdoor lounge/smoking area and the subsequent dispersal of patrons in an otherwise quiet, semi-rural location. A copy of the summarised & redacted representations has been attached at **Appendix 4**.
- 4.7 Matters recorded in the Operating Schedule (Section O of the application form) will become conditions on the licence if this application is granted, unless modified by this Committee. In this instance, Mr Shakil Islam, one of the directors of Sisu Enterprises Ltd., has submitted an accompanying statement advising what steps will be taken to address and counter the conditions he is seeking to remove from the licence, this will become the following conditions:

- Thick curtains and thick pergola glass shall be installed at the front door to ensure a significant reduction in noise escape beyond the premises
- No regulated entertainment will be conducted outside the premises. Music will be played only within the premises.

- 4.8 In respect of the application seeking the provision to supply alcohol for consumption on the premises, the applicant has not yet nominated a designated premises supervisor. If granted, the mandatory condition applies *No supply of alcohol may be made under this licence*
- a) *At a time when there is no designated supervisor in respect of it or,*
b) *At a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.*

5. Reasons for Recommendation

- 5.1 These are the options available to the Sub-Committee under the Licensing Act 2003.

6. Consultation

- 6.1 The application has been consulted on in accordance with the requirements of the Licensing Act 2003.
- 6.2 Officers from the Licensing Authority have made checks on the display of public notices and in a local newspaper and are satisfied that these requirements have been met.

7. Statement of Licensing Policy

The following Brentwood Borough Council Statement of Licensing Policy 2016-2021 control measures relating to the prevention of public nuisance state:

22.2 The Licensing Authority intends to interpret “public nuisance” in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.

22.5 Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and characteristics of their premises and events.

8. Relevant Sections of the Secretary of State's Guidance

- 8.1 No specific additional issues arise from this application in relation to the Section 182 Guidance when determining applications.

9. Legal Considerations

- 9.1 Conditions may be attached to the grant of any licence, the hours or activities may be amended as appropriate, or in some cases the application may be refused. However, any action taken must be appropriate and relevant to promotion of the licensing objectives having considered the full details of the application and representations including testimony from any interested party present at the hearing.
- 9.2 The justification behind any decision to grant or refuse a licence application or the attachment of conditions, or variation of terms applied for must be recorded and given to the applicant and any person that has made representation.
- 9.3 There is a right of appeal to Magistrates Court by any person or party aggrieved by any decision made by the Sub-Committee.

Appendices to this report

- Appendix 1 - Application Form
- Appendix 2 - OS Street Plans & Images
- Appendix 3 - Representation from Responsible Authority
Mr David Carter - Environmental Health Manager
- Appendix 4 - Representations from Other Parties

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