

23 November 2020

Licensing Sub-Committee

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

DUSK, ONGAR ROAD, PILGRIMS HATCH CM15 9SS

Report of: Maria Moses – Licensing Officer

Wards Affected: Pilgrims Hatch

This report is: Public

1. Executive Summary

- 1.1 An application has been received for a review of the premises licence in respect of **Dusk, Ongar Road, Pilgrims Hatch, CM15 9SS**. Thirteen relevant representations have been received during the consultation period. The review relates to the Licensing objective: **Prevention of Public Nuisance**.

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 for the review of the premises licence.

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.

3.3 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 On the 27 September 2020 an application for a Review of the premises licence at Dusk was received from Mrs Megan Bashir, a local resident in Ongar Road, Brentwood, Essex. Mrs. Bashir refers to noise nuisance and anti-social behaviour. A copy of the Review application is attached as **Appendix 1**.

4.2 This Premise is 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 Representations have been received from two Responsible Authorities - Environmental Health and The Licencing Authority of Brentwood Council.

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**.

The Licensing Officer, Mr Dave Leonard, has set out an overview of the applications made, complaints received, warning notices issued and site visits

conducted. Mr Leonard shares the same public noise nuisance concerns in relation to the use of the outside smoking area at Dusk as Mr Carter and his representation is also attached at **Appendix 3**.

- 4.4 There have been 11 further representations received from six residential households and one councillor. The grievances all relate to the noise nuisance being caused by the playing of late-night music in the outdoor lounge/smoking area and the noise cause by the patrons using this area. The subsequent dispersal of patrons in an otherwise quiet, semi-rural location also causes concern and contributes to the disruptive sleep patterns experienced by families. This Copies of the redacted representations have been attached at **Appendix 4**.

5. Reasons for Recommendation

These are the options available to the Sub-Committee

- 5.1 The Committee, after considering the review application and all of the relevant representations, will need to consider what action, if any, to take in order to ensure that the Licensing Objectives are complied with.
- 5.2 The following options are available to the Licensing Sub-Committee:
- Do nothing with the licence;
 - To modify the conditions of the premises licence. This can include adding new conditions or alterations to existing conditions e.g. reducing the hours of operation;
 - To exclude a licensable activity from the scope of the licence e.g. to exclude regulated entertainment after a certain hour,
 - To remove the Designated Premises Supervisor e.g. because it is considered that the problems are being caused by poor management;
 - To suspend the licence for a period not exceeding three months;
- 5.3 The decision made by the committee will not take effect until the end of the period given for appealing against the decision or, if the decision is appealed against, until the appeal is disposed of.
- 5.4 In determining this application for review of the premises licence, the Sub-Committee should have regard to the Council's Statement of Licensing Policy and to the guidance issued by the Secretary of State under s182 of the Licensing Act 2003.
- 5.5 The Sub-Committee are advised that the hearing is a statutory exercise of power delegated by local residents to consider what the public interest requires. The licensing authority, via the Sub-Committee, has a duty, in accordance with the rule of law, to behave fairly in the decision-making procedure. Representations

from all parties both written and verbal will form part of matters that are to be considered. Findings on issues of fact should be on the balance of probability.

5.6 The Sub-Committee are advised that the final decision should be based on the individual merits of the application and findings of fact made at the hearing.

5.7 The application must be determined within 5 working days of the conclusion of the hearing, in accordance with paragraph 26 of the Licensing Act 2003 (Hearings) Regulations 2005.

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 are satisfied that these requirements have been met.

7. Statement of Licensing Policy

7.1 The following Brentwood Borough Council Statement of Licensing Policy 2016-2021 (s22) control measures relating to the prevention of public nuisance state:

Applicants need to be clear the Licensing Authority will normally apply stricter conditions, including controls on licensing hours, where licensed premises are in residential areas and where relevant reorientations have been received. Conversely, premises for which it can be demonstrated have effective measures planned to prevent public nuisance, may be suitable for 24-hour opening.

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

8.1 The licensing objectives relating to public nuisance matters arising from this application are covered in Section 2, paragraphs 22.15 to 2.21 (pages 9 & 10) of the Licensing Act 2003, Section 182 Guidance (April 2018).

9. Legal Considerations

9.1 Brentwood Borough Council, as Licensing Authority under the Licensing Act 2003 and subordinate legislation, is empowered to determine applications of this nature. Notice must be given of the Licensing Authority's decision on this matter. The decision could be subject to an appeal to a Magistrates Court, which can be instigated by either the applicant or the person who made the representation.

10. Appendices to the report:

- Appendix 1 - Application Form
- Appendix 2 - Premises Licence, OS street maps & images
- Appendix 3 - Representations from Responsible Authorities
Environmental Health (Mr David Carter)
Licensing Authority (Mr Dave Leonard)
- Appendix 4 - Representations from residents & Councillor

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