

14 December 2020

Licensing Sub-Committee

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

THE VIPER, MILL GREEN ROAD, FRYERNING CM4 0PT

Report of: Dave Leonard – Licensing Officer

Wards Affected: Ingatestone & Fryerning

This report is: Public

1. Executive Summary

- 1.1 An application has been received for a new premises licence for the provision of live & recorded music, performance of dance, the supply of alcohol & late night refreshment in respect of ***The Viper, Mill Green Road, Fryerning CM4 0PT***. Six 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 1 October 2020 from Mr Rupert Cherryman, Director of The Viper Mill Green Ltd. in respect of ***The Viper, Mill Green Road, Fryerning CM4 0PT***. A copy of the application and a clarifying amendment notice from Mr Cherryman is attached at ***Appendix 1***.

4.2 This premise, which is a listed building, is a traditional pub and has held licence up until 29 October 2019 when it was surrendered by the current owner. A redacted copy of the last Premises Licence issued on 2 July 2018, 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 a new premises licence to conduct the following licensable activities:

Performance of Dance:

Monday-Sunday 1100hrs-2300hrs

Live & Recorded Music:

Monday-Thursday 1100-2300hrs & Friday/Saturday/Sunday 1100-2330hrs

Late Night Refreshment:

Friday & Saturday 2300hrs-0000hrs

Supply of Alcohol:

Monday-Thursday 0830-2300hrs & Friday/Saturday/Sunday 0830-0000hrs

There are also several non-standard timings to cover the regular seasonal celebrations eg. Christmas, New Year, Bank Holidays and Saints' Days (see **Appendix 1**)

4.4 There have been no representations received from the Responsible Authorities.

4.5 There have been 6 representations against the application received from Other Persons. The concerns raised by local residents generally relate to the potential for noise nuisance being caused by the playing of late-night music, the use of the outside garden area and the subsequent dispersal of patrons in an otherwise quiet, rural location. Copies of the redacted representations together with any supporting documents have been attached at **Appendix 3**.

4.6 Any matters recorded in the Operating Schedule (Section O of the application form) will become conditions on the licence if this application is granted, the following conditions will be attached unless modified by this Committee:

- Any incidents of a criminal nature that may occur on the premises will be reported to the Police.
- CCTV will be installed, maintained & monitored on a consistent 24hr basis.
- An 'under 25 identification challenge' will be in place.
- All emergency exits shall be kept free from obstruction at all times.

- All safety certificates and inspection reports must be kept on site and made available for inspection by officers of relevant statutory bodies.
- Prominent, legible notices requesting people to leave the premises and the area quietly must be displayed at all exits.
- All customers will be asked to leave quietly. Clear and legible notices will be prominently displayed to remind customers to leave quietly and have regard to our neighbours.
- Where outside areas are provided for the use of patrons facilities for the disposing and collecting of litter will be maintained.
- The licence holder, or persons authorised by them, must control the volume of regulated entertainment taking place at the premises.
- All staff will be trained for underage sales prevention regularly.
- Any persons under the age of 16 must be accompanied by an adult when entering the premises.

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

- 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 Sections of the Secretary of State's Guidance

8.1 The following Section 182 Guidance relates to determining applications and disclosure of personal details of persons making representations;

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.

9.27 In exceptional circumstances, persons making representations to the licensing authority may be reluctant to do so because of fears of intimidation or violence if their personal details, such as name and address, are divulged to the applicant.

9.30 The licensing authority may also decide to withhold some or all of the person's personal details from the applicant, giving only minimal details (such as street name or general location within a street). However, withholding such details should only be considered where the circumstances justify such action.

9.38 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. 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 & Clarifying Notice
- Appendix 2 - Premises Licence 2 July 2018, OS Street Plans & Images
- Appendix 3 - Representations from Other Persons

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