

Committee(s): Licensing & Appeals Committee	Date: 11 May 2021
Subject: Application to Vary a Premises Licence <i>Brave Nelson, 138 Woodman Road, Brentwood CM14 5AL</i>	Wards Affected: <i>Warley</i>
Report of: Dave Leonard - Licensing Officer	Public
Report Author/s: Name: Dave Leonard Telephone: 01277 312523 E-mail: dave.leonard@brentwood.gov.uk	For Decision

Summary

An application has been received to vary the premises licence to reflect a new premises plan that includes an outside bar area to supply alcohol in respect of ***Brave Nelson, 138 Woodman Road, Warley, Brentwood CM14 5AL***. No representations have been received from the Responsible Authorities. There have been eleven valid representations received from Other Persons of which six are opposed to the application and five are made in support. 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.

Recommendation(s)

Members are asked to:

Consider 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:

1. To grant the application in full on the terms and conditions contained in the operating schedule along with any applicable mandatory conditions;
2. To grant the application in full, modified to such extent as considered appropriate in order to satisfy any relevant representations and to promote the licensing objectives; or
3. To reject the application in whole or in part.

Main Report

1. Introduction and Background

1.1 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

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

1.3 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.

1.4 The four licensing objectives are;

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

1.5 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.

2. Issue, Options and Analysis of Options

2.1 This application was received on 10 March 2021 from Mr Paul Duley in respect of ***Brave Nelson, 138 Woodman Road, Brentwood CM14 5AL***. A copy of the application is attached at ***Appendix A***.

2.2 The premise is a public house situated in the middle of a residential location. In 2013, this public house became the first building in Brentwood to be listed as a Community Asset under the Localism Act 2011. This application does not

seek to vary or contravene the current licence conditions in relation to the use of the outside garden nor does it extend the hours of any licensable activity. The application seeks to vary the premises licence plan to include a newly constructed outside bar and cellar in the outside beer garden where alcohol will be supplied from the following hours:

1700hrs-2130hrs on Thursday and Friday

1200hrs-2130hrs on Saturday and Sunday

The applicant states that the bar has been constructed in order to better address the restrictions imposed on outdoor drinking by the coronavirus regulations and implies that its use is a seasonal option not for use in winter.

A copy of the existing premises licence together with a set of OS Street Maps and images to better identify the location are attached at **Appendix B**.

2.3 No representations have been received from the Responsible Authorities.

The Planning Department is aware and dealing with matters arising in relation to planning permission at The Brave Nelson but this is not a matter for the Licensing Committee.

2.4 There have been six representations received from local residents who all live in close proximity to the premises and are against this application. The representations are attached at **Appendix C**.

2.5 The concerns raised are predominantly based on noise nuisance complaints relating to the extended use of the beer garden area, the showing of sporting events on a large outdoor screen and the staff's lack of control of its patrons. It is claimed that the beer garden has often been used after its strict 2200hrs closure requirement and that the excessive noise generated from it has a negative effect on the lives of those living locally in a built-up residential area.

2.6 There have been five further representations received from local residents who all live in close proximity to the premises who support the application. The letters of support praise the venue as a well maintained, family friendly community pub. These representations are attached at **Appendix D**.

2.7 Based on the content of the operating schedule, the conditions attached to any licence issued (in addition to the mandatory conditions and those consistent with the operation schedule attached to Annex 2 of the current premises licence) will be:

- Staff will be trained to the highest standard on their roles and responsibilities, and that training records will be retained.

- A comprehensive 24-hour CCTV system is installed with full recording facilities covering all of the car park area, the outside garden including the children's area and the outside bar.
- The outside bar will only serve alcohol from Thursdays to Sundays and will not be open in the winter.

3. **Relevant Sections of the Secretary of State's Guidance**

- 3.1 The following guidance issued under Section 182 Licensing Act 2003 relates to determining applications in relation to beer gardens and other outdoor spaces and the disclosure of personal details of persons making representations:

Beer gardens or other outdoor spaces

8.35 Applicants will want to consider whether they might want to use a garden or other outdoor space as a location from which alcohol will be consumed. The sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract. In scenarios where drink orders are taken by a member of staff in the garden or outdoor space & the member of staff then collects the drinks from the licensed premises & returns to deliver them to the customer this would be treated as an off-sale & any conditions that relate to off-sales would apply.

8.36 In such cases it will be not necessary to include the garden or other outdoor space on the plan as part of the area covered by the premises licence. However, it will be necessary for the applicant to include the garden or other outdoor space on the plan as part of the area covered by the premises licence if the intention is to provide a service whereby drinks are available for sale and consumption directly from that area (i.e. the provision of on-sales). This would apply in the case of an outdoor bar or a service whereby a member of staff who is in the garden or outdoor space carries with them drinks that are available for sale (without the need for the staff member to return to the licensed premises to collect them).

8.37 If the beer garden or other outdoor area is to be used for the consumption of off-sales only, there is no requirement to show it on the plan of the premises, but the prescribed application form requires the applicant to provide a description of where the place is and its proximity to the premises.

Disclosure of personal details of persons making representations

9.26 Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearings) Regulations 2005 to provide the applicant with copies of the relevant representations that have been made.

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.

9.28 Where licensing authorities consider that the person has a genuine and well-founded fear of intimidation and may be deterred from making a representation on this basis, they may wish to consider alternative approaches.

9.29 For instance, they could advise the persons to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.

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.

3.2 Statement of Licensing Policy

Brentwood Borough Council's Statement of Licensing Policy makes reference to;

Prevention of Public Nuisance

22.1 Licensed premises have a significant potential to impact adversely on communities through public nuisances that arise from their operation. The Licensing Authority wishes to maintain and protect the amenity of residents and other businesses from the consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

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.

4. Reasons for Recommendation

4.1 These are the options available to the Committee under the Licensing Act 2003.

5. Consultation

- 5.1 The application has been consulted on in accordance with the requirements of the Licensing Act 2003.
- 5.2 Officers from the licensing authority have made checks on the display of notices on two occasions and on both occasions the blue advertising notice was correctly on display on the front of the building. The applicant did delay in placing the public notice in a local paper and as a result the consultation period for the application was extended until 12 April 2021.

Implications

Financial Implications

Name/Title: Jacqueline Van Mellaerts, Corporate Director (Finance & Resources)
Tel/Email: 01277 312500/jacqueline.vanmellaerts@brentwood.gov.uk

- 5.3 There are no financial implications for this report.

Legal Implications

Name & Title: Amanda Julian, Corporate Director (Law & Governance) and Monitoring Officer
Tel & Email: 01277 312500/amanda.julian@brentwood.gov.uk

- 5.4 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.
- 5.5 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.
- 5.6 There is a right of appeal to Magistrates Court by any person or party aggrieved by any decision made by the Sub-Committee.

Background Papers

None

Appendices to this report

Appendix A - Application Form

Appendix B - Current Premises Licence, OS Street Maps & Images

Appendix C - Representations from Other Persons opposed to the application.

Appendix D- Representation from Other Persons in support of the application

Report Author Contact Details:

Name: Dave Leonard

Telephone: 01277 312523

E-mail: licensing@brentwood.gov.uk