

Committee(s): Licensing & Appeals Committee		Date: 20 May 2021
Subject:	Application to Vary a Premises Licence <i>Dusk, Ongar Road, Pilgrims Hatch CM15 9SS</i>	Wards Affected: <i>Pilgrims Hatch</i>
Report of:	Paul Adams - Licensing Manager	Public
Report Author/s: Name: Paul Adams Telephone: 01277 312503 E-mail: paul.adams@brentwood.gov.uk		For Decision

Summary

An application has been received by Sisu Enterprises Ltd. to vary the premises licence for ***Dusk, Ongar Road, Pilgrims Hatch, CM15 9SS***. The applicant seeks to remove the provision to supply alcohol for consumption on the premises and remove two conditions attached to the current licence. Representations against the application have been received from two responsible authorities - Environmental Health & Licensing - together with a further 36 relevant representations received from 18 local households. There have also been 12 statements of support to the application from 10 households 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.

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.
- 1.6 Since first being granted a premises licence on 1 October 2019, Sisu Enterprises Ltd. have submitted a series of applications to vary the licence. These applications have invariably ended up having to be determined at a Licensing Sub-Committee hearing owing to representations being received. In September 2020 a local resident applied to this Council to review the premises licence claiming that the venue was causing a persistent public noise nuisance. A summarised application history is attached at **Appendix B.**

2. Issue, Options and Analysis of Options

- 2.1 This application was received on 26 March 2021 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 A***.
- 2.2 A statement from Mr Shakil Islam, director of Sisu Enterprises Ltd, and a Noise Impact Assessment Sound Report, subsequently submitted in a supplementary package dated 23 April 2021, are attached at ***Appendix AA***.
- 2.3 This premise is a multi-cuisine, fine dining restaurant with function room & an outside shisha smoking lounge in a dedicated enclosed area complete with a retractable roof. The current premises licence together with a set of OS street maps & images to better identify the location are attached at ***Appendix B***.
- 2.4 The applicant previously sought to remove the provision to supply alcohol for consumption on the premises and remove the condition that “customers must not be permitted to consume any alcohol on the premises other than alcohol sold or supplied under the authorisation of this licence” by submitting a minor variation on 27 November 2020. This was rejected by this office on 18 December 2020 after a significant number of representations were received.
- 2.5 Two representations have been submitted by the Responsible Authorities.
- 2.6 Mr David Carter, Environmental Health manager at Brentwood Borough Council has concerns that the proposed variations will have an effect on the ability of the premises to promote the licensing objective of prevention of public nuisance. He maintains that, since Dusk’s opening, there has been a substantial increase in the number of complaints received, largely resulting from the use of the lounge area, which as it is designed to comply with smoking legislation is required to be at least 50% open. This significantly reduces any noise attenuation from the structure and, effectively, operates as an outside area, with associated noise from customers & any amplified music played in the area. Mr Carter’s representation is attached at ***Appendix C***.
- 2.6 Mr Dave Leonard, a Licensing Officer at Brentwood Borough Council, claims that, whilst very affable restaurateurs, the applicants are not so conversant with the requirements of the licensing legislation. This can be historically evidenced with incomplete application forms, frequently amended submissions and poorly advertised notices that have resulted in repeated licensing sub-committee hearings to determine matters. Mr Leonard refers to a previous application made by Sisu Enterprises Ltd asking for the provision to sell alcohol to enable them to discontinue the ‘bring your own’ policy. He also

refers to the warning notices previously issued and to the 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. Mr Leonard's representation is also attached at **Appendix C**.

- 2.7 There have been 36 valid representations received from local residents at 18 different addresses, most who live in close proximity to Dusk and are against this application. The concerns raised 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. In reference to the application in relation to alcohol on the premises, many now see the applicant's attempt to remove conditions set at previous Sub-Committee hearings as insincere undertakings offered merely to appease local opposition. Copies of the summarised and redacted representations have been attached at **Appendix D**.
- 2.8 There have been a further 12 representations received from residents at 10 local addresses in support of the application. The letters of support praise the restaurant as a venue that promotes fine dining, a lounge & a banqueting hall and none have witnessed crime and disorder or public nuisance taking place. These representations are attached at **Appendix E**.

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 steps to promote the licensing objectives and the disclosure of personal details of persons making representations;

Steps to promote the licensing objectives

8.44 It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application.

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 several checks on the display of notices and on each occasion the blue advertising notice was correctly on display at the front of the building and at accessible points on the perimeter of the grounds in Ongar Road. A public notice was placed in the local Gazette newspaper and published on 31 March 2021.

Implications

Financial Implications

Name/Title: Jacqueline Van Mellaerts, Corporate Director (Finance & Resources)
Tel/Email: 01277 312829/jacqueline.vanmellaerts@brentwood.gov.uk

There are no financial implications for this report.

Legal Implications

Name & Title: Amanda Julian, Corporate Director (Law & Governance) and Monitoring Officer
Tel & Email: 01277 312705/amanda.julian@brentwood.gov.uk

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.

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.

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 AA Supplementary Statement & Noise Impact Assessment Report
- Appendix B - Premises Licence, OS Street Maps & Images, Application History
- Appendix C - Representations from Responsible Authorities
- Appendix D - Representations from Other Persons opposed to the application.
- Appendix E - Representation from Other Persons in support of the application

Report Author Contact Details:

Name: Paul Adams

Telephone: 01277 312503

E-mail: licensing@brentwood.gov.uk