

04 October 2021

Licensing and Appeals Committee

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

**BRAVE NELSON, 138 WOODMAN ROAD, WARLEY CM14 5AL**

**Report of:** Paul Adams – Licensing Manager

**Wards Affected:** Warley

**This report is:** Public

**1. Executive Summary**

- 1.1 An application has been received for a review of the premises licence in respect of **Brave Nelson, 138 Woodman Road, Warley CM14 5AL**. Eleven relevant representations have been received during the consultation period. The review relates to the Licensing objectives: Prevention of Crime & Disorder and 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 2 August 2021 an application for a Review of the premises licence at Brave Nelson was submitted by Brentwood Borough Council Licensing Officer, Mr Dave Leonard, in his capacity as representing a Responsible Authority. Mr Leonard refers to direct and deliberate breaches of conditions attached to the premises licence in relation to the use of the beer garden that only served to exacerbate public noise nuisance and anti-social behaviour issues. A copy of the application together with supporting documentation is attached as **Appendix A**.
- 4.2 The Brave Nelson is a public house situated in the middle of a totally residential area. In 2013, this public house became the first building in Brentwood to be listed as a Community Asset under the Localism Act 2011. However, the use of the beer garden in such a location has also historically made the premises the subject of regular public nuisance noise pollution complaints from the closest neighbouring residents. The current premises licence together with a set of OS Street Maps and images to better identify the location are also attached in Mr Leonard's report at **Appendix A**.
- 4.3 No other representations were received from the Responsible Authorities.
- 4.4 There have been 11 further representations received from seven residential households and three Ward Councillors. The representations all relate to the noise nuisance being caused by the patrons using the outside beer garden area. The introduction of an outside bar, pergola, additional seating and a number of TV screens have all served to encourage increased customer use in an otherwise quiet, residential location. It is alleged that it also contributes to the

disruptive sleep patterns experienced by families with young children. The redacted copies of all the representations have been attached at **Appendix B**.

- 4.5 The current licence was only issued in May 2021, following a decision of the licensing sub committee after representations had been received to the variation of the previous licence to include the outside area. Details of the application and decision can be found in Dave Leonard's report at **Appendix A**.

## **5. Relevant Sections of the Secretary of State's Guidance**

- 5.1 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 powers of a Licensing Authority to determine a Review;

### **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.*

### **Powers of a licensing authority on the determination of a review**

11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

## **6. Statement of Licensing Policy**

- 6.1 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.*

## **7. Reasons for Recommendation**

These are the options available to the Sub-Committee

- 7.1 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.
- 7.2 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;
- 7.3 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.
- 7.4 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.
- 7.5 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.

- 7.6 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.
- 7.7 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.

## **8. Consultation**

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

## **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.

## **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.

**10. Appendices to the report:**

- Appendix A - Application Form and supporting documentation including Premises Licence, OS street maps & images
- Appendix B - Representations from Other Persons & Ward Councillors

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