

Committee(s): Licensing Sub-Committee	Date: 17 August 2022
Subject: Determination of an Application for a New Premises Licence	Wards Affected: Brentwood (North) Brentwood (South)
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

The Licensing Office has received an application for a new premises licence to allow for the provision of live music, recorded music, performance of dance, late night refreshment and the supply of alcohol for both on and off the premises at **McCafferty's Bar, 99 High Street, Brentwood CM14 4RR**. Three representations have been received from consulting Responsible Authorities, those being Brentwood Borough Council's Environmental Health Noise Pollution and Health & Food Safety teams and the Planning department. There have been no representations received from Other Persons.

Recommendation(s)

Members are asked to:

Consider this report and appendices together with any oral submissions at the hearing & determines the application in line with the options open to the sub-committee under the Licensing Act 2003. However, the available options are;

- R1.** To grant the application in full on the terms and conditions contained in the operating schedule along with any applicable mandatory conditions;
- R2.** 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
- R3.** To reject the application in whole or in part

Main Report

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.

Issue, Options and Analysis of Options

- 2.1 This application for a new premises licence was received on 23 June 2022 from Ms Lisa Gilligan at Freeths LLP on behalf of the London City Pub Group Limited in respect of **McCafferty's Bar, 99 High Street, Brentwood CM14 4RR**. A copy of the application is attached at **Appendix A**.
- 2.2 The premises was formerly a McDonalds Restaurant but has been a boarded up empty shell for several years now. The applicant is seeking to convert the premises into a themed bar and is seeking the provision of the following licensable activities and opening hours;

The sale of alcohol for consumption on and off the premises, performance of dance, live music and recorded music as follows;

Sunday to Thursday 0800 to 0100 the following morning
Friday and Saturday 0800 to 0200 the following morning

Late night refreshment

Sunday to Thursday 2300 to 0100 the following morning
Friday and Saturday 2300 to 0200 the following morning

Opening hours of the premises

Sunday to Thursday 0800 to 0130 the following morning
Friday and Saturday 0800 to 0230 the following morning

A set of OS Street Maps together with images to better identify the location are attached at ***Appendix B***.

2.3 There were three representations received from the Responsible Authorities.

From Brentwood Borough Council –

Environmental Health (Noise Pollution) Team Manager, Mr David Carter, has concerns relating to the prevention of public nuisance. He notes that there is a proposal to use the first-floor flat roof as a smoking area and for use by customers with a bar. This area is adjacent to a fire escape door of an adjacent residential development, which may result in noise disturbance to the occupiers of the apartments in this building. Mr Carter states that it is also possible that other residential property in the vicinity may be affected by noise from customers using the roof bar area and from amplified music in this area. Mr Carter maintains that noise breakout to adjoining dwellings needs to be considered and appropriate conditions attached to any subsequently granted premises licence in order to control noise levels from amplified music & speech.

Principal Environmental Health (Health & Food Safety) Officer, Ms Elaine Higgins, has raised public safety concerns in relation to the proposed use of the roof terrace. She has been in consultation with the applicant and is seeking a response to questions raised relating to the maximum safe working load, the anticipated capacity and the measures being taken to prevent slip or trip hazards on the roof terrace. Following an on-site meeting with representatives for the applicant, Ms Higgins has raised concerns that the plans submitted with the application do not reflect the on-site discussions that were held. At the on-site meeting it was discussed that the bar would be located in a different position towards the rear staircase and there was the proposal of retractable roof over the roof terrace that had the potential to create a substantially enclosed area that was not suitable for smoking. Ms Higgins is seeking to obtain clarity and reassurance that the public safety licensing objective is satisfied and to agree conditions regarding the use of the roof terrace. The applicant's response to Ms Higgins' representation is also attached.

Planning Officer, Mr Max Gibson, has made a representation relating to the large first floor open terrace, with external bar area and potentially amplified music which is adjacent to residential developments and has the potential to result in noise nuisance impacting on surrounding residential developments. Furthermore, the limited space at the front of the site is in close proximity to a pelican crossing and has potential safety implications in relation to patrons queuing and other users of the public highway.

All three Responsible Authority representations are attached at **Appendix C**.

- 2.4 Following consultation with the applicant, Essex Police (Licensing) withdrew their representation having agreed that the application be amended to include seventeen suggested conditions that are in line with both the operating schedule detailed in the application and other similar premises in the vicinity. These recommended conditions and the applicant's acceptance to incorporate them into their operating schedule are attached at **Appendix D**.
- 2.5 There were no representations received from Other Persons.

Reasons for Recommendation

- 3.1 These are the options available to the Sub-Committee

Consultation

- 4.1 The application has been consulted on in accordance with the requirements of the Licensing Act 2003.
- 4.2 Officers from the licensing authority have made several checks on the display of notices to ensure that the blue advertising notice was correctly on display at the front of the building.
- 4.3 Copies of all representations have been served on the applicant.

References to Corporate Plan

None

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

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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.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

- 5.1 The Council has a duty under Section 17 of the Crime & Disorder Act 1998 to do all that it reasonably can to prevent:
- (a) crime and disorder in its area (including anti-social behaviour and other behaviour adversely affecting the local environment), and;
 - (b) the misuse of drugs, alcohol and other substances in its areas.

In considering this duty the Sub-Committee should have due regard to the Licensing Act 2003, the Guidance issued by the Secretary of State under Section 182 of the Act and the Council's own Statement of Licensing Policy.

The Licensing Sub-Committee is of a quasi-judicial nature and whilst the Licensing Committee should ensure equality of treatment for all groups in the granting of licences, due regard should be given to its responsibility to promote the licensing objectives and its duties under Section 17 of the Crime and Disorder Act 1998. This includes full consideration of the need to prevent crime and disorder, ensure public safety, the prevention of public nuisance and the protection of children from harm. Where it finds that the need to comply with those duties is reasonably inferred, it must determine the application appropriately.

Background Papers

- The Licensing Act 2003
- The Secretary of State's Guidance issued under section 182 Licensing Act 2003
- Brentwood Borough Council's Statement of Licensing Policy

6. Relevant Sections of the Secretary of State's Guidance

- 6.1 The following guidance issued under Section 182 Licensing Act 2003 relates to determining applications in relation to promoting the licensing objectives and the hours of trading;

Steps to promote the licensing objectives

8.43 Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.

8.46 While applicants are not required to seek the views of responsible authorities before formally submitting their application, they may find them to be a useful source of expert advice on local issues that should be taken into consideration when making an application. Licensing authorities may wish to encourage co-operation between applicants, responsible authorities and, where relevant, local residents and businesses before applications are submitted in order to minimise the scope for disputes to arise.

8.47 Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.

8.49 For some premises, it is possible that no measures will be appropriate to promote one or more of the licensing objectives, for example, because they are adequately covered by other existing legislation. It is however important that all operating schedules should be precise and clear about the measures that are proposed to promote each of the licensing objectives.

Hours of trading

10.13 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities.

However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

10.14 Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.

6.2 Statement of Licensing Policy

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

Prevention of Crime & Disorder

19.3 The promotion of the licensing objective, to prevent crime & disorder places a responsibility on licence holders to become key partners in achieving this objective. **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 reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events.**

Public Safety

21.1 The Licensing Authority is committed to ensuring that the safety of any person visiting or working in licensed premises is not compromised. **To this end, 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 ensure public safety, relevant to the individual style and characteristics of their premises and events.**

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 & protect the amenity of residents & other businesses from the consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

22.5 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.

Appendices to this report

Appendix A - Application for a New Premises Licence (received 23 June 2022)

Appendix B - OS Maps and Images

Appendix C - Representations from Responsible Authorities;
Environmental Health (Noise Pollution)- Mr David Carter
Environmental Health (Health & Food Safety) - Ms Elaine Higgins
Planning – Mr Max Gibson

Appendix D - Essex Police - Agreed Conditions forming Operating Schedule

APPLICATION FOR A NEW PREMISES LICENCE

McCAFFERTY'S BAR, 99 HIGH STREET, BRENTWOOD CM14 4RR

Wednesday 17 August 2022

APPENDICES

Appendix A – *Application for a New Premises Licence received 23 June 2022
Plus Proposed Conditions & Brentwood Bar Time Comparisons*

Appendix B – *OS Maps & Images*

Appendix C – *Representations from Responsible Authorities
Environmental Health (Noise Pollution) – Mr David Carter
Environmental Health (Health & Food Safety) – Ms Elaine Higgins
Planning – Mr Max Gibson*

Appendix D - *Essex Police (Licensing) Proposed Conditions – Mr Simon Barnes
Plus Applicant's Agreement to Essex Police Proposed Conditions*