

31 October 2014

Licensing and Appeals Committee

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

BRAVE NELSON, 138 WOODMAN ROAD, WARLEY CM14 5AL

Report of: Ashley Culverwell – Head of Borough Health, Safety & Localism

Wards Affected: Warley

This report is: Public

1. Executive Summary

- 1.1 This report provides information of an application for a new premises licence in respect of **Brave Nelson, 138 Woodman Road, Warley, Brentwood CM14 5AL**
- 1.2 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 Each application must be considered on its individual merits and, therefore, no recommendations may be made. 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 reject 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. Those pertaining to this particular application are reproduced in paragraph 5 of this report.
- 3.4 The four licensing objectives are;
- Prevention of crime and disorder
 - Prevention of public nuisance
 - Public safety
 - Protection of children from harm

No objective carries any more weight than any other.

- 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 9 September 2014 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.
- 4.2 The premises is a public house situated in the middle of a residential location. A site map of the location is attached at Appendix E.
- 4.3 This application is submitted following meetings between the licence holder, his agent, the licensing team and members of two responsible

authorities, namely the Council noise team and the Police. The application was sought to agree conditions that would allow a more efficient promotion of licensing objectives.

4.4 The application does not seek to vary the current premises licence or extend the hours of any licensable activity. It seeks a new premises licence, operating to its current hours, to include conditions that are appropriate and practical together with an operating schedule that promotes the licensing objectives within the community. The conditions on the current licence are ambiguous and difficult to enforce.

4.5 The hours for the sale of alcohol for consumption on and off the premises are for the following hours;

10:00hrs-23:00hrs on Sunday to Thursday and
10:00hrs-23:30hrs on Friday and Saturday

5. Reasons for Recommendation

If Members are minded to grant the application:

5.1 The applicant has stated that they have training programmes in place and that training records will be retained.

5.2 Based on the content of the operating schedule, the conditions attached to any licence issued (in addition to the mandatory conditions) will be:

- An incident log will be kept in which staff will record any crimes, incidents, refusals and any complaints received
- Staff will be trained on their roles and responsibilities, records of training given will be retained and made available to the licensing authority or the Police for inspection upon reasonable request.
- A comprehensive CCTV system is installed with full recording facilities covering both inside and outside parts of the premises
- Any music provided will be closely monitored and controlled by the in house management team so as to minimise noise nuisance to the neighbours
- Music will cease at 23:00hrs
- Smokers will be encouraged to use the garden smoking shelter in a quiet and noise friendly fashion
- Customers will not be permitted use of the garden for purposes of alcohol consumption after 22:00hrs

- Notices will be posted at entrance/exits requesting patrons to respect the neighbours and leave in a quiet & orderly fashion
- The premises will adopt a Challenge 25 policy
- Children will only be admitted while in the company of a supervising adult and will be required to vacate the premises by 22:00hrs daily (except for a pre-booked family party/event)

5.3 Additionally, the applicant has consented to operate with the following conditions proposed by the Essex Police Licensing Officer:

- The premises shall install and maintain a CCTV system. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.
- The CCTV system shall continually record whilst the premises is open to the public and during all times when customers remain on premises.
- All recordings shall be stored for a minimum of 31 days with date and time stamping. Recordings shall be made available immediately upon the request of Police or authorised officer of a Responsible Authority.
- A staff member from the premises who is conversant with the operation of the CCTV system shall be available at all times when the premises are open to the public. This staff member must be able to show Police or authorised council officer recent data or footage with the absolute minimum of delay when requested.

The consultation and agreement by e-mail between the applicant and Essex Police Licensing Officer, Peter Jones, is attached to Appendix C.

6. Consultation

6. The regulations of the Licensing Act 2003 outline the requirements for the advertising of applications. These require the applicant to advertise the application:

- (b) For a period of no less than 28 consecutive days starting on the day after the day on which the application is given to the relevant licensing authority or display a notice ... prominently at or on the premises to which the application relates where it can be conveniently read from the exterior of the premises...

- (c) By publishing a notice in a local newspaper ... on at least one occasion during the period of ten working days starting on the day after the day on which the application was given to the relevant licensing authority.
- 6.2 Regulations also require that the applicant give a copy of the application to each responsible authority on the same day upon which it is given to the licensing authority.
- 6.3 There are no other statutory requirements for advertising of any application, however, the relevant Ward Councillors are notified and details of all applications received along with the time limit for receipt of representations is posted on the Council website.
- 6.4 Officers from the licensing authority have made checks on the display of notices on two occasions, these being 13 September and 7 October. On both occasions the blue advertising notice was correctly on display on the front of the building.
- 6.5 There has been one valid representation received from a Responsible Authority. Environmental Health & Licensing Technical Officer, Mrs Rakish Rose has submitted a representation relating to noise & public nuisance complaints received against the premises over an extended period of time supported by nine Service Request Reports which are attached at Appendix B.
- 6.6 The Police observations & agreed conditions are attached at Appendix C (see 5.3) together with the observations of with a third member from the Responsible Authorities, Senior Planning Officer, Mrs Yee Cheung, who processed a planning application relating to the proposed development of the car park at the premises this summer.
- 6.7 There have been six representations received from local residents who all live in close proximity to the premises. The representations from Mr and Mrs Caccavale, Ms Strudwick and Mr Kevin Ollig, Mr Neil Hutchinson and Mrs Haynes are attached at Appendix D.
- 6.8 The concerns relating to the licensing objectives are predominantly based on noise nuisance complaints relating to the extended use of the beer garden & the premises hosting live entertainment provided at weekends. These concerns have extended to the potential level of disorder & public safety issues to the public on the street in a built up residential location.
- 6.9 The Brave Nelson has been subject of several unsuccessful applications to redevelop the land for residential housing. The latest application, to

redevelop the car park, was refused planning permission this summer and was mentioned in the response by Senior Planning Officer, Mrs Yee Cheung, see Appendix C.

7. Statement of Licensing Policy

7.1 There are no specific issues arising from this application in relation to the Councils' Statement of Licensing Policy.

7.2 The following extracts from the Councils' Statement of Licensing Policy are brought to the general attention of Members:

(1.4) Nothing in this Statement of Policy should be regarded or interpreted as an indication that any requirement of law may be overridden; each application will be considered and treated on its own merits.

(7.1) When considering applications, the Licensing Authority will have regard to:-

(a) The Licensing Act 2003, as amended and the licensing objectives.

(b) Government guidance issued under Section 182 of the Licensing Act 2003, as amended.

(c) Any supporting regulations.

(d) This Statement of Licensing Policy.

(9.1) Licensing is about the appropriate control of licensed premises, qualifying clubs, temporary events and the people who manage them or hold personal licences within the terms of the 2003 Act. Where relevant representations are made, the Licensing Authority will seek to make objective judgments as to whether conditions may need to be attached to various authorisations in order to secure achievement of the licensing objectives. Any conditions arising from the operating schedule or as a result of representations will primarily focus on the direct impact of the activities taking place at licensed premises on those attending the premises and members of the public living, working or otherwise engaged in normal activity in the area concerned. These conditions will cover matters that are within the control of individual licensees and others with relevant responsibilities.

(9.2) The Licensing Authority acknowledges that the licensing function cannot be used for the general control of nuisance or the anti-social behaviour of individuals once they are beyond the direct control of the licensee of any premises concerned. However, other mechanisms may be utilised, where appropriate, to tackle unruly or unlawful behaviour

of consumers when beyond the control of the individual, club or business holding the licence, certificate or authorisation concerned. These include:

- (a) *Planning controls.*
- (b) *Positive measures to create a safe and clean town environment in partnership with local businesses, transport operators and other services within the Local Authority.*
- (c) *The provision of CCTV surveillance in town centres, ample taxi ranks, street cleaning and litter patrols.*
- (d) *Powers of Local Authorities to restrict consumption of intoxicating liquor in designated public places other than Premises licensed for 'on' sales.*
- (e) *Police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices.*
- (f) *The prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk.*
- (g) *The confiscation of alcohol from children and adults in designated areas.*
- (h) *The power of the Police, other responsible authorities or a local resident or business to seek a review of the licence or certificate in question.*
- (i) *Action under the Violent Crime Reduction Act 2006.*

(11.1) There can be confusion about the difference between “need” and the “cumulative impact” of premises on the licensing objectives. “Need” concerns the commercial demand for another pub or restaurant or hotel. This is not a matter for a licensing authority in discharging its licensing functions or for its Statement of Licensing Policy.

*(16.6) The Licensing Authority considers the effective and responsible management of the premises, instruction, training and supervision of staff and the adoption of best practice to be amongst the most essential control measures for the achievement of all the licensing objectives. **For this reason, these elements should be specifically considered and addressed within an applicant’s operating schedule.***

8. Relevant Sections of the Secretary of State’s Guidance

8.1 The following extract of the section 182 guidance as published by the Secretary of State are brought to the attention of Members.

(9.41) Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis.

They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

(9.42) The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

(9.43) Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

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 A - Application Form
- Appendix B - Responsible Authority Representations
- Appendix C - Police Agreed Conditions
- Appendix D - Interested Parties Representations
- Appendix E - Brave Nelson – OS Map

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