

**19 December 2014**

**Licensing and Appeals Committee**

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

**PAPA JOHNS, 106 HIGH STREET, BRENTWOOD CM14 4AP**

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

**Wards Affected:** Brentwood South / Brentwood North

**This report is:** Public

**1. Executive Summary**

- 1.1 This report provides information of an application for a variation to the premises licence in respect of **Papa Johns, 106 High Street, Brentwood CM14 4AP**
- 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 28 October 2014 from Mr Tofur Ali in respect of Papa Johns, 106 High Street, Brentwood CM14 4AP. A copy of the application is attached at **appendix 1**.

4.2 The premises is a food take away and provides late night refreshment. A site map of the location is also attached at **appendix 1**.

4.3 The applicant seeks to vary a premises licence for the provision of late night refreshment for the following hours;  
23:00hrs-03:00hrs daily

## **5. Reasons for Recommendation**

If Members are minded to grant the application:

5.1 The applicant has stated that:

- no alcohol will be served
- no unaccompanied children under 14 will be served after 11pm
- no unaccompanied children under 16 will be served after midnight
- first aid kits will be regularly checked and restocked
- CCTV will be in operation from opening to closing
- Customers will be asked to respect residents rights by avoiding excessive noise
- Bins will be provided
- Staff will clean the area around the premises at the end of operating hours

All such proposals will be converted into conditions on any licence as may be granted.

## **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 several occasions, including 28 October and 14 November. On

both occasions a single blue advertising notice was on display in the front window.

- 6.5 There have been three valid representations received from the Responsible Authorities. Essex Police Licensing Officer, Peter Jones, has concerns relating to potential crime and disorder, public nuisance and public safety. A copy of this representation is attached at **appendix 2**.
- 6.6 Environmental Health Officer, Steve Blake, has submitted a representation relating to the potential noise and public nuisance issues and the effect on local residential properties that may arise should a premises licence be granted and is attached at **appendix 3**.
- 6.7 Planning Enforcement Officer, Dean Baker has submitted a representation making reference to a previous planning application at the location that was refused and states that the proposal would cause noise and disturbance to local residents at unsociable times of the day to the detriment of their amenity. This representation is attached at **appendix 4**.
- 6.8 The concerns relating to the licensing objectives are predominantly based on noise nuisance matters and public safety issues relating to the extended hours in that late night refreshment retains people within the town centre especially at weekends. The applicant has made no address of the additional steps he intends to take to promote the licensing objectives. These concerns have extended to the potential level of disorder and public safety issues to the public on the street.
- 6.9 The current premises licence, together with an OS Map and frontage images to better identify the location are attached at **Appendix 5**.

## **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 1 - Application Form
- Appendix 2 - Responsible Authority (Police) Representation
- Appendix 3 - Responsible Authority (EHO) Representation
- Appendix 4 - Responsible Authority (Planning) Representation
- Appendix 5 – Papa John’s Premises Licence & Street Plan

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