

PART A

Report to: Licensing Sub Committee
Date of meeting: Thursday, 23 January 2020
Report of: Senior Licensing Officer (AY)
Title: Application to vary a club premises certificate – Fulleriens RFC, Coningesby Drive, Watford WD17 3PB

1.0 Summary

1.1 An application has been made by Fulleriens RFC to vary the existing club premises certificate that they hold for the club house at Coningesby Drive, Watford WD17 3PB.

1.2 Members are reminded that representations are only relevant if they relate to one or more of the licensing objectives. The four licensing objectives are;

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

1.3 During the consultation period representations against this application were received from local residents and a ward councillor.

2.0 Risks

| 2.1 | Nature of Risk | Consequence | Suggested Control Measures | Response <i>(Treat, tolerate, terminate, transfer)</i> | Risk Rating (the combination of severity and likelihood) |
|-----|---|--|--|---|---|
| | Appeal against decision by applicant or objectors | Decision overturned by the courts with potential of costs being awarded against council if decision is | Determination of application given with detailed reasons and after considering evidence before the | Treat | 2 |

| | | | | |
|--|---|--|-------|---|
| | not justified or legal | committee, the Council's licensing policy, statutory guidance, and legislation | | |
| Judicial review of decision by applicant, objectors, or consultees | Negative perception of the council and its licensing system | Treat in accordance with the legislation, the statutory guidance, and the council's licensing policy, with both applicants and objectors being given fair chance to present their arguments to the committee | Treat | 1 |

3.0 Recommendations

- 3.1 That the Licensing Sub Committee determines whether to grant the application (amended as appropriate for the promotion of the licensing objectives) as set out in the report.

Contact Officer:

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Report approved by: Justine Hoy, Head of Community Protection

4.0 Application

4.1 Type of authorisation applied for

- 4.2 Application to vary a club premises certificate. The application is attached at appendix 1.

4.3 **Description of premises**

4.4 The premises operates as a private members' club for members of the Fullerians Rugby Club. The premises is licensed for the supply of alcohol to club members and bona fide guests. A copy of the current club premises certificate and layout plan is attached at appendix 2.

4.5 Under Policy LP1, the use would be defined as a 'qualifying club', in that the premises qualifies for, and indeed holds, a club premises certificate under the Licensing Act 2003.

4.6 The premises is a purpose-built club house, with car parking facilities, on the playing fields at the end of Coningesby Drive. The premises is close to two other sports clubs and two schools, as well as residential premises. Under policy LP2, the premises would be defined as being located within a residential area.

4.7 A map of the location of the premises is attached at appendix 3.

4.8 **Licensable activities**

4.9 This application has applied for a variation of their existing certificate as follows:

| Licensable activity | Permitted | Requested |
|--|------------------|------------------|
| Plays | | |
| Films | | |
| Indoor sporting events | | |
| Boxing or wrestling entertainment | | |
| Live music | ✓ | ✓ |
| Recorded music | ✓ | ✓ |
| Performances of dance | | |
| Entertainment of a similar description to live or recorded music, or dance | | |
| Supply of alcohol to club members and bona-fide guests | ✓ | ✓ |

4.10 For clarification, officers can confirm that no permission is being sought for additional licensable activities. The application only seeks to change the hours when activities can be permitted.

4.11 **Licensable hours**

4.12 The hours proposed in this application are detailed in the following table:

| | Live Music | | Recorded Music | | Supply of Alcohol | |
|-------------|-------------|-------------|----------------|-------------|-------------------|-------------|
| | Existing | Proposed | Existing | Proposed | Existing | Proposed |
| Monday | 10:00-23:00 | No change | 10:00-23:00 | No change | 10:00-23:00 | No change |
| Tuesday | 10:00-23:00 | No change | 10:00-23:00 | No change | 10:00-23:00 | No change |
| Wednesday | 10:00-23:00 | No change | 10:00-23:00 | No change | 10:00-23:00 | No change |
| Thursday | 10:00-23:00 | No change | 10:00-23:00 | No change | 10:00-23:00 | No change |
| Friday | 10:00-23:00 | 10:00-00:00 | 10:00-23:00 | 10:00-00:30 | 10:00-23:00 | 10:00-00:30 |
| Saturday | 10:00-23:00 | 10:00-00:00 | 10:00-23:00 | 10:00-00:30 | 10:00-23:00 | 10:00-00:30 |
| Sunday | 11:00-22:30 | 10:00-22:30 | 12:00-22:30 | 10:00-22:30 | 11:00-22:30 | No change |
| Good Friday | 12:00-22:30 | No change | 12:00-22:30 | No change | 12:00-22:30 | No change |

- 4.13 The existing certificate also permits the three licensed activities to be offered continuously from the end of permitted hours on New Year’s Eve through to the start of permitted hours on New Year’s Day.
- 4.14 The proposed variation seeks to state specific hours on New Year’s Eve, and requests that all permitted activities may be offered 10:00-03:00 on New Year’s Eve.
- 4.15 **Opening Hours**
- 4.16 The hours proposed in this application are detailed in the following table:

| | Existing | Proposed |
|----------------|----------------|-------------|
| Monday | Not prescribed | 10:00-23:00 |
| Tuesday | Not prescribed | 10:00-23:00 |
| Wednesday | Not prescribed | 10:00-23:00 |
| Thursday | Not prescribed | 10:00-23:00 |
| Friday | Not prescribed | 10:00-01:00 |
| Saturday | Not prescribed | 10:00-01:00 |
| Sunday | Not prescribed | 08:00-22:30 |
| Good Friday | Not prescribed | No change |
| New Year’s Eve | Not prescribed | 10:00-03:00 |

5.0 **Background information**

5.1 The following background information is known about these premises.

5.2 **Current certificates held**

5.3 The premises currently holds a club premises certificate with the reference of 18/00586/CPCV, valid from 5 May 2018 following the grant of a variation application to change the layout of the premises. A copy of the current certificate is attached at appendix 2.

5.4 **Closing date for representations**

5.5 26 December 2019.

5.6 **Public notice published in newspaper**

5.7 6 December 2019.

5.8 **Visits and Enforcement action**

5.9 The committee have requested that we note the history of visits and enforcement actions. Officers can advise that there have been no complaints logged against this premises since the last variation in 2018.

6.0 **Promotion of the licensing objectives**

6.1 The operating schedule submitted by the applicant to describe the steps that they intend to take to promote the licensing objective is included within the application to vary the club premises certificate, attached at appendix 1.

7.0 **Representations**

7.1 **Responsible Authorities**

7.2 Environmental Health did submit representations against this application, but these representations were withdrawn after the club agreed to amend their operating schedule to include a number of conditions. These conditions are covered later in the report.

7.3 The Police also managed to secure the agreement of the premises to amend their operating schedule and agree to specific conditions. As a result, the Police did not submit formal representations. Again, these conditions are covered later in the report.

7.4 No other responsible authority submitted representations or agreed any additional steps with the premises.

7.5 **Other persons**

7.6 Representations have been received from the persons listed below.

| Ref | Representative Body (Yes/No) | Representations made on which licensing objective(s) |
|-----|------------------------------|---|
| A | No | Crime & Disorder, Public Nuisance |
| B | No | Crime & Disorder, Public Nuisance |
| C | No | Crime & Disorder, Public Nuisance |
| D | No | Crime & Disorder, Public Nuisance |
| E | No | Crime & Disorder, Public Nuisance, Protection of Children from Harm |
| F | No | Crime & Disorder, Public Nuisance |
| G | No | Public Nuisance |
| H | No | Crime & Disorder, Public Nuisance |
| I | Yes | Crime & Disorder, Public Nuisance, Public Safety |
| J | No | Public Nuisance |
| K | No | Public Nuisance |
| L | No | Public Nuisance |
| M | No | Public Nuisance |

7.7 These representations are attached at Appendix 4.

7.8 Officers are aware that some of the representations submitted concern previous planning applications and the current planning permission for the premises. Members are reminded that planning and licensing are separate regimes, administered under differing legislation and considered under differing policies. The fact that controls exist on a planning permission does not automatically mean that the club are not able to apply for a licence for different hours or controls, and Members are reminded that the planning authority were consulted on this application and made no representations.

8.0 **Policy considerations**

8.1 The following provisions of the Licensing Act 2003 apply to this application:

- Sections 84 & 85
Section 84 details how a relevant club can apply to vary a club premises certificate which they hold
Section 85 details how determinations will be made when an application is made under section 84

- The Licensing Act 2003 (Hearings) Regulations 2005 (as amended)
These regulations detail how hearings should be conducted to determine applications submitted under the Licensing Act

8.2 **Statutory guidance**

8.3 The following provisions of the Secretary of State's guidance (April 2018) apply to this application:

- Paragraph 2.21
This paragraph explains that beyond the immediate area surrounding the premises, individuals are responsible for their own actions and are accountable in their own right. However, it may be reasonable for premises to display signage to inform customers to respect the rights of people living nearby, for example.
- Paragraph 6.11
This paragraph explains that the process for applying for a variation to a club premises certificate is extremely similar to the process of applying for a variation to a premises licence, and that licensing authorities should refer to Chapter 8 of this guidance when handling such applications.
- Paragraph 6.12
This paragraph explains that relevant members' club must operate within the rules of the respective club, and that there is a process to formally notify the licensing authority of any changes to the rules. This paragraph also confirms that licensing authorities cannot require any changes to club rules unless relevant representations have been made.
- Paragraphs 8.41 – 8.49
These paragraphs explain how steps should be taken to promote the licensing objectives. It is for the Sub-Committee to decide in light of this guidance whether the measures offered by the applicant are appropriate to promote the licensing objectives. It is equally important to use the same measures when looking at any steps requested by a party making representations against an application.
- Paragraphs 9.31 – 9.41
These paragraphs explain that hearings should be focussed on the steps considered appropriate to the promotion of the licensing objectives, as well as how appropriate weight must be attributed to the steps to promote the licensing objectives, the representations presented by all parties, the statutory guidance and the licensing authority's statement of licensing policy.

- Paragraphs 9.42 – 9.44
These paragraphs explain that when determining applications, the authority's determination should be evidence-based, as well as how to assess if a step is 'appropriate' for the promotion of licensing objectives.

- Chapter 10
This chapter looks at best practice in relation to conditions that may be attached to a club premises certificate should it be believed that such conditions are appropriate to promote the licensing objectives. Any additional conditions requested by any party should be considered with reference to this chapter.

Paragraph 10.14 refers to 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, grant it with appropriate conditions and /or different hours from those requested.

- Paragraph 14.65
This paragraph explains that there may be circumstances when, as a condition of a planning permission, a terminal hour may have been set for the use of a premises for commercial premises. Where these hours are different to licensing hours, it is for the premises to observe the earlier closing time and abide by their permission or face enforcement action.
- Chapter 16
This chapter looks at what entertainment is licensable as 'regulated entertainment' and when it is not.

Paragraphs 16.26 – 16.29 cover live music, and paragraph 16.33 covers recorded music.

Paragraphs 16.36 – 16.41 consider the effects that deregulatory changes have on licence conditions regarding entertainment, and how conditions which relate to live and recorded music are suspended (i.e. have no effect) in certain circumstances.

8.4 **Statement of licensing policy**

8.5 The following paragraphs of the licensing authority's statement of licensing policy apply to this application:

- Policy LP1 – Premises definitions
Under this policy the premises are defined as a 'qualifying club'.

- Policy LP2 – Location and operation of premises
This policy sets out the approach to licensing premises when relevant representations are received, notwithstanding that each application is considered on its own merits.

This policy states that qualifying clubs will generally be granted for hours and activities requested.

- Policy LP6 – Prevention of crime and disorder
Under this policy the committee will consider any necessary measures to deal with the potential for crime and disorder where relevant representations have been received, and this policy highlights areas of particular concern.
- Policy LP7 – Public safety
This policy details the factors that will be considered when a relevant representation is received based on this licensing objective.
- Policy LP8 – Prevention of public nuisance
Under this policy the committee will consider any necessary measures to deal with the potential for public nuisance and/or antisocial behaviour where relevant representations have been received.
- Policy LP9 – Protection of children from harm
This policy details the factors that will be considered when a relevant representation is received based on this licensing objective.
- Policy LP11 – Representations against applications
This policy recommends the type of information that should be included in a representation. It also explains how representations will be dealt with.

8.6 The Sub-Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the Borough.

8.7 The Sub-Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life.

9.0 **Conditions**

9.1 Members will be aware that an operating schedule forms part of the licensing process. This document outlines what activities are proposed, the opening hours,

and how the activities will be managed particularly in respect of the licensing objectives.

9.2 The most critical part of the operating schedule is the steps taken by the applicant to promote the four licensing objectives. Applicants are always reminded to take careful consideration as to what is entered in this section as whatever is proposed will be translated as conditions on the licence.

9.3 Applicants should give consideration to the local area and reflect this in their application. It should demonstrate an awareness of the local community, local crime and disorder issues, and the local environment.

9.4 The club's operating schedule for this variation can be found in their application, which is attached at appendix 1.

9.5 **Conditions agreed with Environmental Health**

9.6 The club have offered the following conditions following agreement with Environmental Health, which would be attached to the club premises certificate should this application be granted:

1. All windows and external doors shall be kept closed from 23:00, except for the immediate access and egress of persons.
2. The regular monitoring of amplified music by the senior member on duty shall take effect from 23:00. You will need to ensure that regular checks (on at least a 30 minute basis) are carried out and will record in writing the outcome of these checks and any action taken. The volume of the music is to be reduced if, when undertaking the checks, the lyrics to any song can be clearly identified or if the bass is any more than faintly audible at the boundary of the premises car park. Locations for the checks will be walking around the boundary of the premises car park.
3. Music amplification systems shall not be located in the entrance lobby or outside the premises building. Music amplification systems must not be directed outwards towards any street or installed externally to the premises.
4. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
5. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.

9.7 **Conditions agreed with the Police**

9.8 The club have offered the following conditions following agreement with the Police, which would be attached to the club premises certificate should this application be granted:

1. Any supply of alcohol must be made to members and bona fide guests of members only.
2. Members shall be responsible for the admission of their guests in accordance with clubs rules.
3. The premises shall install and maintain a CCTV system, and have a staff member from the premises who is conversant with the operation of the CCTV system, all recordings shall be stored for a minimum of 28 days and made available to police and an authorised member of the licensing authority.
4. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.

9.9 **Conditions consistent with the operating schedule**

9.10 The club have offered the following condition in their operating schedule:

“No private functions will be taken for any celebrations for under 25s”

Officers suggest that, should Members assess that it is appropriate to attach such a condition to the club premises certificate in response to the representations submitted against this application, that this condition be made more explicit in order to be clearer and more enforceable.

9.11 **Conditions proposed to be removed**

9.12 The application also proposes to remove conditions 1 and 2 of annex 2 of the existing club premises certificate, regarding opening times and the supply of alcohol. Officers can advise that these conditions, if kept on the certificate, would contradict with the proposed hours.

9.13 It is noted that condition 1 states that alcohol shall not be supplied except during ‘permitted hours’, and that the permitted hours are 10 am to 11pm on weekdays. However, this application seeks to extend the permitted hours for alcohol sales until 00:30 on Fridays. Should the terminal hour be varied to later than 11pm as a result of this application, then those hours would contradict with this condition. The condition also permits continuous supplies of alcohol on New Year’s Eve, but the application is proposing to set a specific terminal hour for activities on New Year’s Eve. Officers must advise that this condition already contradicts the licensed hours

which have been granted for this premises in the past, because this condition states that on Sundays alcohol shall only be supplied from 12 noon to 10:30 p.m. However, this premises has been granted permission to supply alcohol from 11am on Sundays.

9.14 With regards to condition 2 of annex 2, this states that members are permitted to consume alcohol on the premises for 20 minutes after the terminal hour for the supply of alcohol. However, the application proposes that the premises close 30 minutes after the terminal hour for the supply of alcohol, which would give 30 minutes drinking-up time instead of 20 minutes.

9.15 **Conditions proposed by other objectors**

9.16 There are no conditions proposed by the objectors

9.17 **Pool of Model Conditions**

In addition to any conditions proposed by the responsible authorities or objectors, the licensing authority also has its own pool of model conditions that may help mitigate the concerns raised in the representations.

9.18 Officers have not identified any specific conditions from the pool of model conditions which are considered to be appropriate for the promotion of the licensing objectives in this case.

9.19 This does not restrict the Sub-Committee's power to attach conditions from the pool (amended or otherwise) if they consider that they are appropriate, proportionate, justifiable and within the applicant's power to comply with.

9.20 A draft club premises certificate which reflects this application and the conditions which are proposed in the preceding paragraphs is attached at Appendix 5.

10.0 **Officers' observations**

10.1 As relevant representations in respect of this application have been received, and which have not been withdrawn, the Licensing Sub-Committee acting on behalf of the licensing authority must make a determination on this application.

10.2 Officers advise that due to the number of parties involved in this application, mediation was not pursued in this case.

10.3 It is noted that this application does concern an extension to hours into the night/early morning. Paragraph 2.19 of the Statutory Guidance states:

"Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example the most sensitive period for people being disturbed by unreasonably loud music is at night and into

the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11pm and 8am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave”.

- 10.4 The Sub-Committee will need to consider the hours of operation, the effectiveness of the operating schedule by the applicant, the representations received, the location of the premises, the history of the management of the premises (if applicable), the evidence provided of any problems in the past, the likely impact of any extension of hours and activities, the right the applicant has to operate a business and balancing the rights of residents to the quiet enjoyment and privacy of family life. These and other relevant issues may be explored at the hearing in so far as it reflects the proposed impact of the application on the four licensing objectives.
- 10.5 Members are reminded that the purpose of the hearing is to determine the variation application, and may not be used to reduce or remove existing licensable activities.
- 10.6 The conditions consistent with the operating schedule may be modified to alter or omit any of them or to add any new condition, including restricting the times at which licensable activities authorised by the certificate can take place. However, conditions should not be imposed on a licence which are unrelated to the variation sought.
- 10.7 The officers’ observations and the comments regarding the representations are in no way meant to bind Members. They are for guidance only and Members may attach whatever weight they see fit.
- 10.8 Members are also to attach whatever weight they see fit to both the submissions of the applicant, and to the submissions of the objectors, when considering this application and give reasons for their decision.
- 10.9 The Sub-Committee is reminded that it has a duty to “have regard” to the licensing policy but is not bound by it. However, should Members wish to depart from the policy then detailed reasons for this must be given as part of any decision.
- 10.10 In determining this application, the Sub-Committee must have regard to the representations and take such steps as it considers appropriate for the promotion of licensing objectives. The steps are:
 - (a) grant the application in full.
 - (b) modify the conditions of the licence volunteered by the applicant in the operating schedule, by altering or omitting or adding them.

(c) reject the whole or part of the application.

It is important that a licensing authority should give reasons for its decision in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal.

Appendices

Appendix 1 – Application form

Appendix 2 – Existing club premises certificate

Appendix 3 – Location plan

Appendix 4 – Representations

Appendix 5 – Draft club premises certificate

Background Papers

The following background papers were used in the preparation of this report. If you wish to inspect or take copies of the background papers, please contact the officer named on the front page of the report.

Licensing Act 2003

Amended guidance issued under section 182 of the Licensing Act 2003 (Home Office April 2018)

Licensing Act (Hearings) Regulations 2005

Watford Borough Council Licensing Policy (November 2018 – November 2023)

Watford Borough Council Pool of Model Conditions (January 2018)