

LICENSING ACT 2003 SUB COMMITTEE

Friday, 20th October, 2023
10.30 am





LICENSING ACT 2003 SUB COMMITTEE

RECEPTION ROOM

Friday, 20th October, 2023 at 10.30 am

AGENDA SUPPLEMENT

6) *Determination of a Premises Licence Application*

3 - 18

To determine a Premises Licence application under the Licensing Act 2003 relating to Cocktails & Creamz, 25-29 Hammerton Street, Burnley:

Covering report – Public version
Covering report – Private version
Appendix A – Licence Application
Appendix B – Representations – Public version
Appendix B – Representations – Private version
Appendix C – Env. Health Conditions
Appendix D – Police Conditions
Appendix E – Operating Schedule

Supplementary agenda:

Appendix F – Residents' Submission – Public version
Appendix F – Residents' Submission – Private version

Supplementary agenda 2: Reflecting changes to the timing of the sale of alcohol as agreed with the Police:

Covering report – Public version
Covering report – Private version
Appendix E – Operating Schedule

REPORT TO LICENSING SUB-COMMITTEE



DATE	20th October 2023
PORTFOLIO	Community & Environment
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Licensing Act 2003 application for a Premises Licence
Cocktails & Creams, 25-29 Hammerton Street, Burnley

PURPOSE

1. To consider an application under section 17 of the Licensing Act 2003 (The Act) received from Company A for a Premises Licence for Cocktails & Creams, 25-29 Hammerton Street, Burnley.

2. A copy of the application is attached at Appendix A.

RECOMMENDATION

3. Members are recommended to make a determination under section 18 of the Act with a view to promoting the licensing objectives.
 - The prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm

The committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- To grant the licence, subject to the mandatory conditions and conditions consistent with the operating schedule;
- To alter, omit or add conditions to such an extent as is considered appropriate for the promotion of the licensing objectives;
- To exclude any of the licensable activities to which the application relates
- To amend the times for all or some of the licensable activities;
- To refuse to specify a person in the licence as the premises supervisor
- To refuse the application

REASONS FOR RECOMMENDATION

4. Members of the Licensing Committee are responsible for determining such applications.

SUMMARY OF KEY POINTS

5. An application for a premises licence under the Licensing Act 2003 was received by the Licensing Authority on 4th September 2023.

Full details of the application are listed in the application form and are summarised as follows:

- The sale by retail of alcohol on the premises from 10am to 12 midnight Monday to Wednesday and 10am to 3.30am Thursday to Sunday
- The provision of live music indoors from 10am to 11pm Monday to Wednesday and 10am to 2.30am Thursday to Sunday
- The provision of recorded music and dancing indoors from 10am to 12 midnight Monday to Wednesday and 10am to 3.30am Thursday to Sunday
- The provision of late-night refreshment from 11pm to 12 midnight Monday to Wednesday and 11pm to 3.30am Thursday to Sunday
- The premises opening hours to be from 10am to 12 midnight Monday to Wednesday and 10am to 3.30am Thursday to Sunday

Copies of the application were sent to all Responsible Authorities. Relevant representations were received within the prescribed period from 7 individuals and a copy of those representations are provided at Appendix B.

Relevant representations were also received within the prescribed period from the Environmental Health Officer, however, following mediation between the Environmental Health Officer and the applicant, conditions were agreed and those representations were withdrawn. A copy of those agreed conditions is provided at appendix C and they have now been incorporated into the operating schedule.

Also, during the prescribed period, conditions suggested by Lancashire Constabulary were agreed with the applicant and those conditions have been incorporated into the operating schedule. A copy of the agreed conditions is provided at Appendix D.

As a result of the agreed condition relating to the sale of alcohol ceasing 30 minutes prior to the closing of the premises, the timings for the sale of alcohol have been adjusted as follows:

- *The sale by retail of alcohol on the premises from 10am to 11.30pm Monday to Wednesday and 10am to 3.00am Thursday to Sunday

Members are reminded that representations are relevant where they relate to the likely effect of the grant of the application on one or more of the 4 licensing objectives which are:

- PREVENTION OF CRIME & DISORDER
- PUBLIC SAFETY
- PREVENTION OF PUBLIC NUISANCE
- PROTECTION OF CHILDREN FROM HARM

The applicant had, at section M of the application, detailed the steps they intend to take to promote the four licensing objectives. As outlined above, this section has since been amended following mediation with the Police & Environmental Health. A copy of the revised section M, which incorporates the amended agreed conditions, is provided at Appendix E.

This schedule is incorporated into the licence as conditions when a licence is granted. Sub-Committee can modify, i.e. alter, omit or add to these conditions following a hearing.

Notice of a hearing has been sent to the applicant and to each of the persons from whom the licensing authority has accepted a representation.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

6. None

POLICY IMPLICATIONS

7. The following paragraphs from Burnley Borough Council's Statement of Licensing Policy 2022 – 2027 are relevant to this application:

1.6 The 2003 Act is part of a wider Government strategy to tackle crime, disorder and anti-social behaviour and reduce alcohol harm. It is recognised that the Act is not the primary mechanism for controlling nuisance by individuals once they are away from the premises, and beyond the control of the holder of a licence, club certificate or temporary event authorisation.

3.1.5 Operating schedules are an opportunity for the applicant to explain how the licensing objectives will be upheld at the premises. The operating schedule should be completed with careful consideration to the activities requested. The Licensing Authority recognises that licensed premises vary considerably in terms of what activities they provide, their size and location and therefore, there is no single set of measures that will be appropriate measures for inclusion on the operating schedule. Applicants should consider the particular sensitivities of people living or working in the vicinity. The application is less likely to be subject to representations where good advice has been sought and appropriate measures are incorporated into the operating schedule.

3.2.2 Representations can be received from a Responsible Authority or from any other

person. Those received from Responsible Authorities will be afforded particular weight.

3.4.3 Conditions attached to the licence/certificate will avoid `gold plating`, ie restating, existing legal requirements imposed via other acts of parliament or statutory instruments.

5.1.2 The Licensing authority wants to encourage responsible businesses to operate in the Borough. The Council is keen to encourage and support a more diverse mix of venues, events and visitor attractions which will be balanced against the potential for disturbance to town centre residents and businesses.

5.6.3 The Licensing Authority considers that later hours will typically be more sensitive and higher risk in causing noise from regulated entertainment, anti-social behaviour from patrons in the vicinity of the premises, and crime and disorder from inebriated patrons. This will include late night food vendors. It therefore follows that additional measures may be required, including noise mitigation controls and an increasing number of SIA registered door supervisors may need to be employed the later the premises remains open, and these requirements may be considered as licence conditions

5.8.1 It is expected that premises licensed to sell alcohol for consumption on the premises, especially those trading beyond midnight, implement appropriate welfare measures. This may include the employment of designated welfare staff and trained first aiders, as well as steps to identify vulnerable person(s) and respond to accidents, injuries and other immediate harms such as unconsciousness, alcohol poisoning, drug intoxication, and any reported `Spiking` incidents. Safety measures could include encouraging customers to ensure their drinks are not left unattended, and the use of publicity material to ensure customers remain vigilant. Overt CCTV is also a major deterrent for potential offenders.

5.8.2 Where spiking incidents occur inside premises or affect customers who either leave or are ejected, the necessary duty of care is exercised by the Premises Licence Holder / DPS and their staff, and that includes the immediate calling of appropriate medical aid and the notification of the police

5.8.3 A zero-tolerance policy should be implemented regarding the use of illegal drugs and new psychoactive substances (NPS), (previously referred to as `legal highs`), and nitrous oxide (NO) on the premises. Where there is a risk of illegal drug use on the premises, the authority expects a documented policy that sets out how drugs will be prevented from being brought into the premises, what action the venue will take should anyone be caught with drugs on the premises, and how the drugs will be disposed of.

Licensees should remain alert to emerging issues. The authority considers that nightclubs, in particular, should address these risks, but it may also be appropriate for other licensed premises to do so. Relevant considerations could include: –

- The searching of customers and their bags etc on entry, this being a condition of entry
- A refusal/ejection policy for anyone found in possession of drugs, NPS, NO or similar intoxicants
- The use of toilet attendants / floor walkers and regular documented toilet checks –
- Searches of the premises – Training of staff in drug awareness to identify and prevent the supply and use of illegal drugs and new psychoactive substances
- Physical measures to deter drug use on the premises.
- Clear posters displayed and the overt use of CCTV, particularly in vulnerable areas.

The following extracts from the Home Office Revised Guidance issued under Section 182

of the Licensing Act 2003, issued in August 2023 are also relevant:

2.20 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.21 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises.

2.22 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.

2.23 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.

2.24 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 11 pm and 8 am. 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.

2.26 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the

building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

9.12 Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing

9.42 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.

9.43 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.

DETAILS OF CONSULTATION

The statutory consultation has taken place.

BACKGROUND PAPERS

9. Burnley Borough Council Statement of Licensing Policy.
Licensing Act 2003.
Home Office Revised Guidance issued under Section 182 of the Licensing Act 2003, issued in 2023.

FURTHER INFORMATION

PLEASE CONTACT:

Lisa Tempest at licensing@burnley.gov.uk

ALSO:

Karen Davies at licensing@burnley.gov.uk

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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Describe the steps you intend to take to promote the four licensing objectives:

a) General – all four licensing objectives (b, c, d and e) (please read guidance note 10)

Designated Premises Supervisor

Whenever licensable activity takes place after 22.00hrs on a Friday or Saturday evening, the Designated Premises Supervisor will be present on site or at least one member of staff on duty who holds a personal licence.

b) The prevention of crime and disorder

CCTV

A comprehensive colour CCTV system shall be installed internally and externally at the premises and cover all area where licensable activity takes place and will meet the following criteria:

- The system will display on any recording the time and date of said recording;
- The system will be recording whenever the premises is open to the public;
- Any recordings will be retained for a minimum of 28 days after they are made and will be produced to an authorised officer upon request, so long as said request is in accordance with the principles of the Data Protection Act or any subsequent or alternative legislation;
- Where such a request is made in writing, the images will be provided as soon as practicable, but in any event no later than 48 hours after said request has been made, (unless otherwise agreed with the party requesting the images);
- Images provided will be uploaded to the requesting authorities current online portal, e.g. NICE, unless otherwise agreed with the party requesting the images. A supply of USB sticks, DVD's, or alternatives shall be kept on the premises for this purpose.

Appropriate signage alerting customers to the use of CCTV shall be displayed in a conspicuous position at the premises.

A competent person trained in the use of and operation of the CCTV will be in attendance at the premises at all times that licensable activities are taking place. Said person will be able to fully operate the CCTV system and be able to download data in a recognised format when requested.

c) Public safety

Door Supervisors

Prior to any occasion on which licensable activities are to be carried on at the premises, a risk assessment will be carried out to determine whether SIA registered door supervisors are required. An appropriate number of door supervisors will be utilised in accordance with said risk assessment, which will be recorded in writing and made available to an authorised officer upon request. As a minimum, whenever the premises is open to the public, there will be at least two SIA registered door supervisors utilised from 00.00 to close of business on Friday and Saturday evenings.

An incident register of all occurrences and ejections from the premises will be maintained at the premises and any details of public order offences will be recorded. Said register will be made available upon request to an authorised officer.

A record shall be kept on the premises by the DPS of every person employed on the premises as a door supervisor. The record shall contain the following details: name, address, date of birth and SIA licence number and signing in and out for each door supervisor. The record shall be available for inspection, on demand, by an authorised officer of the council, a police officer or the SIA.

Drug and Search Policy

The premises will have a written zero tolerance drugs policy which is enforced at all times. This policy will include search, seizure and disposal of drugs and weapons. This will include details of the recording of seizures, secure, tamper proof storage and disposal via the Police. A copy of the policy will be provided to the Licensing Authority and be available for inspection on demand by authorised officers of the Council, Police or SIA.

d) The prevention of public nuisance

The management of the premises will ensure that the area immediately outside the entrance to the premises is kept clean, tidy and free from litter. No glass will be allowed off the premises at the front entrance and only permitted in the rear smoking area up until 22.00hrs.

Signs will be placed at the main public exit in a conspicuous position requesting patrons to respect the needs of residents and to leave the premises and the area quietly.

Plastic drink containers will be used when requested by the Police, and these will be compliant with current Weights and Measures Regulations.

Bottles and glasses will not be placed into external waste receptacles between the hours of 23.00 and 08.00.

There will be a clear customer dispersal policy in place. Such a policy should minimise noise disturbance and potential disorder from customers leaving the premises. A policy should clearly set out measures to control the exit at the end of the evening, including lowering the volume of music 30 minutes prior to closing and the premises will cease the selling of alcohol 30 minutes prior to the closing of the premises.

A noise limiting device must be installed and must operate at all times regulated entertainment takes place at the premises. The device must be of a type, in a location and set at a level indicated by a Noise Impact Assessment, completed by a competent acoustician to the satisfaction of the EHO.

The rear exit and walkway, running to the rear of the Hammerton House buildings along-side the river, will remain clear of obstructions to allow for unimpeded exiting of the building in the case of a fire or other emergency, in accordance with the required fire risk assessment.

All external windows and doors must be kept shut at all times when regulated entertainment is being provided. Doors may be opened for normal entrance and egress of people but must be shut immediately thereafter. With the exception of the front door to the street which will be open in the day time and will be closed from 11pm

until closing time, in order to reduce noise being emitted from the premises at night time.

No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises that gives rise to a nuisance.

Records will be kept to demonstrate noise monitoring is being undertaken and will be available for officers to view on request.

There shall be no noise or odours caused by the kitchen extraction equipment that gives rise to a nuisance.

There will be no music played externally.

Clear and legible notices must be prominently displayed at all exits requesting customers to respect local residents and leave the area quietly.

Staff will monitor the dispersal of customers and ensure patrons do not contribute to anti-social behaviour in the vicinity.

e) The protection of children from harm

Protection of Children

The premises will have a written dispersal policy designed to encourage patrons to leave the venue and the area quickly and quietly. A "Challenge 25" policy shall be adopted and enforced at the premises whereby any person who appear to be under the age of 25 shall be required to provide identification to prove that they are over the age of 18 before they are permitted to purchase alcohol. The only forms of acceptable identification will be:

- A Passport;
- A UK Photocard Driving Licence
- Official ID card issued by HM Forces or EU bearing a photograph and the date of birth of the holder;
- PASS ID Cards;
- Any other form of identification agreed with a representative of Lancashire constabulary Licensing Unit.

All staff who are involved in the sale of alcohol will be trained in relation to the "Challenge 25" policy upon the commencement of their employment, following which they will undertake refresher training at least once every twelve months. Said training will be documented and will be made available to an authorised officer upon request.

All children will be under the supervision of their parent/guardian at all times whilst on the premises and all children will be off the premises after 19.00hrs. All music before 19.00hrs will be child appropriate and all gambling and gaming machines will be in view of staff and clearly marked with notices prohibiting the use by persons under 18.

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