

REPORT TO LICENSING SUB-COMMITTEE



DATE	8th May 2024
PORTFOLIO	Community & Environment
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Licensing Act 2003 application for a Premises Licence
Shakespeare Local, 2 Wytham St, Padiham, Burnley

PURPOSE

1. To consider an application under section 17 of the Licensing Act 2003 (The Act) received from Person A for a Premises Licence for Shakespeare Local, 2 Wytham St, Padiham.
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, namely:
 - The prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm

In determining the application, 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. A Hearing is necessary because representations received from environmental health have not been withdrawn. Members of the Licensing Committee are responsible for determining such applications. Notice of the Hearing has been sent to the applicant and to the

Environmental Health Officer.

SUMMARY OF KEY POINTS

5. The Premises were previously a public house and until recently were licensed as such under licence number PL0159. That licence was surrendered by Person A on 25th April 2024. The premises are being converted by the applicant which is also subject to a current planning application. The plans indicate that part of the ground floor of the premises is to continue to operate as a bar. The bar area is not included within the licensed area of the application before you for consideration today. A plan of the application premises is provided at Appendix B.

The remainder of the ground floor will be converted to a store/off licence and the upper floors to 4 flats. This application is for a Premises Licence for the off licence part of the premises. It was received by the Licensing Authority on 14th March 2024.

Full details of the application, as made, are listed in the application form at Appendix A and are summarised as follows:

- The sale by retail of alcohol off the premises from 6am to 12 midnight, Monday to Sunday.
- The premises opening hours to be from 6am to 12 midnight, Monday to Sunday
- The 'operating schedule' identifies measures the applicant intends to take to uphold the licensing objectives and, if granted, these measures are converted to conditions that apply to the licence.

Copies of the application were sent to all Responsible Authorities. Relevant representations were received within the prescribed period from the Environmental Health Officer.

Following mediation between the Environmental Health Officer and the applicant, some further conditions have been agreed and the EHO's representations were in part withdrawn. A copy of the agreed conditions are provided at appendix C and they now become part of the operating schedule.

As a result of the agreed conditions the timings for the closing of the premises and for the sale of alcohol have been adjusted as follows:

- The sale by retail of alcohol off the premises from 6am to 11pm Monday to Sunday

A further condition relating to deliveries was agreed:

- No deliveries, collections or servicing of the premises will be undertaken outside of the following hours:
Monday to Saturday (excluding Bank Holidays) – 08:00 to 20:00 hours.

There is therefore one matter outstanding relating to the EHO representation, which is the opening time/time from which alcohol can be sold.

Before the end of the period for representations the police agreed a condition relating to Challenge 25 which is provided at Appendix D and now also becomes part of the operating schedule.

A satellite image of the location is provided at Appendix E.

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. The conditions already agreed with the police and environmental health, together with any further conditions imposed via the Hearing will be incorporated into the operating schedule, which is then become licence conditions. Sub-Committee can modify, i.e. alter, omit or add conditions following a hearing.

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.

5.6.2 Where its discretion is engaged at a hearing, the licensing authority will give consideration to the appropriateness of hours applied for, or hours permitted by the existing licence, having regard to any planning restrictions in relation to operating hours, the location of premises and their likely effect on the promotion of the four licensing objectives..... At a hearing the licensing authority will consider restricting hours to ensure the promotion of the licensing objectives....

5.10.3 The 2018 NPPF 'Agent of Change' principle establishes that where a new land use is introduced into an area, the impact should be managed by the person/business that introduces the new use, eg introducing noisy premises into a quiet location or vice-versa. This will be relevant when considering measures necessary to uphold licensing objectives at hearings.

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.

9.45 Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme

designs

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.

10.15 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

14.51..... 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

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,.

FURTHER INFORMATION

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ALSO:

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