

Notice of Meeting

Licensing Sub-Committee

Date: Monday, 12 June 2017

Time: 09:30

Venue: Conference Room 1, (Beech Hurst), Beech Hurst, Weyhill Road,
Andover, Hampshire, SP10 3AJ

For further information or enquiries please contact:

Sally Prior - **01264 368024**

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Legal and Democratic Service

Test Valley Borough Council,
Beech Hurst, Weyhill Road,
Andover, Hampshire,
SP10 3AJ

www.testvalley.gov.uk

The recommendations contained in the Agenda are made by the Officers and these recommendations may or may not be accepted by the Committee.

Membership of Licensing Sub-Committee

MEMBER

Councillor N Anderdon

Councillor J Budzynski

Councillor A Johnston

WARD

Chilworth, Nursling &

Rownhams

Andover (Winton)

Romsey Extra

Licensing Sub-Committee

Monday, 12 June 2017

AGENDA

The order of these items may change as a result of members of the public wishing to speak

- 1 Apologies
- 2 Declarations of Interest
- 3 Appointment of Chairman
- 4 Licensing Procedure Rules 4 - 6
Procedure Rules for Licensing Sub-Committee
- 5 Application for Variation of a Premises Licence - Flames, 37 London Street, Andover SP10 2NU 7 - 13
To determine an application for the variation of the existing Premises Licence.

ITEM 4

Licensing Procedure Rules - Licensing Sub-Committee

Application

These Procedure Rules shall apply to all hearings of applications and other matters pursuant to the Licensing Act 2003 and subordinate legislation and any amendments thereto, and the Gambling Act 2005 and subordinate legislation and any amendments thereto.

Terms of Reference of the Licensing Sub-Committee:

1. Ward Members will have no involvement in the decision making process.

Procedure for hearing licensing applications:

1. The Council's Scheme of Public Participation will not apply.
2. At the start of the hearing the Chairman will explain the procedure to all those present.
3. The Hearing shall take place in public. The Sub-Committee may exclude the public from all or part of the hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.
4. A party to whom notice has been given may attend the hearing and may be assisted or represented by a person whether or not that person is legally qualified.
5. The hearing shall take the form of a discussion led by the Sub-Committee.
6. Cross-examination will not be permitted unless the Sub-Committee considers it is required for it to consider the representations, application or notice as the case may require.
7. The Sub-Committee may impose a maximum period of time for each party to address the Sub-Committee.
8. To facilitate the discussion the following procedure will be followed in all cases except for reviews when 8(b) shall apply and interim steps hearings for expedited summary reviews when 8(c) shall apply:
 - (a) (i) The Licensing Manager of the Council or their representative will present the facts of the application and action taken, to the Sub-Committee.
 - (ii) The Applicant or their representative may address the Sub-Committee.

- (iii) Other parties may address the Sub-Committee in the following order:
 - Responsible authorities
 - Other parties
 - (b) (i) The Licensing Manager of the Council or their representative will present the facts of the review, and action taken, to the Sub-Committee.
 - (ii) The person requesting the review may address the Sub-Committee.
 - (iii) The licence holder may address the Sub-Committee.
 - (iv) Other parties may address the Sub-Committee in the following order:
 - Responsible authorities
 - Other parties
 - (c) (i) The Licensing Manager of the Council or his representative will present the facts giving rise to the review, and will outline any action taken, to the Sub-Committee.
 - (ii) The Police officer requesting the review or his representative may address the Sub-Committee.
 - (iii) The licence holder or their representative may address the Sub-Committee.
9. The Sub-Committee may permit the applicant or any party to question any other party.
10. The members of the Sub-Committee may ask any questions of the Licensing Manager or their representative, or of any party or other person appearing at the hearing.
11. Documentary or other evidence may be produced at the hearing with the consent of all the parties.
12. Where a party fails to attend or be represented and the Sub-Committee considers it necessary in the public interest it may adjourn the hearing to a specified date or hold the hearing in a party's absence.
13. The Sub-Committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and refuse to permit that person to return or permit them to return only on such conditions as the Sub-Committee may specify. Any such person may submit to the Sub-Committee in writing before the end of the hearing any information which they would have been entitled to give orally had they not been required to leave.
14. The Sub-Committee may ask questions of its legal adviser.

15. The Sub-Committee will deliberate in private.
16. The Sub-Committee may request advice in private of its legal adviser regarding the drafting of reasons.
17. In the case of a hearing under the sections and circumstances set out in Regulation 26(1) of the Licensing Act 2003 (Hearings) Regulations 2005 (or any amending legislation), the Sub-Committee will make its determination at the conclusion of the hearing.

In any other case, the Sub-Committee will make its determination either at the conclusion of the hearing or within the period of five working days beginning with the day or the last day on which the hearing was held.

18. A record of the hearing will be taken in a permanent and intelligible form.

ITEM 5 Application for variation of a Premises Licence – Flames, 37 London Street, Andover SP10 2NU

1 The application

- 1.1 The application is by Mr C Kutlubay for the variation of the existing Premises Licence for the late night take-away premises known as Flames, 37 London Street, Andover SP10 2NU. The applicant has applied to vary the times during which provision of late night refreshment may take place such that it would cease at 0500 hours the following morning Wednesday to Sunday; the times for Monday and Tuesday remain unchanged. The premises are currently licensed for the provision of late night refreshment until 2400 hours Sunday to Wednesday and until 0400 hours the following morning on Thursday, Friday, Saturday and Bank Holiday evenings. This application has attracted a representation necessitating the application to be determined at a hearing. A copy of the existing licence is attached as Annex 1 to this report.

2 Background

- 2.1 The premises are a late night fast food take-away located in the centre of Andover close to a number of licensed premises. An evening only taxi rank and taxi booking office are located at the end of the road in which the premises are located and it is not unusual for the general area to be very busy later in the evenings as patrons leave licensed premises in the area.

3 Promotion of the Licensing Objectives

- 3.1 The applicant makes the following comments in relation to the steps taken to promote the four licensing objectives:
- a) General – none beyond those conditions attached to the existing licence.
 - b) The prevention of crime and disorder – See above.
 - c) Public safety – See above.
 - d) The prevention of public nuisance – See above.
 - e) The protection of children from harm – See above.

The measures to promote the licensing objectives are of relevance when considering the representations received.

4 Relevant Representations – Responsible Authorities

- 4.1 **TVBC Housing and Environmental Health Service** – The Environmental Protection Team has raised an objection which is attached as Annex 2 to the application.

- 4.2 **Hampshire Fire and Rescue Service** – Having examined the application the Fire Service does not wish to make any representation.

5 Relevant Representations – Other Persons

- 5.1 There are no representations from other persons.

6 Policy Considerations

- 6.1 It is considered that the following extracts from the guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 (April 2017 edition) are relevant.

2.15-2.21 – Public nuisance

8.38-8.46 – Steps to promote the licensing objectives

9.1, 9.3, 9.31-9.44 – Determining applications

10.1-10.10, 10.13-10.14 – Conditions

A copy of the Secretary of State's Guidance will be provided at the meeting for Members of the Sub Committee. Additional copies can be obtained from the GOV.UK website.

- 6.2 It is considered that the following extracts from the Licensing Authority's own Statement of Licensing Policy are relevant to this application:

Section C Prevention of Public Nuisance

The Statement of Licensing Policy has either previously been provided for Members of the Sub Committee or will be provided at the hearing. Copies can also be obtained from the Licensing Section of the Legal and Democratic Service or downloaded from the Council's website.

7 Observations

- 7.1 The Committee is obliged to determine this application with a view to promoting the four licensing objectives of prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm. In making its decision, the Committee is also obliged to have regard to the national Guidance and the Council's own Statement of Licensing Policy. The Committee must also have regard to all of the representations made and the evidence it hears. The Committee must take such of the following steps as it considers appropriate for the promotion of the licensing objectives:

- a) Grant the application as requested
- b) Modify the conditions of the licence, by altering or omitting or adding to them. (The Committee may where appropriate attach different conditions to different parts of the premises concerned and/or to different licensable activities).

- c) Reject the whole or part of the application (this is not entirely relevant for this application as in the case of the latter an example would be only allowing some of the licensable activities or permitting them to take place at times other than those requested).

The Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be appropriate in order to promote one or more of the four licensing objectives:

- a) Prevention of crime and disorder
- b) Public safety
- c) Prevention of public nuisance
- d) Protection of children from harm

| | | | |
|--|-------------------------|-------|--------------|
| <u>Background Papers (Local Government Act 1972 Section 100D)</u> Premises Licence application reference PREM/11/0419 for Flames, London Street, Andover. | | | |
| <u>Confidentiality</u> It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public. | | | |
| No of Annexes: | 2 | | |
| Author: | Michael White | Ext: | 8013 |
| File Ref: | PREM/11/0419 | | |
| Report to: | Licensing Sub-Committee | Date: | 12 June 2017 |



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**Schedule 12
Part A
Premises Licence**

Regulation 33,34

| | |
|--|-------------------|
| Current Premises Licence number | PREM/11/0419 |
| Previous Premises Licence number (if any) | TVBC PREM-LIC 380 |

Part 1 – Premises details

| | |
|---|--|
| Postal address of premises, or if none, ordnance survey map reference or description, Flames | Flames 37 London Street Andover Hampshire SP10 2NU |
| Telephone number | 01264 363222 |

| | |
|--|--|
| Where the licence is time limited the dates - | |
|--|--|

| | |
|---|---|
| Licensable activities authorised by the licence | Late night refreshment |
| The times the licence authorises the carrying out of licensable activities | |
| <u>Late night refreshment</u> | |
| <u>Standard timings</u> | Monday 23:00 - 00:00 |
| <u>Late night refreshment</u> | |
| <u>Standard timings</u> | Tuesday 23:00 - 00:00 |
| <u>Late night refreshment</u> | |
| <u>Standard timings</u> | Wednesday 23:00 - 00:00 |
| <u>Late night refreshment</u> | |
| <u>Standard timings</u> | Sunday 23:00 - 00:00 |
| <u>Late night refreshment</u> | |
| <u>Standard timings</u> | Bank Holidays 23:00 - 04:00 |
| <u>Late night refreshment</u> | |
| <u>Standard timings</u> | Thursday, Friday and Saturday 23:00 - 04:00 |

The opening hours of the premises

| | |
|---------------|---------------|
| Bank holidays | 11:00 - 04:00 |
| Monday | 11:00 - 00:00 |
| Tuesday | 11:00 - 00:00 |
| Wednesday | 11:00 - 00:00 |
| Thursday | 11:00 - 04:00 |
| Friday | 11:00 - 04:00 |
| Saturday | 11:00 - 04:00 |
| Sunday | 11:00 - 00:00 |

Where the licence authorises supplies of alcohol whether these are on and / or off supplies**Part 2****Name, (registered) address, telephone number and email (where relevant) of holder of premises licence**

Cemalettin Kutlubay
Flames
37 London Street
Andover
Hampshire
SP10 2NU

Registered number of holder, for example company number, charity number (where applicable)**Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol****Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol**

This premises licence is issued by Test Valley Borough Council as licensing authority under part 3 of the Licensing Act 2003 and regulations made thereunder

Date licence originally granted 16th day of March 2011

Date this licence printed 13 December 2013

Test Valley Borough Council
Beech Hurst
Weyhill Road
Andover
Hampshire
SP10 3AJ

Annex 1 – Mandatory Conditions

Annex 2 – Conditions consistent with the operating Schedule

1 A minimum of one SIA registered door staff shall be provided on Thursday, Friday, Saturday, Bank Holidays and College Bop nights between 0100 and 0400 hours. Door staff shall wear high visibility sleeved jackets, to BS EN 471 or equivalent standard but not in yellow (to avoid being mistaken for emergency services staff), with appropriate holders for SIA badges to allow clear identification.

2 CCTV shall be installed and maintained at the premises to the satisfaction of the Licensing Authority and Police. As a minimum it shall enable surveillance of internal areas of the premises including all entrances and exits. Recordings from the system shall be to a standard acceptable as evidence in a court of law and shall be securely retained for a minimum of 30 days. The recording shall be surrendered in a playable format to Hampshire Constabulary or the Licensing Authority immediately on request.

3 In addition to clearing the refuse from outside of the shop after closing time, the licence holder must take all possible steps to ensure that adequate facilities are made for collection and disposal of refuse.

Annex 3 – Conditions attached after a hearing by the licensing authority

Annex 4 – Plans

Plan, if attached, not reproduced to scale.

If no plan attached, contact the Licensing Authority

ANNEX 2

I am concerned that the proposed variation poses a risk of public nuisance arising from noise and disturbance from clientele congregating outside the premises and during their dispersal late at night. The variation if granted, would increase the number of days when late closing (after midnight) is permitted by two per week (i.e. Wednesday and Sunday) and increase the terminal hour to 05:00 hours on 5 days per week. This seems a substantial change that would increase the operational hours beyond midnight in a typical week from 12 hours to 25 hours.

Clearly there is a balance to be struck between protecting the public from the risks posed by late night noise and the needs to support the late night economy in this area. It seems to me that were the application granted, it would allow this particular premises to open later and for more days than has been considered appropriate when considering the right balance for other similar premises in this vicinity. As such, if granted this variation could result in atypical patterns of clientele dispersal being created that extend any periods of disturbance.

Furthermore, in seeking the variation, the applicant does not appear to have carefully considered this risk in their application and have no comment to make on mitigation measures to address the risk of public nuisance arising.

As such, I wish to make representations that the variation application should not be granted.

Regards

Stuart Wedgbury
Environmental Protection Team
Housing and Environmental Health Service
Test Valley Borough Council