

LICENSING ACT 2003 HEARING TUESDAY 08 NOVEMBER 2022 @ 0930HRS

APPLICATION FOR THE VARIATION OF A PREMISES LICENCE

1. Premises:

The Jolly Anglers
314-316
Kennetside
Reading
Berkshire
RG1 3EA

2. Applicant:

The application was submitted o.b.o the premises licence holder, Mrs Susan Bates by Mr William Donne, of Silver Fox Consultants. Following an agreement with Mr William Donne, this hearing was moved from 25.10.2022 to this date.

3. Premises Licence:

The premises is located in Thames Ward in east Reading, fronting onto the Kennet & Avon Canal, with a rear garden accessed via the building or via Avon Place/ Cumberland Road. The premises is a pub and currently has the benefit of a premises licence number LMV000406 held by Mrs Susan Bates which authorises:

Hours for the Provision of Regulated Entertainment

(Performance of Plays, Exhibition of Films, Indoor Sports, Performance of Live Music, Recorded Music, Performance of Dance, Anything similar to Live Music, Recorded Music & Performance of Dance)

Sunday to Thursday from 1000hrs to 2300hrs
Friday to Saturday from 1000hrs to 2330hrs

Unamplified acoustic music permitted in the garden no more than once a month

Monday to Sunday from 1000hrs to 2100hrs

Hours for the Provision of Late Night Refreshment

Sunday to Thursday from 2300hrs to 2330hrs
Friday to Saturday from 2300hrs to 0000hrs

Hours for the Sale by Retail of Alcohol

Sunday to Thursday from 1000hrs to 2300hrs

Friday to Saturday from 1000hrs to 2330hrs

Hours the Premises is Open to the Public

Sunday to Thursday from 1000hrs to 2330hrs

Friday to Saturday from 1000hrs to 0000hrs

It is important to note that the premises licence contains the following condition that restricts the use of the garden:

Condition 4 'The beer garden shall be completely cleared of patrons, plates and glasses and the lighting shall be switched off from 2130hrs and shall not be used between 2130hrs and 1000hrs.'

A copy of the Premises licence - is attached at **Appendix LIC-8**

4. Proposed licensable activities and hours:

The application is for the variation of a premises licence for the following:

1)Removal of the following current conditions relating to the use of the garden area located at the rear of the premises:

Conditions agreed following a Licensing Committee Hearing - Variation Application - June 2011

***1 (e). No music or speech shall be relayed via external speakers;
Conditions Post Hearing:***

4. The beer garden shall be completely cleared of patrons, plates and glasses and the lighting shall be switched off from 2130hrs and shall not be used between 21:30hrs and 10:00hrs.

6. Events involving live music in the beer garden shall only be of an acoustic nature and shall not be amplified. Such events shall only take place at a maximum frequency of once per month.

2)And the addition of the following conditions:

(i). All music in the rear garden area will cease at 23:00 hours

(ii) The rear beer garden shall be completely cleared of patrons by 23:30hrs.

Please

5. Temporary Event Notices

In considering any application the Licensing Authority should be aware of the possible use of Temporary Event Notices to extend entertainment activities or hours of operation. A premises may extend the hours or scope of their operation by the use of Temporary Event Notices. Up to 15 events per year can be held under this provision at a particular premises. These events may last for up to 168 hours provided less than 500 people are accommodated and provided the total number of days used for these events does not exceed 21 per year.

6. Date of receipt of application: 31.08.2022

A copy of the application form are attached as **Appendix LIC-1**

7. Date of closure of period for representations: 28.09.2022

8. Representations received:

During the 28 day consultation process for the application, the following representations were received from:

The RBC Licensing Team (attached at **Appendix LIC-2**)

The RBC Environmental & Nuisance Team (attached at **Appendix LIC-3**)

Thames Valley Police (attached at **Appendix LIC-4**)

Councillor Barnett-Ward (attached at **Appendix LIC-5**)

Resident J.Brown (attached at **Appendix LIC- 6**)

Resident (attached at **Appendix LIC- 7**)

9. Licensing Objectives

In considering representations received the Licensing Authority has a duty to carry out it's functions with a view to promoting the four licensing objectives, which are as follows:

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

Any conditions that are placed on a premises licence should be appropriate and proportionate with a view to promoting the licensing objectives. The Licensing Authority can amend, alter or refuse an application should it be deemed appropriate for the promotion of the licensing objectives.

The Council's licensing policy also places an onus on applicant's who wish to

open past 11pm to demonstrate how they will mitigate the issues of crime and disorder and potential public nuisance.

Amended Guidance issued under Section 182 of the Licensing Act 2003 (April 2018)

Licensing Objectives and Aims:

1.5 (However) the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work.

They include:

protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;

Steps to promote the licensing objectives

8.41 In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives. Licensing authorities and responsible authorities are expected to publish information about what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. However, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application.

8.42 Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:

- the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;
- any risk posed to the local area by the applicants' proposed licensable activities; and
- any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.

8.43 Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific

policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.

8.44 It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application.

8.45 The majority of information which applicants will require should be available in the licensing policy statement in the area. Other publicly available sources which may be of use to applicants include:

- the Crime Mapping website;
- Neighbourhood Statistics websites;
- websites or publications by local responsible authorities;
- websites or publications by local voluntary schemes and initiatives; and
- on-line mapping tools.

8.46 While applicants are not required to seek the views of responsible authorities before formally submitting their application, they may find them to be a useful source of expert advice on local issues that should be taken into consideration when making an application. Licensing authorities may wish to encourage co-operation between applicants, responsible authorities and, where relevant, local residents and businesses before applications are submitted in order to minimise the scope for disputes to arise.

8.47 Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.

8.48 All parties are expected to work together in partnership to ensure that the licensing objectives are promoted collectively. Where there are no disputes, the steps that applicants propose to take to promote the licensing objectives, as set out in the operating schedule, will very often translate directly into conditions that will be attached to premises licences with the minimum of fuss.

8.49 For some premises, it is possible that no measures will be appropriate to promote one or more of the licensing objectives, for example, because they are adequately covered by other existing legislation. It is however important that all operating schedules should be precise and clear about the

measures that are proposed to promote each of the licensing objectives.

The role of responsible authorities

9.11 Responsible authorities under the 2003 Act are automatically notified of all new applications. While all responsible authorities may make representations regarding applications for licences and club premises certificates and full variation applications, it is the responsibility of each responsible authority to determine when they have appropriate grounds to do so.

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 area⁵. 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.

Licensing authorities acting as responsible authorities

9.13 Licensing authorities are included in the list of responsible authorities. A similar framework exists in the Gambling Act 2005. The 2003 Act does not require responsible authorities to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes. It is, therefore, for the licensing authority to determine when it considers it appropriate to act in its capacity as a responsible authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act.

Proposed conditions

10.4 The conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence or certificate holder, which they should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule, which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public.

10.5 It is not acceptable for licensing authorities to simply replicate the wording from an applicant's operating schedule. A condition should be interpreted in accordance with the applicant's intention.

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.

Public Nuisance

2.15 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.

2.16 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. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

Integrating strategies

14.63 It is recommended that statements of licensing policy should provide clear indications of how the licensing authority will secure the proper integration of its licensing policy with local crime prevention, planning, transport, tourism, equality schemes, cultural strategies and any other plans introduced for the management of town centres and the night-time economy. Many of these strategies are not directly related to the promotion of the licensing objectives, but, indirectly, impact upon them. Co-ordination and integration of such policies, strategies and initiatives are therefore important.

Licensing Act 2003

The Licensing Act 2003 under Section 35 also states that any relevant representation should be considered in the context of:

(a) the likely effect of the grant of the premises licence on the promotion of the licensing objectives.

Therefore in the context of the grant of a licence, it is reasonable for the Licensing Authority to base its decision on an application on what the likely effects of granting a licence would have on the promotion of the licensing objectives.

The Council's Statement of Licensing Policy (October 2018)

Licensing and Planning Integration

2.3 The planning authority have a number of policies that impact on Reading's night time economy. The Licensing authority recognises that licensing applications should not be a rerun of the planning application process. The planning authority remains the regime that is directed at development of land and the use of premises upon it. The licensing authority remains the regime that is directed at the licensable activities and responsible management of said premises upon that land.

2.4 Whilst there is a clear distinction and separation between the licensing authority and planning authority in terms of their remit, there are times when there are overlapping considerations. In order to secure proper integration across the Council's range of policies, **the Licensing authority will expect applicants to demonstrate that their proposed use of a premises is lawful in planning terms, including complying with any conditions and timings that may be imposed upon a planning consent prior to any application being submitted under the Licensing Act.**

2.5 Where the planning authority has granted planning consent to a specific time, the Licensing authority would expect any applicants under the Licensing Act to not exceed that time within any application.

2.6 Where the planning authority has granted a planning consent that contains conditions that may undermine the promotion of the licensing objectives (such as a restriction in the opening hours based on potential public nuisance issues), the licensing authority would expect applicants to demonstrate how they will mitigate those issues within any application. Failure to do so could lead to representations being made against an application.

2.7 Whilst acknowledging that planning and licensing are separate regimes and that licensing authorities are not bound by the decisions of planning committees (and vice versa), the licensing authority shall aim for the proper integration between licensing and all other Council policies, strategies and initiatives in order to actively promote the licensing objectives.

Other Legislation that the Licensing Authority will consider:

3.7 The Licensing Authority will also have cognisance to the following legislation when it decides to discharge its responsibilities under the Licensing Act. This list is not exhaustive:

- Environmental Protection Act 1990 which deals with noise and nuisance
- Regulatory Reform Order 2005 which deals with fire safety
- Highways Act 1980 which deals with pavement café licences
- Reading Borough Council Act 2013 which deals with street trading and touting
- Health and Safety at Work Act 1974 and Food Hygiene regulations
- Planning legislation (see paragraphs 2.2-2.9 of this policy)

Temporary Event Notices

5.31 An event organiser who wishes to arrange a one off event or extend the hours for licensable activities at a premises, may notify the Authority of the proposed event. The application (or notice) needs to be submitted to the Licensing Authority with the fee of £21. The application must be submitted electronically via the gov.uk portal or via hardcopy. If submitted via hardcopy then it must also be sent to Thames Valley Police and the Council's Environmental Protection and Nuisance team.

5.32 A temporary event notice must be submitted to the authority at least ten clear working days before any event. This does not include the day of the application; the date the application is submitted; weekends or bank holidays. Failure to adhere to these timescales may invalidate the application.

5.33 An applicant who also holds a Personal Licence may apply to hold 50 events per year. An applicant who does not hold a Personal licence may only apply for 5 events.

5.34 Each Temporary Event may last for up to 168 hours and an individual premises may hold up to 15 events totalling 21 days. There must be a gap of 24 hours between the end of one temporary event and the start of another one.

5.35 If the Police or the Environmental Protection and Nuisance team make a representation in regard to a temporary event notice then the Licensing Authority will arrange a hearing before the Licensing Application Committee in the required timescales.

5.36 Applicants are encouraged to submit Temporary Event notices as far in advance as possible to allow issues to be worked out and for any required hearing to be held in good time before any proposed event.

Late Temporary Event Notices

5.37 Late notices can be given no later than five working days before an event but no earlier than nine working days before an event. If there is an

objection to the proposed event from either Thames Valley Police or the Council's Environmental Protection and Nuisance team then the authority will issue a counter notice. This means that the event will not be permitted to go ahead.

5.38 The number of late notices that can be given in any one calendar year is limited to ten for personal licence holders and two for non personal licence holders. Late notices count toward the total for the number of events per year held at a single premises and for the number of events per year applied for by the applicant.

Mandatory Conditions

6.7 There are conditions that are imposed on all premises licences and club premises certificates. These are mandatory conditions and will apply to all licences and certificates that authorise the sale or supply of alcohol. These conditions will apply even if they are not contained on the physical copy of any licence.

6.8 The mandatory conditions are laid out in the Secretary of State's guidance. Licence holders must ensure, for example, that irresponsible drink promotions do not take place on the premises. Licence holders must also ensure that any drink measurement is compliant and that all sales meet the minimum permitted pricing. Licences that permit alcohol to be sold and consumed on the premises must also provide free potable water to customers. The licensing authority considers irresponsible drinks promotions and alcohol being sold below the permitted minimum price as extremely serious offences that only promote excessive and irresponsible alcohol consumption and which then go on to cause alcohol related crime; anti social behaviour and poor health outcomes. Any premises found engaging in such activity is likely to face appropriate enforcement action for undermining the promotion of the licensing objectives.

6.9 The mandatory conditions stipulate that no sale of alcohol may be made under a premises licence at any time when there is no Designated Premises Supervisor or when the proposed Designated Premises Supervisor does not have a valid Personal licence. Every supply of alcohol made under the premises licence must be made or authorised by a person who holds a personal licence. Any premises found to be in breach of this is likely to face appropriate enforcement action for conducting unlicensed activity and undermining the promotion of the licensing objectives.

6.10 The mandatory conditions also stipulate that the holder of any premises licence or club premises certificate must ensure that a suitable age verification policy is adopted at the premises in respect to the sale or

supply of alcohol. All sales must then be carried out in relation to that policy and only then when suitable photographic identification is produced. Any premises found operating without a valid policy is likely to face appropriate enforcement action for conducting unlicensed activity and undermining the promotion of the licensing objectives.

Alcohol led bars and clubs with regulated entertainment - General Approach to conditions

6.27 The licensing authority is of the opinion that premises that are alcohol led; provide limited seating for customers; provide little food and provide entertainment facilities have the strongest potential to undermine the promotion of the licensing objectives. The licensing authority believes that venues that encourage up right vertical drinking and the sale of alcohol - often at cheap prices - leads to a negative impact on the town and only serves to promote drunkenness and crime and disorder. Any applicant who wishes to operate such a venue will have to demonstrate that it's proposed use does not undermine the promotion of the licensing objectives and the authority would expect any operating schedule to contain stringent policies and procedures to achieve this. Measures such as CCTV, employment of door supervisors and the use of a club scan device will be expected as a minimum requirement. Door staff will also be expected to wear high visibility jackets and armbands so that they can be easily identified as well utilising - where appropriate - body worn video to help promote the prevention of crime and disorder licensing objective. The use of breathalysers is also to be encouraged in venues that are alcohol led and should - where appropriate - be advertised as a condition of entry to a licensed premises - particularly given the current prevalence for pre-loading.

Licensing Hours - General Approach

7.1 The Licensing Act 2003 gives the licensing authority the power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of this policy. The licensing authority will make appropriate decisions on licensing hours for the locality of each premises. All applications will be considered on its individual merits.

7.2 When an application receives representations, the authority may consider reducing the opening hours and times for licensable activities if it considers it appropriate for the promotion of the licensing objectives.

7.3 As part of the operating schedule submitted with any application, the applicant is expected to take cognisance of the guidance, this policy and any other available data pertaining to their prospective locality and the potential impact their operation may have on that area.

7.4 Where it is deemed appropriate and proportionate to do so, the authority may seek to reduce the hours for licensable activities in order to promote an orderly and gradual dispersal from a certain area or certain premises.

7.5 All applicants and licence holders are expected to achieve and to adhere to any relevant planning permissions - including hours of operation. Applicants are expected to achieve planning permission before applying for any licence. Where the planning authority have set a terminal hour on a premises planning permission, the licensing authority will generally only grant a licence to that hour. This is to ensure consistency and integration between licensing and planning as detailed in section 2 of this policy.

Licensed Premises in Residential Areas

7.6 When dealing with applications and issuing licences, the authority is likely to impose stricter conditions on premises operating in residential areas if it considers it appropriate and proportionate to do so. This will apply to all premises types.

7.7 Generally, any licensed premises looking to open past 11pm (2300hrs) in a residential area will need to demonstrate clearly in their operating schedule that public nuisance will not result from later operation. As part of the operating schedule, applicants should read the Secretary of State's Guidance, this policy and any other relevant document and ensure that robust measures are included in any application.

7.9 Premises with outdoor areas such as beer gardens and smoking areas may also be subject to further restrictions in regard to their operation and use.

Background Papers

East Lindsey District Council v Abu Hanif (t/a Zara's Restaurant) (2016) this underpins the principles widely acknowledged within the Licensing Act 2003 that the licensing objectives are prospective, and that the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.

Reading Borough Council's Statement of Licensing Policy (2018)

Licensing Act 2003 S182 Guidance

10. Appendices

Appendix LIC-1: Application

**Appendix LIC-2: Representation from Reading Borough Council -
Licensing team - Robert Smalley**

**Appendix LIC-3: Representation from Reading Borough Council -
Environmental Protection - Rebecca Moon**

**Appendix LIC-4 : Representation from Thames Valley Police -
Declan Smyth**

Appendix LIC-5 : Representation from Councillor Barnett -Ward

Appendix LIC-6 : Representation from resident J Brown

Appendix LIC-7: Representation from resident

Appendix LIC-8: Premises licence