

LICENSING ACT 2003 HEARING THURSDAY 6 JUNE 2019 @ 1100 HOURS

APPLICATION FOR THE GRANT OF A PREMISES LICENCE

<p>1. Premises:</p> <p>Farmhouse Pizza 435 Oxford Road Reading RG30 1HD</p>
<p>2. Applicant:</p> <p>SAN INT TRADING LTD 435 Oxford Road Reading RG30 1 HD</p>
<p>3. Premises Licence:</p> <p>There is currently no premises licence in place. As background, in April 2019 the Licensing team discovered the previous premises licence holder, Farmhouse Pizza Reading 1 Limited was dissolved on 30th October 2018 and therefore the premises was operating illegally since that date as the premises licence had lapsed as they failed to transfer the licence to another person within the stipulated 28 days.</p> <p>The application was submitted by Mr Solhail Anwar, the sole Director of SAN INT TRADING LTD and seeks to apply for the licensable activity and opening hours to the times stated below.</p> <p>A plan showing the location of the premises and surrounding area is shown at <u>Appendix PN-6</u></p>
<p>4. Proposed licensable activities and hours:</p> <p>The application is for the increase in hours for the following activities:</p> <p><u>Late Night Refreshment (Indoors)</u> Monday to Thursday 2300hrs to 0200hrs Friday to Sunday 23.00hrs to 0300hrs</p> <p><u>Hours open to the public</u> Monday to Thursday 0900hrs to 0200hrs Friday to Sunday 0900hrs to 0300hrs</p>
<p>5. Temporary Event Notices</p> <p>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.</p>

6. Date of receipt of application: 10 April 2019

A copy of the application form is attached as Appendix PN-1

7. Date of closure of period for representations: 08 May 2019

8. Representations received:

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

Reading Borough Council Licensing Team. A copy is attached at Appendix PN-2

Thames Valley Police. A copy is attached at Appendix PN-3

Planning team. A copy is attached at Appendix PN-4

Environmental Protection team (Noise). A copy is attached at Appendix PN-5

9. Licensing Objectives and Reading Borough Council's Licensing Policy Statement

In considering representations received the Licensing Authority has a duty to carry out its 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.

Relevant, vexatious and frivolous representations

9.4 A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

9.8 Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This may be difficult for councillors who receive complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub-committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.

9.9 It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.

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 areas. 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.

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.

Planning and Building Control

14.64 The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa. However, as set out in chapter 9, licensing committees and officers should consider discussions with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.

Licensing Act 2003

The Licensing Act 2003 under Section 18 (6) 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.

Reading Borough Council Statement of Licensing Policy 2018

2. Integrating Strategies

2.1 The Secretary of State's Guidance to the Licensing Act 2003 states that the licensing authority should outline how it will secure proper integration between its licensing policy with policies and strategies concerned with local crime prevention, planning, transport, tourism, equality schemes, cultural strategies and any other policy or plan introduced for the management of town centres and night time economies. The Licensing Authority agree that such co-ordination and integration is crucial to achieve the Council's aims for a safe and vibrant night time economy.

Licensing and Planning integration

2.2 The planning authority of Reading Borough Council is a responsible authority under the Licensing Act 2003. It can make representations on applications or call for reviews of existing licences based upon any of the four licensing objectives. The prevention of crime and disorder and prevention of public nuisance are shared concerns of the planning and licensing authorities.

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.

3.2 This Act requires local authorities and other bodies to consider crime and disorder reduction. Section 17 of the Act states that it shall be the duty of each authority, to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that is reasonably can to prevent, crime and disorder in its area (including anti social and other behaviour adversely affecting the local environment). This links specifically with the licensing objective of prevention of crime and disorder and the licensing authority will take into account all reasonable measures that actively promote this licensing objective.

The Anti-social Behaviour, Crime and Policing Act 2014

3.3 This Act gives a wide range of powers to local authorities and the police to tackle incidents of crime, disorder and nuisance that may be impacting on residents. The Act introduced public spaces protection orders which allows the local authority to designate areas in the borough where anti social behaviour such as street drinking will be prohibited. The Council has designated areas where street drinking is prohibited and is in the process of introducing a new public space protection order. The Act also gives powers to the local authority and police to close licensed premises where nuisance and anti social behaviour is taking place or likely to take place. This Act therefore clearly supports and actively promotes the licensing objectives contained within the Licensing Act 2003.

3.4 The Council's Licensing policy is therefore clear and unchallenged on the matter of the planning permission - particularly when it impacts on the promotion of the four licensing objectives - in this case, the prevention of public nuisance. It should also be noted that the planning authority is a named responsible authority in the Licensing Act 2003 and can make representations in relation to applications and call review of licences if it believes it is necessary to do so.

6.1 Conditions shall be appropriate and proportionate for the promotion of the licensing objectives and shall be unambiguous and clear in their stated aims. Conditions will also be tailored to the type, location and characteristics of the particular premises and the relevant licensable activities. Any condition imposed by the Authority shall also aim to avoid duplication of other legislation unless there is a requirement to impose such a condition in order to promote the licensing objectives (for example, a capacity limit for public safety reasons). This shall apply to all relevant applications (grant/variation of a premises licence or club premises certificate).

6.2 The operating schedule within an application should contain an assessment from the proposed licence holder of what they believe are appropriate and proportionate measures to enable them to carry out their proposed licensable activities. This assessment should be arrived at by taking cognisance of this policy and the Secretary of State's guidance which outlines the matters that an applicant should take into account such as issues in the locality and why their proposed measures are suitable for their proposed operation.

Late Night Refreshment (takeaways) and Conditions - General Approach

6.19 Late night food outlets are a major contributor to crime and disorder and anti social behaviour within Reading. Applicants who wish to provide hot food or drink

after 2300hrs and up to 0500hrs, will need to demonstrate that their proposed operation will not exacerbate issues of crime and disorder in that locality.

6.20 Applicants for late night refreshment are expected to take cognisance of the Secretary of State's Guidance and to include appropriate and proportionate measures within their operating schedule to assist in actively promoting the licensing objectives.

6.21 The licensing authority will expect all applicants who wish to provide late night refreshment to include measures for adequate staff training; measures to ensure that no public nuisance occurs from the premises as well as additional measures to assist in crime prevention such as CCTV and door supervisors.

6.22 Public nuisance can often occur from takeaways being sited in residential areas. This could be in relation to the use of delivery vehicles and the congregating of customers outside the premises. Applicants are expected to make an assessment of their proposed locality and implement measures to avoid disturbing local residents such as the use of electric bikes and the implementation of a dispersal policy.

6.23 Where it is practical, the authority will also look to ensure that all packaging used for the provision of hot food and drink shall be made of recyclable materials or be biodegradable. This will include all fixed premises and static vans.

7. 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.

7.12 The licensing authority will seek the input of the Council's Environmental Protection and Nuisance team when looking at measures that may be appropriate for the prevention of public nuisance. This will include taking cognisance of any representations that are submitted as part of the application process or any enforcement action they have taken under their own legislation - such as noise abatement notices.

Late Night Refreshment

7.16 There are concerns about noise, nuisance, crime and disorder and anti social behaviour in respect of premises open late and providing hot food and drink. Operators and potential applicants of late night refreshment venues wishing to open past 11pm will need to demonstrate that there are suitable policies and procedures in place to mitigate any undermining of the licensing objectives from their operation. If suitable practices and policies are not put in place and it is the belief of the Authority that crime and disorder and/or a public nuisance is likely to occur due to the late operation of late night refreshment premises, then the Authority will look at reducing the hours and or (subject to relevant representations being received) removing late night refreshment from an application in its entirety.

7.17 The Authority - whilst taking each application on its own merits - is unlikely to grant excessive hours to any premises if it believes it will undermine the promotion of the licensing objectives in the locality where it proposes to operate. Applicant's should ensure that their application takes cognisance of the information available - including crime data - and ensure that the operating schedule is tailored accordingly. Premises within the Council's town centre Cumulative Impact Area will also need to ensure that they rebut the presumption of refusal against applications in that area.

8.16 The Licensing Authority expects all applicants for grants or variations of their premises licence or club premises certificate to outline robust measures to protect children from harm. This can include appropriate staff training as well as a Challenge 25 age verification policy for the sale of alcohol and any other measure which is deemed appropriate for the style of premises.

9. Enforcement

9.1 It is the responsibility under the Act for all responsible authorities; licence holders and prospective licence holders to actively promote the four licensing objectives. The Council along with partner agencies, has a wider responsibility to protect the public as a whole and prevent crime, harm or nuisance from taking place.

9.2 The Authority will carry out its licensing functions with a view to actively promoting the licensing objectives and maintaining public safety. This applies to the dual role the licensing authority has both as the administrator of the process and as a responsible authority.

9.3 The Licensing Authority has previously and will continue to work with other responsible authorities and partner agencies in order to ensure that the licensing objectives are promoted and that a consistent and joined up approach is taken to enforcement across Reading.

Inspections

9.6 The Authority will carry out inspections at all premises where a premises licence is in force. Additionally, an inspection may also be carried out where an application for a grant, variation or review is received by the Authority to ascertain the likely effect of granting any application on the promotion of the licensing objectives. Inspections may also be carried out if the Authority or one of our partner agencies/responsible authorities are made aware of complaints or other incidents that undermine the promotion of the licensing objectives.

9.7 Inspections will be carried out solely by the Licensing Authority or in conjunction with other partners such as Thames Valley Police, Home Office Immigration Enforcement and Trading Standards.

Summary

The Responsible Authorities object to the grant of a premises licence for Farmhouse Pizza 435 Oxford Road, Reading as the application is contrary to the Council's Licensing policy; does not appear to have been made in line with the Secretary of State's Guidance.

Therefore granting this grant will be inconsistent with the Authority's duty to actively promote the licensing objectives.

Case Law

East Lindsey DC v Abu Hanif (2016)

BBPA V Guildford Council application of Portsmouth City Council v 3D

Lic/farmhousepizza06.06.2019/pn/b