

FOR PUBLICATION

APPLICATION FOR A VARIATION OF A PREMISES LICENCE BY MICHAEL LESLIE WALKER IN RESPECT OF JUNCTION BAR, 3 CHATSWORTH ROAD, BRAMPTON, CHESTERFIELD, S40 2AH (LC180)

MEETING:	LICENSING COMMITTEE
DATE:	22 AUGUST 2017
REPORT BY:	STEVE ASHBY LICENSING OFFICER
WARD	BRAMPTON

1.0 APPLICATION

- 1.1 The Applicant is Michael Leslie Walker.
- 1.2 The premise subject of the application is
Junction Bar
3 Chatsworth Road
Brampton
Chesterfield
S40 2AH

2.0 PURPOSE OF REPORT

- 2.1 For Members to determine an application for variation of the premises licence in respect of the Junction Bar.
- 2.2 A relevant representation has been made and not withdrawn and thus the application cannot be granted or refused under officer delegated authority.

3.0 **BACKGROUND**

- 3.1 The premise is described by the applicant as a recently refurbished public house, attracting a broad age range. The building's recent renovations include moving the toilets from the ground to the first floor and adding bi-fold doors on the ground floor to create a larger access to the premises' outside garden area.
- 3.2 The Junction Bar was visited by Licensing Enforcement Staff on 22nd June 2017. A discussion took place with the premises licence holder regarding the use of an outside bar in the beer garden to the rear of the premises. Mr Walker had procured a small shipping type container which he had converted to be able to be used as a temporary bar. He also wished to use speakers mounted on the external walls of the premises in the beer garden to provide music.
- 3.3 The detail of Mr Walker's licence was discussed and it was identified that outdoor sales of alcohol were not be permitted under the terms of the current premises licence, nor was the use of the outdoor speakers. The use of Temporary Event Notices or a premises licence variation to achieve these activities within the terms of the licence was discussed. This application is the result of those discussions.
- 3.4 The premises are currently licensed for the sale of alcohol, indoor regulated entertainment and the provision of late night refreshment as below.

The sale by retail of alcohol for consumption ON and OFF the premises

- Sun, Mon, Tues, Wed, & Thursday 10:00 - 00:00
- Friday & Saturday 10:00 - 01:00

These timings and the additional permissions described in the non-standard timings are reflected in the premises opening hours as below:

- Sun, Mon, Tues, Wed, & Thursday 05:00 - 00:30
- Friday & Saturday 05:00 - 01:30

Indoor activities:

Performance of live music, playing of recorded music, performance of dance, provision of facilities for dancing and indoor sporting events,

- Sun, Mon, Tues, Wed, & Thursday 10:00 – 23:30
- Friday & Saturday 10:00 - 00:30

Late Night Refreshment (indoors)

- Sun, Mon, Tues, Wed, & Thursday 23:00 – 00:00
- Friday & Saturday 23:00 - 01:00

3.5 Each of these activities benefit from the same non- standard timings permission which extends their operating hours as below:

- Maundy Thursday & Good Friday - 0500 hours to 0230 hours.
- On Fridays, Saturdays & Sundays preceding a Bank Holiday Monday - 0500 hours to 0230 hours.
- Bank Holiday Mondays - 0500 hours to 0130 hours (following day)
- December 24th - 0500 hours to 0230 hours (following day)
- December 26th - 0500 to 01.30 (following day)
- December 27th to December 30th (inclusive) - 0500 hours to 0130 hours.
- December 31st - 0500 hours to 0130 hours on 2nd January.
- January 25th, February 14th, 1st March, 17th March, 23rd April, 31st October, 5th November and 30th November - the terminal hour shall be extended by one hour.
- When events from the Football World Cup, Rugby World Cup or Olympics are televised live, from one hour before the start of the televised event until standard opening time.
- On the morning on which summer time begins, where the terminal hour is later than 0100 hours, the terminal hour shall be extended by one hour.

- 3.6 The variation application seeks to increase the scope of the premises licence by adding the sale of alcohol to the outside garden area from 10.00 am to 11.00 pm.
- 3.7 The current non-standard timing permission is also requested to be carried forward to the garden area. This would significantly extend the hours of activity in the garden area on those additional specified days.
- 3.8 The Premises Licence Holder states in his application “Due to demand it has deemed necessary to put an outside bar in the beer garden. The whole outside area to be licensed, the outside bar is a temporary structure and could be moved to any place in the garden.”
- 3.9 Clearly the refurbishment of the premises has resulted in increased activity and the proposed variation seeks to meet that extra demand.
- 3.10 The provision of indoor live and recorded music is already included in the licence.
The applicant had also considered adding these to the application for the outside area but recognised that this would not be necessary when taking into account the deregulation granted by the Live Music Act of 2012.
- 3.11 That act allows the provision of regulated entertainment without a specific authority on the premises licence within certain constraints.
For live music, those constraints are that the entertainment
- Takes place between 8.00 am and 11.00 pm
 - And the audience for the performance does not exceed 500 people.
- For amplified live music or recorded music there is an additional condition that the entertainment
- Takes place in an area that is licensed to sell alcohol.

3.12 Should the premises licence be granted in the terms of the application i.e. to licence alcohol sales in the beer garden until 11.00 pm, it would follow that recorded music and amplified live music would also be permissible until the same terminal hour.

3.13 The application also includes a revised operating schedule for the premises, which introduces a range of control measures not included in the current licence.

4 APPLICATION PROCESS

4.1 A copy of the application form including plans of the premise, are attached at Appendix 1 and 1A.

4.2 A copy of the current Premises Licence is attached as Appendix 2.

4.3 Applications for a variation of a Premises Licence are required to

- be advertised by way of site notice/s displayed at the premises and an advert in the local press
- have a copy of the application posted on the Licensing Section of the Borough Council's website
- and have copies of the application circulated to all Responsible Authorities.

4.4 The site notices displayed on the premises, advertising the application were viewed by licensing enforcement staff on 1st July 2017 and found to be displayed correctly and completed appropriately.

4.5 The required advert appeared within the required period in the Derbyshire Times on 13th July 2017. A copy of the advert can be seen at Appendix 3.

4.6 The application was added to the Borough Council Licensing web page upon submission.

- 4.7 A copy of the application was circulated to the Responsible Authorities at the point of submission.
- 4.8 The statutory deadline for representation was 28th July 2017.

5 REPRESENTATIONS

- 5.1 Responsible Authorities and Interested Parties (persons/bodies representative of businesses or residents in the vicinity of the premises) are entitled to make representations to the Licensing Authority provided that they are relevant representations.
- 5.2 Any representation received must be relevant to the likely effect of the proposed variation on the promotion of at least one of the 4 licensing objectives which are:
- the prevention of crime and disorder
 - public safety
 - prevention of public nuisance
 - protection of children from harm.
- Representations which are not relevant must be rejected.
- 5.3 If a representation has been made but is subsequently withdrawn, it is no longer a relevant representation and provided there are no other relevant representations the application can be dealt with under officer delegated authority.
- 5.4 A representation has been received and accepted from The Environmental Health Department in relation to the prevention of public nuisance licensing objective.
- 5.5 This representation is submitted by District Environmental Health Officer, Mr Steven Payne.
A copy of the representation can be seen at Appendix 4.
It follows complaints from a member of the public concerning noise nuisance attributed to the Junction Bar premises with particular reference to the beer garden.

Aerial photographs of the premises in relation to nearby residences and buildings and the location of the beer garden are shown at Appendix 5.

A photograph of the outside temporary bar is included at Appendix 6.

- 5.6 Mr Payne describes having carried out observations around the premises and encountering differing levels of audible noise. His findings prompted him to consider instigating formal action against the premises. However before this formal action was commenced the complaint was withdrawn and so no further action was taken.
- 5.7 Mr Payne identifies that by allowing an external bar until 11:00 pm, the provisions of the Live Music Act 2012 would be engaged. Thus the performance of live or recorded music in an unregulated manner would also be permitted in the beer garden. He goes on to say that whilst this is within the terms of the Act, he does not believe that this is within the intended spirit of the legislation. Mr Payne states that when this legislation was introduced, it was by way of a private members bill. The intention of the legislation was to loosen regulation of music performances within buildings to which Mr Payne states he has little objection.
- 5.8 The representation also identifies that allowing an external bar would lead directly to an increase in noise both from numbers in the beer garden and possibly from the external speakers.
- 5.9 Consequently Mr Payne objects to the application in its present format on the grounds of probable noise disturbance to nearby residential premises which engages the prevention of public nuisance licensing objective. He does however state that he would look more favourably on a revised application, possibly one restricting licensable activities to 9.00 pm rather than 11.00 pm.

6.0 ADDITIONAL INFORMATION

- 6.1 As part of the application process, the applicant is required to describe in the operating schedule any additional steps that are intended to be taken in order to promote the licensing objectives for the requested variation of the licence.
- 6.2 The schedule can be seen at Part M of the application form included at Appendix 1.
- 6.3 The applicant has volunteered a more detailed operating schedule than that seen in the current licence.
The additional key elements are summarised below:

General

- A programme of initial and refresher training for staff in relation to age restricted sales of products and a record keeping commitment for that training.

Prevention of crime and disorder

- CCTV fitted to the venue internally and externally, with a commensurate retention and production policy.
- An undertaking to be a member of pub watch.
- Risk assessed deployment of security staff.

Public Safety

- Adherence to identified capacity limits.
- Health and safety training for staff in respect of fire procedures.
- Compliance with building regulations.

Prevention of Public Nuisance

- A proactive approach to noise control with monitoring of noise levels within the premises and outdoor patrols to ensure noise levels do not cause nuisance to nearby residents.
- Clearing of litter in the immediate vicinity of the premises.
- Open bottles and drinking vessels not to be removed from the premises.

Protection of Children from harm

- A challenge 25 age verification scheme with appropriate signage, record keeping and auditing of refused sales.
- A 9.00 pm curfew for under 18 year olds entering the premises.

6.4 The only notable omission from this list of conditions is a lack of additional control measures from the prevention of public nuisance objective as below

- Notices to be displayed in the beer garden and at point of exit, reminding patrons to respect nearby residents and to leave quietly.
- Refuse / glassware only to be transferred to external bins between 9am and 11pm.

6.5 These two additional measures are considered appropriate by the Licensing Department to support both the prevention of public nuisance licensing objective and Mr Payne's representation.

6.6 The Licensing department would also draw attention to the request to carry forward the non-standard timings permission to the beer garden.

The Environmental Health representation seeks to limit the activities in the beer garden of the premises after 9.00pm but the non-standard timings, if granted, would allow significant late night activity in that outside area on certain days of the year.

Clearly application of the non-standard timings to the beer garden would not be consistent with Mr Payne's representation.

7 OPTIONS

7.1 When carrying out its licensing functions, the Licensing Authority must do so with a view to promoting the 4 licensing objectives and also with regard to its Statement of Licensing Policy and the guidance issued by the Secretary of State under section 182 of the Licensing Act 2003.

- 7.2 The Licensing Committee may decide to
- grant the application as requested
 - grant it subject to conditions
 - or refuse the application.
- 7.3 Where either the applicant or a person who made relevant representations is aggrieved by the decision of the Licensing Authority, appeal is to the Magistrates' Court.

8 RECOMMENDATION

- 8.1 That the Licensing Committee
- consider the variation application made by Mr Walker in relation to the Junction Bar, taking note of
 - The representation made by The Environmental Health Department
 - The omission of the two additional “prevention of public nuisance” conditions regularly associated with premises with similar areas of concern.
 - The counterproductive effect of carrying forward the non-standard timings from the current licence to the garden area.
 - and determine whether the application be
 - granted
 - granted with conditions
 - or refused.

Steve Ashby
LICENSING OFFICER

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