

Agenda Item No: 5
Licence Reference WK/200810898
Report To: LICENSING SUB COMMITTEE
Date: 2ND JANUARY 2009



Report Title: **Licensing Act 2003 - Application for a premises licence - Charing Sports & Social Club, Arthur Baker Field, The Moat, Charing, Ashford, Kent, TN27 0JJ**
Report Author: Licensing Manager

Summary:

The report advises Members of a licence application under the provisions of the Licensing Act 2003.

Application type: **Application for a premises licence**

Applicant: **Charing Sports & Social Club**

Premises: **Charing Sports & Social Club, Arthur Baker Field, The Moat, Charing, Ashford, Kent, TN27 0JJ**

Members are asked to determine whether to grant the premises licence.

Key Decision: NO

Affected Wards: Charing

Recommendations: **The Committee is asked to determine the application and decide whether to grant the premises licence.**

Policy Overview: The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy. Where the decision departs from the Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and such departure must be supported by clear and cogent reasons.

Financial Implications: The costs associated with processing the application are taken from licensing fee income.

Other Material Implications: **HUMAN RIGHTS:** In considering this application the Sub Committee will balance the competing Human Rights of the various parties including the right to respect for private and family life, the protection of property and the right to a fair hearing.

LEGAL: Under the Licensing Act 2003 the Council has a duty to exercise licensing control of relevant premises.

Exemption Clauses: Not applicable

**Background
Papers:** None

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Purpose of the Report

1. The report advises Members of a licence application under the provisions of the Licensing Act 2003.
Application type: **Application for a premises licence.**
Applicant: **Charing Sports & Social Club**
Premises: **Charing Sports & Social Club, Arthur Baker Field, The
Moat, Charing, Ashford, Kent, TN27 0JJ**

Issue to be Decided

2. Members are asked to determine whether to grant the premises licence.

Background

The Licensing Objectives

1. The licensing authority must carry out its functions under the Licensing Act 2003 with a view to promoting the licensing objectives namely, the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm (LA 2003, s4 (1)).

Application details

2. The application is for a premises licence.
3. See Appendix A for the application for a premises licence, along with a plan. The application has been made in the proper manner.
3. A map showing the location of the premises is provided at Appendix B.
4. Representations have been received hence the determination coming before Members.

Additional steps

5. The applicant states within section P of the application form the additional steps they intend to take in order to promote the four licensing objectives if the proposed variation is granted.
4. The conditions put forward by the Licensing Manager as taken from section P of the application form are as given within Appendix E. Note it is the responsibility of the Licensing Authority to prepare conditions that are “consistent” with the operating schedule (s.18).

6. It is stressed that while a licensing authority has no discretion to add or modify a condition where there is no relevant representation, it may not issue a licence with conditions that are illegal.

Representations from Responsible Authorities

7. No representations were received from the responsible authorities.

Representations from Interested Parties

5. Fifty eight parties have made representations. A summary of these representations is provided in Appendix C. Copies of the letters are contained in Appendix D.

8. All of the representations are parties living in the area.

9. The representations have a number of common themes in terms of the licensing objectives and indeed 52 of the 58 representations raise the same points which can be summarised as follows:

- Loud music coming from the premises during the occasional events that are currently held at the premises and concern about the application's request for live & recorded music and the effect the potential noise nuisance this may cause, given the premises' lack of sound proofing.
- Potential public safety with increased traffic outside the premises and vehicles being driven without due care and attention likely to cause a nuisance to the interested parties. Members may wish to consider whether the applicant is responsible for these issues under the Licensing Act 2003.
- Members are reminded that issues regarding planning are not matters which can be considered by the Licensing Sub Committee when considering applications under the Licensing Act 2003.
- The prevention of public nuisance and the prevention of crime and disorder are objectives raised with reference to the behaviour of customers leaving the premises. Vandalism, rubbish and shouting are examples raised by numerous interested parties.
- Concern a premises which is used as a nursery school is inappropriate place to be licensed at times when children are present.

10. Under section 35(5) of the Licensing Act 2003, representations are relevant if they are about the likely effect of the grant of the licence on the promotion of the licensing objectives and (subsection 6) are made by an interested party or responsible authority within the prescribed period, are not withdrawn or, in the opinion of the licensing authority, frivolous or vexatious.

11. The prescribed period for the receipt of such representations in this case is, by Regulation 22(b) of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 "during a period of 28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant". In this case the application

was given to the authority on 4th November 2008 and the last date for receipt of relevant representations was therefore 3rd December 2008.

Relevant premises history

12. The premises is consisting of a function room with a bar and sports facilities consisting of changing rooms and showers. The club is located on the side of the Arthur Baker playing field in Charing and there as a large car park for people using the facilities.
13. The car park, playing fields and club are accessed via a single lane to a residential area, known as The Moat.
6. The premises currently has Club Premises Certificate (CPC) which was converted from a Club Registration Certificate originally awarded by the Magistrates' Court in 1972 under the Licensing Act 1964.
14. The CPC permits the supply of alcohol to members and guest from 10:00 to 23:00 Monday to Saturday and fro, 12:00 to 22:30 on Sunday. There are some restrictions on Christmas Day and Good Friday and there is an extension on New Year's Eve until the end of permitted hours on 1st January.
7. In 2005 representatives of the Club contacted the licensing authority and sought advice on whether the Charing Sports and Social Club and the Charing Bowls Club could be licensed through the Licensing Act 2003 under one CPC.
8. Based on the Magistrates' decision and the authority's understanding of the law concerning the licensing of private member clubs at that stage, the representative was advised that the clubs could remain under one certificate. An application was subsequently made to convert the Club Registration Certificate to a Club Premises Certificate and the application was granted in 2005.
9. In April 2008 it came to the attention of the licensing authority that Charing Bowls Club and Charing Sports and Social Club operated under different Club Rules and had separate Committees. A representative of the licensing authority met with the Chairman of the Charing Playing Fields Management Committee and representatives of the Caring Sports Club to discuss the issue of the joint Club Premises Certificate. The advice given during the discussions was that either the two committees could combine and have a single set of rules or the two clubs should be licensed separately.
10. An email was subsequently received from the Chairman of the Charing Playing Fields Management Committee stating that separate licences or certificates would be the preferred option and subsequently Charing Bowls Club were advised to apply for a CPC and assistance and site meetings were undertaken.
11. In October 2008 a CPC was applied for by the Charing Bowls Club and during the consultation period no representations were received and the CPC was automatically granted.
15. Following discussions with representatives of the Charing Sports Club it became apparent there was a desire to change the permitted hours and

occasionally admit members of the public onto the premises. It was suggested to the Club's representatives that a new premises licence would be the most appropriate course of action.

12. The application proposes to permit the sale of alcohol from 10:00 until 23:00 Sunday to Thursday and from 10:00 until 01:00 on Friday and Saturday, with extensions on Christmas Eve, Boxing Day and New Year's Eve until 02:00. Opening hours are proposed from 08:30 until to 30 minutes after the end of the permitted hours for the sale of alcohol.
13. The application proposes the regulated entertainment in the form of plays, the showing of films, performances of dance, live and recorded music and of anything of a similar description (all inside the premises) until 23:30 Sunday to Thursday and until 01:30 on Friday and Saturday, with an extensions on the three stated dates above. The facilities for making music, for dancing and for other entertainment are also requested for the same hours.
14. Charing Sports and Social Club and the Arthur Baker Playing Field have been licensed for events involving the public on eight occasions during 2008, though the Notification of a Temporary Events.
15. Our records show that the Council has received one complaint regarding events associated with the Charing Sports and Social Club in the last ten years, but this concerned an outside event and the licensed activities proposed in this application are sought for inside the premises only.

Options

General

16. Members attention is drawn to the following matters:
 - All applications are to be considered on their merits as well as against the relevant policy and statutory framework.
 - Due regard should be given to the provisions of the Human Rights Act 1998, Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 and Section 17 of the Crime and Disorder Act 1998 and, so far as possible, reflect local crime prevention strategies.
 - The operating schedule forms part of the completed application form for a premises licence. The operating schedule should include information, which is necessary to enable any responsible authority or interested party to assess whether the steps to be taken to promote licensing objectives are satisfactory.
 - The licensing authority may not impose any conditions unless its discretion has been engaged following the making of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions due to the representations raised. It may then only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the representations. However, in order to minimise problems and the necessity for hearings, it would be sensible for applicants to consult with responsible authorities when schedules are

being prepared. This would allow for proper liaison before representations prove necessary.

- Where problems have occurred, the application for the new licence or certificate will afford an opportunity for responsible authorities and interested parties to raise the issue through representations and for conditions addressing any nuisance previously caused to be attached following a hearing where necessary. The views of local residents will be important in establishing the extent of any history of problems.
- The conditions put forward within this report are suggested on the basis of:
 - information contained within the application form;
 - interested parties representations and
 - on those measures currently in existence.
- The 2003 Act requires licensing authorities following receipt of relevant representations to make judgements about what constitutes public nuisance and what is necessary, in terms of conditions attached to specific premises licences to prevent it. It is therefore important that in considering the promotion of this licensing objective, licensing authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- Public nuisance is not narrowly defined in the 2003 Act and retains its broad common law meaning for the Act's purposes. The prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.
- Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise may also prove necessary to address any disturbance anticipated as customers enter and leave the premises and therefore, in the immediate vicinity of the premises.
- In the context of preventing public nuisance, it is essential that conditions are focused on measures within the direct control of the licence holder. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, or premises management cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises. Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who

engages in anti-social behaviour is accountable in his own right. However, it would be perfectly reasonable for a licensing authority to impose a condition it considered necessary following relevant representations from an interested party that requires the licence holder to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living near-by to a peaceful night. After a licence has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate.

- The Guidance states “the conditions that are necessary for the promotion of the licensing objectives should emerge initially from a prospective licensee’s risk assessment which should be undertaken by applicants or clubs 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 that it is proposed to take to promote the licensing objectives.”
- It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions, which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

Decision options

17. In addition to those matters outlined in the applications operating schedule if members are minded to grant the application they may wish to consider the following conditions:

Prevention of Public Nuisance

- a) The licence holder will ensure prominent, clear notices shall be displayed at all exits requesting customers to respect the needs of local residents and leave the premises and the area quietly.
- b) The licence holder will not permit noise from amplified music to be audible from the inside of neighbour’s property.
- c) The licence holder will ensure all external doors and windows are kept closed, other than for access and egress, in all rooms when events involving amplified music or speech are taking place
- d) The license holder or a nominated representative shall receive and respond to complaints.
- e) The licence holder will ensure that appropriate staff regularly monitor noise levels outside the premises to ensure that they are not excessive or likely to disturb neighbours.
- f) The licence holder will ensure will promote sensible drinking and will proactively monitor the consumption of alcohol by its customers. Service will be refused to anyone appearing to be drunk.

Legal options open to members

16. Members may grant the licence with no modifications to the conditions to the licence, modify the conditions of the licence or reject the whole or part of the application.

Consultation

18. All relevant parties have followed the consultation procedures required under the Licensing Act 2003.

Implications Assessment

19. The decision should be made with regard to the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal / challenge is increased.

Human Rights

20. While all Convention Rights must be considered, those which are of particular relevance to the application are:
- Article 8 - Right to respect for private and family life
 - Article 1 of the First Protocol - Protection of Property
 - Article 10 – Freedom of Expression

The full text of each Article is given in the attached Appendix F.

Handling

21. The timings for handling the application are set out in the Licensing Act 2003 and related regulations.

Conclusion

22. Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

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| Contact: | Licensing Manager |
| Email: | James.hann@ashford.gov.uk |

APPENDIX C
SUMMARY OF REPRESENTATIONS FROM INTERESTED PARTIES

| Name & Address | Representation Details |
|---|-------------------------------|
| Mr Ansley 5 The Moat, Charing, Ashford, Kent, TN27 0JH | Object |
| Mr Webb Palace Gate, 6 The Moat, Charing, Ashford, Kent | Object |
| Mr Andrews 7 The Moat, Charing, Ashford, Kent, TN27 0JH | Object |
| Mrs Andrews 7 The Moat, Charing, Ashford, Kent, TN27 0JH | Object |
| Mrs Gosling 8 The Moat, Charing, Ashford, Kent, TN27 0JH | Object |
| Mr Huggett 9 The Moat, Charing, Ashford, Kent | Object |
| Ms Mumford 10 The Moat, Charing, Ashford, Kent | Object |
| Mrs Woodworth 11 The Moat, Charing, Ashford, Kent | Object |
| Mr Rowland 12 The Moat, Charing, Ashford, Kent | Object |
| Mr Willmott 14 The Moat, Charing, Ashford, Kent, TN27 0JH | Object |
| Mrs Bird 15 The Moat, Charing, Ashford, Kent | Object |
| Mr Medcraft 16 The Moat, Charing, Ashford, Kent, TN27 0JH | Object |
| Mrs Hawley 17 The Moat, Charing, Ashford, Kent | Object |
| Mr Horan 18 The Moat, Charing, Ashford, Kent | Object |
| Mrs Crompton 19 The Moat, Charing, Ashford, Kent, TN27 0JH | Object |
| Mr Warburton 20 The Moat, Charing, Ashford, Kent | Object |
| Mrs Wood 22 The Moat, Charing, Ashford, Kent, TN27 0JH | Object |
| Mr Elphick 24 The Moat, Charing, Ashford, Kent, TN27 0JH | Object |
| Mr & Mrs Humphries 26 The Moat, Charing, Ashford, Kent | Object |
| Mr & Mrs Burt 21 The Moat, Charing, Ashford, Kent | Object |
| Mr Barnard 28 The Moat, Charing, Ashford, Kent | Object |
| Mrs Brett 32 The Moat, Charing, Ashford, Kent | Object |
| Mrs Sykes 33 The Moat, Charing, Ashford, Kent, TN27 0JH | Object |
| Mrs Duncan 34 The Moat, Charing, Ashford, Kent | Object |

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| Mr Jordan 35 The Moat, Charing, Ashford, Kent | Object |
| Mrs Domke 39 The Moat, Charing, Ashford, Kent, TN27 0JH | Object |
| Mr & Mrs Barnett 40 The Moat, Charing, Ashford, Kent, TN27 0JH | Object |
| Mrs Luke 42 The Moat, Charing, Ashford, Kent, TN27 0JH | Object |
| Mr & Mrs Methven 43 The Moat, Charing, Ashford, Kent, TN27 0JH | Object |
| Mrs Foad 45 The Moat, Charing, Ashford, Kent, TN27 0JH | Object |
| Mr Emery 46 The Moat, Charing, Ashford, Kent | Object |
| Mr Bates Cedar Wood, The Moat, Charing, Ashford, Kent, TN27 0JJ | Object |
| Mr Rye 1 Pym House, Pett Lane, Charing, Ashford, Kent, TN27 0DW | Object |
| Mrs Shoobridge 4 Pym House Pett Lane, Charing, Ashford, Kent | Object |
| Ms Graham 7 Pym House, Pett Lane, Charing, Ashford, Kent, TN27 0DW | Object |
| Mrs Radford 8 Pym House, Pett Lane, Charing, Ashford, Kent, TN27 0DW | Object |
| Mr Jarvis 9 Pym House, Pett Lane, Charing, Ashford, Kent, TN27 0DW | Object |
| Mr Apps 10 Pym House, Pett Lane, Charing, Ashford, Kent, TN27 0DW | Object |
| Mrs Duncombe 12 Pym House Pett Lane, Charing, Ashford, Kent | Object |
| Mrs Birch 15 Pym House Pett Lane, Charing, Ashford, Kent | Object |
| Mrs Dunk 16 Pym House Pett Lane, Charing, Ashford, Kent | Object |
| Mrs Hood 19 Pym House Pett Lane, Charing, Ashford, Kent | Object |
| Mrs Clark 20 Pym House Pett Lane, Charing, Ashford, Kent | Object |
| Mrs Kaszubowski 22 Pym House, Pett Lane, Charing, Ashford, Kent, TN27 0DW | Object |
| Mrs Lilian Webb 25 Pym House Pett Lane, Charing, Ashford, Kent. | Object |
| Mrs Doris Martin 27 Pym House, Pett Lane, Charing, Ashford, Kent. | Object |

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| Mrs Pearl Ford 30 Pym House, Pett Lane, Charing, Ashford, Kent. | Object |
| Mr Keith McDuff 33 Pym House, Pett Lane, Charing, Ashford, Kent, TN27 0DW. | Object |
| Mrs Phyllis Richardson 34 Pym House, Pett Lane, Charing, Ashford, Kent. | Object |
| Mrs Daphne Maynard 35 Pym House, Pett Lane, Charing, Ashford, Kent, TN27 0DW. | Object |
| Mrs Veronica Rogers 36 Pym House Bungalows Pett Lane, Charing, Ashford, Kent, TN27 0DW. | Object |
| Mr Brian Cuthbertson 9 Woodbrook, Charing, Ashford, Kent | Object |
| Mrs Angela Castle 19 Woodbrook, Charing, Ashford, Kent. | Object |
| Mr Peter Rawlinson 23 Woodbrook, Charing, Ashford, Kent, TN27 0DN. | Object |
| Mrs Betty Chambers 30 Woodbrook, Charing, Ashford, Kent. | Object |
| Mrs Jean Mapley 33 Woodbrook, Charing, Ashford, Kent, TN27 0DN. | Object |
| Mrs Sarah Littlewood-Tribe 10 Moat Park Houses, Ashford Road, Charing, Ashford, Kent, TN27 0EE. | Object |
| Mr Robin Shepherd Thornfields, Pett Lane, Charing, Ashford, Kent, TN27 0DL. | Object |
| Mr P Newman Hazel Cottage, Pett Lane, Charing, Ashford, Kent, TN27 0DS. | Secretary of Club |

APPENDIX E
CONDITIONS CONSISTENT WITH THE APPLICANTS OPERATING SCHEDULE

GENERAL – ALL FOUR LICENSING OBJECTIVES

None identified

THE PREVENTION OF CRIME AND DISORDER

1. The Licence Holder will ensure that all staff are trained as appropriate to ensure that alcohol is not served to anyone who appears intoxicated.

PUBLIC SAFETY

2. The Licence Holder will ensure that all fire safety and electrical equipment are regularly tested and re-certified as appropriate.
3. The Licence Holder will ensure that the Fire Risk Assessment for the licensed premises is implemented and updated on a regular basis. The Fire Risk Assessment will be maintained at the licensed premises and will be available for inspection.

THE PREVENTION OF PUBLIC NUISANCE

4. The Licence Holder will ensure that customers are advised to leave the premises quietly and orderly.

THE PROTECTION OF CHILDREN FROM HARM

5. The Licence Holder will, through the operation of a recognised 'proof of age' scheme, ensure that any one who appears to be under 18 and is attempting to buy alcohol will be asked to provide adequate and accepted proof of age.

APPENDIX F - HUMAN RIGHTS

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 1 of the First Protocol

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws, as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 10

3. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
4. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.