

**Agenda Item No:**

**Licence Reference** WK/201003134

**Report To:** LICENSING SUB COMMITTEE

**Date:** 3<sup>RD</sup> JUNE 2010

**Report Title:** Licensing Act 2003 - Application for a premises licence –  
**Farriers Arms, The Forstal, Mersham,  
Ashford, Kent, TN25 6NU**

**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: **Farriers Arms Kent Limited**

Premises: **Farriers Arms, The Forstal, Mersham,  
Ashford, Kent, TN25 6NU**

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

**Key Decision:** NO

**Affected Wards:** Weald West

**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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Farriers Arms, The Forstal, Mersham, Ashford, Kent, TN25  
6NU**

### **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:           **Farriers Arms Kent Limited**  
Premises:           **Farriers Arms, The Forstal, Mersham, Ashford, Kent,  
TN25 6NU**

### **Issue to be Decided**

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

### **Background**

#### ***The Licensing Objectives***

3.     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***

4.     The application is for a premises licence.
5.     See Appendix A for the application for a premises licence, along with a plan. The application has been made in the proper manner.
6.     Representations have been received hence the determination coming before Members.

#### ***Additional steps***

7.     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.
8.     The conditions put forward by the Licensing Manager as taken from section P of the application form are as given within Appendix F. Note it is the responsibility of the Licensing Authority to prepare conditions that are "consistent" with the operating schedule (s.18).

9. 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***

10. No representations were received from the responsible authorities, although the Environmental Health Manager suggested a number of conditions regarding the use of the area to the rear of the pub.
11. A copy of the letter agreeing these additional conditions is provided in Appendix B.

### ***Representations from Interested Parties***

12. Nine parties have made representations, including Mersham and Sevington Parish Council. A summary of these representations is provided in Appendix C. Copies of the letters are contained in Appendix D. All of the representations are parties living in the area.
13. The representations have a common theme in terms of the licensing objectives and they can be summarised as follows:
  - Use of the area to the rear of the pub and the public nuisance that may be caused from people using this area late at night.
14. 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.
15. 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 12<sup>th</sup> April 2010 and the last date for receipt of relevant representations was therefore 11<sup>th</sup> May 2010.
16. As all representations were not withdrawn and a compromise could not be agreed, the matter is brought before members for consideration.

### ***Relevant premises history***

17. The premises is a 400 year old public house in a listed building in the Forstal area of Mersham. The premises comprises of a public house with dining facilities, a number of outbuildings and approximately 6 acres of land to the rear of the premises. The premises has a road in front of the pub, an access road to on the left hand side and is in close proximity to residential properties.
18. The current premises licence permits the sale of alcohol from 10:00 until 23:30 on Sunday, midnight on Monday to Thursday and until 01:00 on Friday and Saturday. There are also extensions on specific days and the current licence is in Appendix E.

19. The current premises licence also permits the playing of recorded and live music, the performance of dance and the facilities of music inside the premises to the same hours as the permitted hours for the sale of alcohol. The same activities are permitted outside the premises in the area up to the stream at the rear of the pub, but these are limited to 23:00.
20. The licence also permits the exhibition of films and late night refreshment inside the pub.
21. The premises was previously owned by Punch Taverns and in recent years had fallen into a state of disrepair. In 2009 the pub was refurbished and reopened by a company owned by villagers and their friends.
22. The applicant contacted the licensing authority several months ago and a site visit was undertaken. The applicant had started to make several changes to the premises, specifically the building of a new kitchen area and the redesigning of the existing kitchen area into a dining area. There was also a proposal to use outbuildings for licensable activities and to licence the large green open space to the rear of the property.
23. Due to the extent of the changes and the size of the green space to be licensed the pub's managing director was advised to apply for a new premises licence.
24. The application proposes the sale of alcohol from 10:00 until 23:30 on Sunday, midnight on Monday to Thursday and until 01:00 on Friday and Saturday, with extensions on specific days. The application seeks permission to sell alcohol across the area identified in the plan attached to the application. The application is in Appendix A.
25. The application proposes to permit performances of live and recorded music, the performance of dance until 23:30 on Sunday, until midnight on Monday to Thursday and until 01:00 on Friday and Saturday, with extensions on specific days. The facilities for making music and for dancing are also requested. While these are the same hours and activities permitted in the current licence, they are also requested in the outside areas, including the green open space identified in the application.
26. The application also proposes the showing of films indoors until the same hours as those proposed for the sale of alcohol and this is unchanged from the current premises licence.
27. The application proposes that late night refreshment be permitted inside the pub until the end of the permitted hours for the sale of alcohol and this is unchanged from the current premises licence.
28. Our records show that the Council has received no complaints regarding the Farriers Arms since the current licence holders have been responsible for the pub.
29. As part of the process, the applicant was informed of the objections and a compromise was suggested; namely that:
  - a. The indoor alcohol/music licence to stay as present.

- b. The alcohol/music licence for outdoors to be limited to 10:00 until 23:00 Sunday to Saturday with an extension to be permitted until 01:00 on 4 occasions per calendar year.
  - c. The Licence Holder to notify in writing a specified group of residents of events that are planned to operate in outside areas after 23:00 in advance of the event.
30. Each interested party was contacted regarding the revised hours and subsequently two representations were withdrawn. However all the representations and any withdraws are included in the papers before members.
31. The main issue is the use of the large outside space to the rear of the pub, how often it is used and until what time.

## **Options**

### ***General***

32. 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***

33. 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 and appropriate staff will regularly monitor noise levels outside the premises to ensure that are not excessive or likely to disturb neighbours.
- b) The licensee or a nominated representative shall receive and respond to complaints.
- c) Events involving licensable activities in the green area beyond the stream be limited to 23:00.
- d) The number of events involving licensable activities that are permitted outside the buildings to be limited to a specified number each calendar year.

### **Legal options open to members**

34. 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**

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

### **Implications Assessment**

36. 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**



37. 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 G.

### **Handling**

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

### **Conclusion**

39. 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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## APPENDIX C – SUMMARY OF REPRESENTATIONS FROM INTERESTED PARTIES

Name & Address	Representation Details
Environmental Health Ashford Borough Council, Civic Centre, Tannery Lane, Ashford, Kent, TN23 1PL	Objection – Public Safety Number of conditions regarding public safety were suggested by the EHO and these were agreed by the applicant. <b>Objection withdrawn.</b>
Miss Mills Mesham & Sevington Parish Council, 8 Long Row, Flood Street, Mersham, Ashford, Kent, TN25 7HD	Objection - Prevent Public Nuisance In support of parishers who object to the use of the land to the rear of the pub. Support a 23:00 curfew
Mr & Mrs Blakley Riverside, The Forstal, Mersham, Ashford, Kent, TN25 6NU	Objection - Prevent Public Nuisance
Mrs K Holliday Brooke Cottage, The Forstal, Mersham, Ashford, Kent, TN25 6NU	Objection - Prevent Public Nuisance
Mr Firth Raymond Firth, 2 The Forstal, Mersham, Ashford, Kent, TN25 6NY	Objection - Prevent Public Nuisance Agreed to compromise & <b>objection withdrawn.</b>
Mr & Mrs Cook 4 Alexandra Terrace, The Forstal, Mersham, Ashford, Kent, TN25 6NU	Objection - Prevent Public Nuisance Agreed to compromise & <b>objection withdrawn.</b>
Mrs J Lomas Forstal Cottage, The Forstal, Mersham, Ashford, Kent, TN25 6NU	Objection - Prevent Public Nuisance
Mr Corbett Fairlawn, The Forstal, Mersham, Ashford, Kent, TN25 6NU	Objection - Prevent Public Nuisance
Mr & Mrs Moss Goodrich Cottage, The Forstal, Mersham, Ashford, Kent, TN25 6NU	Objection - Prevent Public Nuisance
Mrs C Knight 1 Bell Field, Mersham, Ashford, Kent, TN25 6NU	Objection - Prevent Public Nuisance
Farriers Arms Kent Limited Farriers Arms, The Forstal, Mersham, Ashford, Kent, TN25 6NU	Applicant

**APPENDIX F**  
**CONDITIONS CONSISTENT WITH THE APPLICANTS OPERATING SCHEDULE**

**Mandatory Licensing Conditions from 6 April 2010**

The Premise Licence Holder, Designated Premises Supervisor, Club Premises Certificate Holder or authorised person (Responsible Person) shall take all reasonable steps to ensure that staff do not carry out, arrange or participate in any irresponsible promotions in relation to the premises, including:

- games or other activities that require or encourage, or are designed to encourage, individuals to drink a quantity of alcohol within a time limit, or to drink as much alcohol as possible
- providing unlimited or unspecified quantities of alcohol free, or for a fixed or discounted fee
- providing free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less
- providing free or discounted alcohol in relation to viewing of a sporting event on the premises, where provision is dependent on the outcome of the event, or the likelihood of anything occurring or not occurring
- selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises that could be considered to encourage or condone anti-social behaviour or refer to the effects of alcohol in a favourable manner.

The Responsible Person shall ensure that no alcohol is dispensed by one person into the mouth of another. (This is referring to the use of 'Dentist Chairs'.)

The Responsible Person shall ensure that free tap water is provided on request to customers.

**GENERAL – ALL FOUR LICENSING OBJECTIVE**

1. The Licence Holder will ensure that fire appliances, AWP machines, cigarette machines and or any other similar objects are positioned as to maintain escape routes and exits throughout the premises. The positioning of such equipment shall not make it impossible to comply with other conditions attached to this licence and shall not obviate the need where appropriate for an application for variation to be made.

**PREVENTION OF CRIME & DISORDER**

2. The Licence Holder will maintain an alarm system on the premises including the provision of alarms to appropriate internal and / or external doors.
3. The Licence Holder will ensure that all ground floor windows are fitted with operable locks.
4. The Licence Holder will employ appropriate drug prevention measures and will adhere to relevant drug related policies as agreed with the Police or other

relevant authority. Appropriate signage relating to drug prevention measures shall be displayed on the premises.

5. The Licence Holder will ensure that a minimum of two bar staff are on duty when the premises is open to the public.
6. The Licence Holder will, in the absence of adequate daylight, ensure that suitable and sufficient lighting is provided and maintained in any external area accessible to the public including the car park.
7. The Licence Holder will display suitable posters and literature to promote responsible drinking e.g. drink/drive posters.

## **PUBLIC SAFETY**

8. The Licence Holder will ensure that a written health and safety risk assessment is completed for each event held on the land at the rear of the premises. The assessment will be available to the regulatory bodies on request.
9. The Licence Holder will ensure that all large scale public entertainment events (exceeding 500 people) held on the land at the rear of the premises will be notified to the regulatory bodies a minimum of 8 weeks before the event.
10. The Licence Holder will, if requested by the regulatory bodies, arrange a site meeting to discuss the safety/security of large scale events and will pay due attention to any concerns expressed by the regulatory bodies over the conduct of the event.
11. The Licence Holder will ensure that an emergency lighting system including illuminated exit signs is in operation.
12. 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.
13. The Licence Holder will display suitable posters advising of any trip hazards within the premises.
14. The Licence Holder will ensure that all fire fighting equipment is fully operable and covered by a current maintenance contract.
15. The Licence Holder will ensure that a Health & Safety Risk Assessment for the licensed premises is implemented and update on a regular basis. The Health & Safety Risk Assessment will be maintained at the licensed premises and will be available for inspection.
16. The Licence Holder will ensure that at least two members of staff have completed a recognised basic food hygiene course as commensurate with their work activities.

17. The Licence Holder will ensure that adequate and appropriate first aid equipment or material is supplied and made available at all times where the premises is open to the public or when staff are occupying the premises.
18. The Licence Holder will hold appropriate certification in respect to the premises gas and electric installation. Such certification will be maintained at the licensed premises and will be available for inspection.
19. The Licence Holder will maintain an accident / incident record book. All accidents / incidents to members of the public or staff will be detailed in this book which is maintained at the licensed premises and available for inspection.
20. The Licence Holder will ensure that all portable electrical equipment is tested annually.

### **PREVENTION OF PUBLIC NUISANCE**

21. The Licence Holder will ensure that a phone taxi service is available to customers.
22. The Licence Holder will ensure adequate signage is in place advising customers to leave the premises quietly and orderly.
23. The Licence Holder will ensure that customers are seen off the premises and encouraged to disperse quietly.

### **PROTECTION OF CHILDREN FROM HARM**

24. The Licence Holder will not permit children onto the premises unless accompanied by an adult over the age of
25. The Licence Holder will operate a recognised 'proof of age scheme.
26. The Licence Holder will ensure that cigarette machines and AWP machines are situated where their use is in full view of the bar staff.
27. The Licence Holder will ensure a wide range of soft drinks are available.
28. The Licence Holder will provide a secure family garden.

## **APPENDIX G - HUMAN RIGHTS**

### Article 8

Everyone has the right to respect for his private and family life, his home and his correspondence.

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

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.

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.