

Agenda Item No: 5
Licence Reference WK/201507995
Report To: LICENSING SUB COMMITTEE
Date: 22 OCTOBER 2015
Report Title: Licensing Act 2003 - Application for a premises licence for **The Phoenix, Tufton Street, Ashford TN23 1QP**
Report Author: Interim 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: **Gosschalks Solicitors on behalf of Phoenix Pub Group Limited**

Premises: **The Phoenix, Tufton Street, Ashford TN23 1QP**

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

Key Decision: NO

Affected Wards: Victoria Ward (Ashford)

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: **Gosschalks Solicitors of Phoenix Pub Group Limited**

Premises: **The Phoenix, Tufton Street, Ashford TN23 1QP**

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. See Appendix A for the application for a premises licence, along with a plan of the internal layout of the premises. The application has been made and advertised in the correct manner. Licensing officers have checked that the public notice has been on display at the premises.
5. A location map of the premises and surrounding area can be found at Appendix B.
6. Representations have been received hence the determination coming before Members.

Additional steps

7. The applicant states within section M of the application form the additional steps they intend to take in order to promote the four licensing objectives if the proposed application is granted.
8. The conditions put forward by the applicant are listed in appendix E and will form part of the conditions on the licence. 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 have been received from responsible authorities.

Representations from Other Parties

11. 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
12. The prescribed period for the receipt of such representations in this case is, by Regulation 22(b) of the Licensing Act 2003 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 1 September 2015 and the last date for receipt of relevant representations was 29 September 2015.
13. 22 parties have made a representation. A list of these can be found in Appendix C and the representations in full in Appendix D.
14. 15 of the representations are from residents living within 14 properties in the church yard. One representation is from a person who owns a property in the church yard but is not currently resident there. The other six representations are from people who are not living in the immediate area. Members may wish to consider the weight given to these representations.
15. The main concern of the representations is the potential for anti social behaviour when customers leave the premises and the worry by residents that customers might head into the churchyard area. The residents of Church Yard Passage and Church Yard have these concerns as a result of previous complaints and issues experienced in the area in the past.
16. Since 14 February 2014 a gate has been installed at the north exit of the Church Yard. This is closed from 10pm to 6am on Friday and Saturday nights. This was because it had become a popular “cut through” from the licensed premises in Bank Street and Tufton Street through the Church Yard to the town centre. Since the gate was installed only one call has been logged regarding anti social behaviour. It should be noted that the gate was only installed and in operation after the premises had closed.

Relevant premises history

17. The premises was previously licensed but closed in November 2013 with the premises licence being surrendered in February 2014. The previous licence was for licensable activities until 00:00 Sunday to Thursday and 01:00 Friday and Saturday with closing time half an hour later.
18. Under the previous licence two noise complaints were received in 2009 and 2011.
19. The application proposes to permit:

Sale or Supply of Alcohol (on and off sales)	Sunday to Thursday 10:00 – 00:00	Friday and Saturday 10:00 – 02:00
	10:00 – 02:00 Thursday to Monday of bank holiday weekends, Christmas Eve and Boxing Day. From the end of permitted hours on New Years Eve to the start of permitted hours on New Years Day	
Late Night Refreshment (indoors only)	Sunday to Thursday 23:00 – 00:30	Friday and Saturday 23:00 – 02:30
	All days specified under the sale of alcohol 23:00 – 02:30 23:00 on New Years Eve to 05:00 New Years Day	
Recorded Music (indoors only)	Sunday to Thursday 10:00 – 00:30	Friday and Saturday 10:00 – 02:30
	All days specified under the sale of alcohol 10:00 – 02:30 New Years Eve until close on New Years Day	
Hours premises open to the public	Sunday to Thursday 10:00 – 00:30	Friday and Saturday 10:00 – 02:30
	All days specified under the sale of alcohol 10:00 – 02:30 New Years Eve until close on New Years Day	

20. It should be noted that from 6 April 2015 recorded music became exempt from entertainment licensing between 08:00-23:00 on the same day; provided that the premises has an on-licence and the audience does not exceed 500.

General

21. 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 other 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 appropriateness to impose conditions due to the representations raised. It may then only impose such conditions as are appropriate 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 will afford an opportunity for responsible authorities and other 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 enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be

disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

- Public nuisance is not narrowly defined in the 2003 Act and retains its broad common law meaning for the Act's purposes. It is important to remember that 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 of other parties living and working in the area of a licensed premises. Public nuisance may also arise as a result of artificial light, dust, odour and insects or where its effect is prejudicial to health.
- 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 appropriate 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.
- The Guidance states "the conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence or certificate holder, which they should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public."
- It is perfectly possible that in certain cases, because the test is one of appropriateness, 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

22. The steps an authority may take are:
- a) Grant the licence subject to
 - i) Such conditions as are consistent with the operating schedule accompanying the application modified to such an extent as the authority considers necessary for the promotion of the four licensing objectives, and
 - ii) any conditions which must under section 19, 20, or 21 of the Licensing Act 2003 be included in the licence (the mandatory conditions).
 - b) Exclude from the scope of the licence any of the licensable activities to which the application relates.
 - c) Refuse to specify the person named in the application as the Designated Premises Supervisor (DPS).
 - d) Reject the application.

Consultation

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

Implications Assessment

24. 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

25. 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

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

Conclusion

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