

Decision Notice – Variation of Premises Licence

MEMBERS PRESENT:	Councillor J Baugh (Chairman of the Licensing Sub-Committee) Councillor A Hensman Councillor P Schwier
PREMISES:	Fox and Hounds 3 Chapel Street Steeple Bumpstead Haverhill, Suffolk CB9 7DQ
APPLICANT:	Mrs Catherine Irwin
DATE OF HEARING:	Tuesday, 21st July 2020 Friday, 24th July 2020 (announcement of decision)
DATE OF NOTICE:	Friday, 24th July 2020

The Licensing Sub-Committee has read the material presented to it and has listened to all the evidence and submissions.

In considering the provisions of Section 35 of the Licensing Act 2003, the Statutory Guidance issued under Section 182 of the Licensing Act 2003 (issued April 2018) and Braintree District Council's Licensing Policy, the Licensing Sub-Committee has decided to **GRANT THE VARIATION** to the **Premises Licence (S4/3 – 19/01279/LADPS/LA)** for the above premises as follows:-

The purpose of the variation application is to remove Condition No. 10 contained within 'Annex 2 – Condition consistent with the operating schedule' which states:

- '10. The Premises Licence Holder (PLH) or Designated Premises Supervisor (DPS), or person instructed by the PLH/DPS and in a suitable position of authority, shall ensure that the area is monitored to ensure that this requirement is being complied with and that loitering does not take place in the Public Front Garden, "with exceptions allowing access and regress to the Public House, the Public Front Garden shall be cleared of patrons or other persons (including staff) from 20:30 pm daily.'

Instead, the applicant has proposed the following restriction to support the variation application:

'To restrict the use of the front garden to:

May to August inclusive
Monday-Thursday and Sunday up to 10.00pm
Friday and Saturday up to 11.00pm'

The Premises Licence, as varied by the removal of Condition No. 10 and the inclusion of the restriction set out above, is subject to the Conditions offered by the applicant in order to promote the four licensing objectives, as set out in Section 16 of their application, and all Mandatory Conditions and other Conditions contained in the existing Licence (S4/3 – 19/01279/LADPS/LA).

The decision of the Licensing Sub-Committee in respect of this application to vary the Premises Licence takes immediate effect, i.e. 24th July 2020.

Reasons for Decision:

The Licensing Sub-Committee is required to consider the application to vary the Premises Licence as submitted in accordance with Section 35 of the Licensing Act 2003.

Paragraph 8.57 of the Statutory Guidance issued under Section 182 of the Licensing Act 2003 (April 2018) states that in considering an application for the variation of a Premises Licence a Licensing Authority must consider any relevant representations received which clearly relate to the likely effect of the grant of the variation on the promotion of at least one of the licensing objectives.

Paragraphs 9.42 and 9.43 of the Guidance state that each application must be considered on a case by case basis and that representations submitted by Responsible Authorities, other persons and the applicant should be taken into account.

In addition, paragraph 9.44 of the Guidance states that the determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. The Licensing Authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business.

The decision of a Licensing Authority should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what is intended to be achieved. The imposition of standard conditions should be avoided and may be unlawful where it cannot be shown that they are appropriate for the promotion of the licensing objectives in an individual case. In this case, the Licensing Sub-Committee having regard to the application and the representations made prior to and during the Hearing considers that it is not proportionate and necessary for the promotion of the licensing objectives to impose any further conditions.

In considering this application, the Licensing Sub-Committee has had regard to a representation submitted by a local resident. The representation is based on the effect of the application on the licensing objectives of the prevention of public nuisance and the protection of children from harm. However, as the Licensing Act 2003 stipulates that the objective relating to children only applies to children within a licensed premises, this part of the representation cannot be considered.

With respect to the prevention of public nuisance, the resident's concern is about the hours and nature of the use of the area to the front of the premises and that the removal of Condition No. 10 of the existing Premises Licence (restricting the use of the area to 8.30pm each evening) would lead to unacceptable levels of noise and anti-social behaviour late at night. The resident's account of the history of the licensed premises indicates that there have been problems with noise, disturbance and anti-social behaviour in the past and he is concerned about a possible re-occurrence of such problems if Condition No. 10 was to be removed.

The last complaint recorded against the premises was in September 2011 and there have been a number of licensees since that date. There is no reliable evidence as to whether the existence of Condition No. 10 has reduced noise and anti-social behaviour, or if this has resulted from different management regimes.

The Licensing Sub-Committee acknowledges that the representation submitted is based mainly on concerns about the potential for noise disturbance, particularly raised voices and unsuitable language from patrons using the outside area at the front of the premises. However, the Sub-Committee has been advised that there have been no recent complaints to the Licensing Authority about noise nuisance at the premises and that the volume of a person's voice is not something which can be controlled under the terms of a Premises Licence.

No objections had been submitted by the Responsible Authorities.

It is noted that the Premises Licence was transferred to the applicant on 23rd September 2019 and that the premises operated for a few months before being required to close until early July 2020 in accordance with Covid-19 restrictions imposed by the Government. The applicant intends to encourage good behaviour by patrons, whilst discouraging inconsiderate behaviour. As part of the application to vary the licence, the applicant has offered to restrict the use of the 'front garden' to the months of May-August inclusive each year. This, together with suggested hours of use would reduce the potential use of this external space over a year to that currently available under Condition No. 10. Furthermore, the applicant has offered to take additional steps, as set out in Section 16 of her application, to promote the four licensing objectives and these will become Conditions of the licence. Taking these factors together, the Sub-Committee is persuaded that they represent a proportionate response to address any concerns over the removal of Condition No. 10.

Note to Applicant:

The Licensing Sub-Committee welcomes the applicant's suggestion to erect signage at the front of the Public House stating that the 'front garden' is a quiet area and that patrons who wish to smoke, other than those who are seated in the area, should use the designated smoking area at the rear of the premises.

The Sub-Committee also encourages the applicant to maintain contact with her neighbour in order to resolve any issues/concerns arising from the operation of the varied Premises Licence.

End of Decision.

Right of Appeal

If you wish to appeal against the Council's decision, you must do so in writing within 21 days of being notified of the Council's decision to the Magistrates' Court. A fee must be paid to the Magistrates' Court and your application should be sent to the:-

Chelmsford Magistrates' Court
Court Administration Centre
P.O. Box 10754
Chelmsford
Essex
CM1 9PZ

Telephone: 01245 313300.
Email enquiries: esosprey@hmcts.gsi.gov.uk

For further guidance on appeals to the Magistrates' Court please contact the Magistrates' Court, or seek independent legal advice.

Right to Request a Review

At any stage following the grant of a Premises Licence, you may be able to ask the Licensing Authority to review the Premises Licence. You will need to complete an application form which can be obtained from the Council or from www.gov.uk. An application for a review must be about the effect that the Premises Licence is having on at least one of the four licensing objectives. Further information about reviews can be found at www.gov.uk.