
Meeting: Meeting of Licensing Sub- Committee

Date: 7 March 2012

Subject: Application for the Variation of a Premises Licence and a Sex Entertainment Venue Licence

Report of: Head of Public Protection

Summary: The report provides information to the Licensing Sub Committee to allow them to take a decision relating to an application for the variation of a Premises Licence and a Sex Entertainment Venue Licence for Shaylers Ampthill

Advising Officer: Director of Sustainable Communities

Contact Officer: Susan Childerhouse
Head of Public Protection

Public/Exempt: Public

Wards Affected: Ampthill

Ward Councillors Cllr. M Blair, Cllr. P. Duckett, Cllr. M.A. Smith

Location 4 Church Street Ampthill

Applicant Lord John Shayler

Applicant's Agent Frank Fender FJF Licensing

Function of: Licensing Committee

CORPORATE IMPLICATIONS

Council Priorities:

- Promote health and wellbeing and protecting the vulnerable.

The licensing regime centres around the four licensing objectives namely:

Prevention of Crime and Disorder

Public Safety

Prevention of Public Nuisance

Protection of Children from Harm

By meeting these objectives this priority will be met

Financial:

1. Should an appeal to the magistrates court follow the decision of the committee there will be legal costs associated with this process.

Legal:

2. It is possible that these decisions could be appealed to the Magistrates Court by the licence applicant or by the licence applicant or for the Licensing Act licence by an objector to the application

The applications are considered pursuant to two separate pieces of legislation and the tests therein.

Risk Management:

3. All members are aware that any decision which is unreasonable or unlawful could be open to challenge resulting in loss of image, reputation and potential financial penalty to the Council.
4. The report details the options available to the sub - committee in determining the application and recommends that a decision be reached. There is a risk of appeal to a Magistrates Court involved with this recommendation

Staffing (including Trades Unions):

5. Not Applicable.

Equalities/Human Rights:

6. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Public Health

7. The licensing regime contributes to the protection of public health by restricting the sale of alcohol to licensed premises. By preventing public nuisance those illnesses associated with lack of sleep and stress resulting from nuisance can be mitigated.

Community Safety:

8. The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in Central Bedfordshire.

It is important that the late night economy is managed to ensure that the effects of alcohol and anti social behaviour do not have a detrimental impact on the amenity of an area.

Sustainability:

9. Not applicable.

Procurement:

10. Not applicable.

RECOMMENDATION(S):

- 1. Refuse the application to vary the hours of the Premises Licence**
- 2. Refuse the application to vary the hours of the Sex Entertainment Venue Licence**

Summary

11. Two applications have been received from Lord John Shayer for a variation to the opening hours at Shaylers 4 Church Street Ampthill MK45 2EH.
12. The first application relates to the Sex Establishment Licence and requests approval to allow opening hours of :
 - 19:00 to 00:30 Monday, Tuesday and Wednesday
 - 19:00 to 04:00 on Thursday, Friday and Saturday
 - The premises will be closed as a Sexual Entertainment Venue on a Sunday

A copy of this application is attached at Appendix 1

13. The second application applies for the grant of a variation to a Premises Licence. The application requests an extension of the current licensed hours:
 - for the sale of alcohol to 03:30 Thursday to Saturday,
 - to extended the hours for regulated entertainment (live and recorded music) Thursday to Saturday to 04:00,
 - to extend hours for sale of late night refreshment Thursday to Saturday to 04:00,
 - to add performance of dance as a licensable activity from 18:00 to 04:00 Thursday to Saturday and 18:00 to 01:00 on Sundays
 - to extend opening hours for the premises Thursday to Saturday to 04:00

A copy of this application is attached at Appendix 2

Background

14. Shaylers is situated in a small shopping parade at 4 Church Street Ampthill MK45 2EH, close to a mini roundabout complex in Ampthill town centre. Other retail properties are situated around this area. A public house, The White Hart is within 70 metres of the property. There is some residential property within the nearby surroundings. A small public space, with a local monument, is situated in front of the premise. There is a large supermarket (Waitrose) and public car park to the rear of the premise.

15. The premises have held a Premises Licence since the 6th March 2009.

The authorisation includes provision:

- of facilities for live music and recorded music,
- of facilities for making music,
- of facilities for dancing,
- of late night refreshment and the supply of alcohol.

A copy of the licence is attached at Appendix 3

16. More recently a licence to operate a Sex Entertainment Venue was granted by Central Bedfordshire Council on the 30th July 2012,

A copy of the licence is attached at Appendix 4

17. Since opening as a Sex Entertainment Venue in November 2012 the establishment has only opened on a Friday and Saturday night initially between the hours of 20:00 and 01:30 but latterly, the premises has been opening from 21:00 to 01:30.

18. Officers from Central Bedfordshire Council have observed the establishment in operation since December 2012 and have not witnessed any breach of conditions imposed on the licences.

- .19. The White Hart Public House the only other premises in Ampthill with a licence for licensable activities that extended beyond midnight has recently had its licence reviewed due to noise nuisance and anti social behaviour associated with the premises. On the 22nd January 2013 the Licensing sub committee decided to reduce the hours of opening so that the premises were not open beyond midnight on any day.

- . 20. The applications for variation mean that If the variation to hours is granted the establishment will be the only one in the area open for licensable activities beyond midnight.

Consultation

21. In line with the legislative requirements consultation was carried out by the applicant by means of notice affixed to the premises for the prescribed time.

22. As a result of the consultation, 51 objections have been received by the licensing authority and are presented to the Committee for consideration. These are attached at Appendix 5.

23. Schedule 3, paragraph 10(17) of the 1982 Act (as amended) states 'The appropriate authority shall not without the consent of the person making the objection reveal his name to the applicant'. Full copies of the objections have been provided to the Committee and redacted copies to the applicant.

Other Relevant Information

24. In considering the applications the sub committee is reminded of the four Licensing Objectives ;
Prevention of Crime and Disorder
Public Safety
Prevention of Public Nuisance
Protection of Children from Harm

25. Shaylers currently only operates for a period of five and a half hours on a Friday and Saturday night from 21:00 to 01:30. These applications for variation are seeking to extend the current opening hours until the early hours of the following day seven days per week as set out in paragraphs 3.1 and 3.2.

There has been no evidence of any adverse impact on the four licensing objectives directly associated with these premises during its current operating hours. However there has been evidence of noise and antisocial behaviour in Ampthill relating to another premise with a late night licence which is located in close proximity to the applicant's establishment.

Even with its current operating hours the establishment is now the only premises open after midnight in Ampthill.

26. One of the licensing objectives listed at paragraph 22 relates to the prevention of public nuisance. Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains the broad common law meaning. 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 a major disturbance affecting the whole community.

27. Disturbances occurring in the early hours will normally have a greater impact on those sleeping or trying to sleep and that disturbance can go on until all patrons have left the area.

28. The majority of objections to this application are about disturbance in the early hours. Given a number of the residents of Ampthill have only just had remedy from disturbance associated with late night licensable activities by the Council a precedent has been set.

29. During the review hearing for the White Hart on the 22nd January 2012 it was noted that residents in the area of Church Street and Dunstable Street were not only disturbed by the activities being undertaken at the White Hart but also from patrons leaving the premises and exiting the area.

.30. The Licensing Sub Committee at it's meeting on the 22nd January 2013 took the decision to reduce the hours of the White Hart from

- Monday to Thursday 10:00 to 0:00 hrs
- Friday 10:00 to 02:00 hrs
- Saturday 10:00 to 01;00hrs
- Sunday 11:00 to 23.30 hrs

to

- Friday 10:00 to 24:00
- Saturday 10:00 to 24:00

31. Legislation allows for Committee to consider the likely effects of the grant of the variations on the licensing objectives. Given that the majority of objections relate to these likely effects and that the residents of the town have witnessed first hand nuisance associated with a licensed premises there is a strong body of evidence to support the recommendations in this report. This is further supported by the precedent set by the Licensing Sub – Committee at it's meeting on the 22nd January 2013.

Options

32. In assessing the impact of the options, each option is considered individual. It is important to note that each application for a variation is independent of the other and it is open to the Committee to determine that one will be granted whilst the other isn't or one is granted without modification whilst the other is granted subject to modification. However, due to the different rights of appeal, the different options are analysed separately below.

33 Option 1a: Grant the premises licence in the terms applied for

Option 1b: Grant the premises licence with modified/additional conditions

34. Option 2a: Grant the Sexual Entertainment Venue Licence in the terms applied for

Option 2b: Grant the Sexual Entertainment Venue Licence with modified/additional conditions

35. Option 3 : Reject the applications

Analysis

36. In assessing the impact of the options, each option is considered individual. It is important to note that each application for a variation is independent of the other and it is open to the Committee to determine that one will be granted whilst the other isn't or one is granted without modification whilst the other is granted subject to modification. However, due to the different rights of appeal, the different options are analysed separately below.

37. Option 1a: This decision could be appealed to the Magistrates Court by any aggrieved person who was a party to the proceedings, ie, applicant, objector or responsible authority. The magistrates will be required to consider the reasonableness of the committee in coming to its conclusion and will have to give reasons if they come to a different conclusion to that of the Committee.

Option 1b: This decision could be appealed to the Magistrates Court by the applicant, an objector to the application or a responsible authority. The magistrates will be required to consider the reasonableness of the committee in coming to its conclusion and will have to give reasons if they come to a different conclusion to that of the Committee.

38. Option 2a: This decision can be appealed to the Magistrates Court by the applicant. The magistrates will be required to consider the reasonableness of the committee in coming to its conclusion and will have to give reasons if they come to a different conclusion to that of the Committee.

Option 2b: This decision can be appealed to the Magistrates Court by the applicant. The magistrates will be required to consider the reasonableness of the committee in coming to its conclusion and will have to give reasons if they come to a different conclusion to that of the Committee.

39. Option 3: This decision could be appealed at Magistrates Court by the licence applicant. . The magistrates will be required to consider the reasonableness of the Committee in coming to its conclusion and will have to give reasons if they come to a different conclusion to that of the Committee.

Conclusion

40. I would recommend that the Licensing Sub committee accepts the recommendations set out at the front of this report :

Refuse the application to vary the hours of the Premises Licence

Refuse the application to vary the hours of the Sex Entertainment Venue Licence

The reason for the recommendation is to avoid nuisance in the area and taking into account the communities concerns.

Guidance

41. The sub committee must also have regard to

- The Local Government (Miscellaneous Provisions) Act 1982
- Any supporting regulations - i.e. s27 of the Policing and Crime Act 2009
- Licensing Act 2003
- Guidance issued pursuant to section 182 of the Licensing Act 2003
- Central Bedfordshire Council Licensing Policies

42. The Local Government (Miscellaneous Provisions) Act 1982 is only applicable to the application for the variation of the Sex Establishment Licence, and considerations pertaining to the Licensing Act and its associated guidance should not be undertaken.
43. Equally, The Licensing Act 2003, and its associated guidance, is applicable only to the application for a variation to the premises licence and matters pertaining to the Sex Establishment should not be taken into account in the determination of that application.
44. In the consideration of both applications, Members are required to consider the Council's Licensing Policy, relevant to that matter.
45. In relation to the Sex Establishment licence variation application, paragraph 18 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 provides that the Local Authority is entitled to consider an application for a variation and is entitled to:
 - (a) grant the application, and make the variation;
 - (b) make such variations as it considers fit; or
 - (c) refuse the application.

For the avoidance of doubt the power contained in (b), above, is a power of general application and may include (but is not limited to) the imposition of terms, conditions or restrictions other than those specified in the application.

46. Although paragraph 12 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 highlights the reasons for refusal of a licence, the paragraph relates directly to new or renewal applications. It is not considered that paragraph 12 relates to this application, although Members may have regard to the paragraph and attach such weight as they consider appropriate.
47. Applications for variations of Premises Licences are governed by sections 34 – 36 of the Licensing Act 2003.
48. Section 34 provides the licence holder with a right to apply for a variation of the licence.
49. Section 35 provides details regarding when a hearing must be held and includes the situation where relevant representations have been made. In such a situation, as is the case with this application, the Licensing Authority is required to hold a hearing for all parties to be heard, before making a determination.
50. Section 36 provides that a written notice of the decision and reasons must be provided to all those who are party to the proceedings.

51. The application should be considered against the promotion of the four licensing objectives:
- (1) The prevention of crime and disorder;
 - (2) Public safety;
 - (3) The prevention of public nuisance;
 - (4) The protection of children from harm.
52. The relevant paragraphs of the guidance issued pursuant to section 182 are paragraphs 8.59 – 8.61 and 8.67 – 8.68.
53. Paragraphs 8.59 – 8.61 make clear that a change to licensing hours are considered to be ‘full’ variations to a licence and, therefore, need to be dealt with through the full licensing procedure, with consideration of the impact on the licensing objectives.
54. Paragraphs 8.67 – 8.68 make clear that a full variation procedure allows a Licensing Authority to consider the licence in its entirety and impose, alter or remove such conditions as are appropriate.
55. The Council’s Licensing Policy is relevant to the application to vary the premises licence. In particular, attention is drawn to part 7 where the policy makes the following statements:-

“In most cases (other than minor variations), if representations are received from, or a review is requested by, a responsible authority or interested party, and these cannot be resolved by discussion between the responsible authority, the interested party, the applicant and the licensing authority, a public hearing will be held by the Licensing Sub Committee. At the hearing the Licensing Sub Committee will listen to the evidence and statements of the responsible authority and/or interested party who have made representations/called for a review, and any information the applicant wishes to provide.

The Licensing Sub Committee will only consider the evidence relating to representations which are in connection with one or more of the four licensing objectives. Consequently, the Licensing Sub Committee will only attach conditions to authorisations, where representations have been made, and where those conditions are considered necessary to ensure that the licensing objectives are being met. If it is ruled that the applicant has met the licensing objectives then no conditions will be attached. The Licensing Sub Committee may also choose to refuse the application; however, the presumption of the Act is that all applications will be granted unless there are exceptional circumstances where the licensing objectives cannot be met. The Licensing Sub Committee will seek to avoid attaching conditions that duplicate other regulatory regimes as far as possible. They will also only seek to attach conditions that are focused on matters in the direct control of the licence holder or club.”

56. The paragraph continues with considerations of how the four licensing objectives may be interpreted.
57. Members are reminded that they must balance all of the relevant information that is heard and read through the course of this hearing and determine the appropriate outcome

Appendices:

Appendix 1 – Application to vary the Sex Entertainment Venue Licence

Appendix 2 – Application to vary the Premises Licence

Appendix 3– Copy of Premises Licence

Appendix 4 – Copy of Sex Entertainment Venue Licence

Appendix 5 – Correspondence from objectors

Background Papers: (open to public inspection)

Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 as amended by S27 of the Policing and Crime Act 2009

Licensing Act 2003

Central Bedfordshire Council Statement of Licensing Policy for Sex Establishments

Central Bedfordshire Council Statement of Licensing Policy

Papers are located at: Licensing Team Public Protection Watling House, High Street North, Dunstable Bedfordshire, LU6 1LF