

LICENSING PANEL
30 August 2017

LICENSING ACT 2003
FENWICK, THE AVENUE, BRACKNELL
APPLICATION FOR NEW PREMISES LICENCE
(Chief Officer: Environment and Public Protection)

1 APPLICATION DETAILS

- 1.1 On 10 July 2017 an application was made by Fenwick Limited for a new premises licence for the above mentioned premises. The application is attached at **Annex A** and the proposed plan at **Annex B**.
- 1.2 The application is for the following licensable activities:
- Sale of alcohol (on and off sales) 08:00 - 00:00 Monday to Sunday
 - Live and recorded music (indoors only) 12:00 - 23:00 Monday to Sunday
 - Late night refreshment (indoors and outdoors) 23:00 - 00:00 Monday to Sunday
- 1.3 The premises is proposed to be open to the public from 08:00 - 00:30 Monday to Sunday.

2 SUPPORTING INFORMATION

- 2.1 A map showing the location of the premises is attached at **Annex C**.
- 2.2 The proposed conditions including both the mandatory conditions and those arising from the operating schedule are attached at **Annex D** of this report.

3 REPRESENTATIONS RECEIVED

- 3.1 During the period for making representations from 11 July 2017 to 7 August 2017, one representation was received in respect of the application. This was from Environmental Health and can be found at **Annex E**. The representation raises concerns regarding the potential for public nuisance as a result of the application.
- 3.2 The applicant's agent and Environmental Health have liaised in respect of the concerns raised, and agreement has already been reached in respect of the following additional conditions to be placed on the licence:
- i) The terrace shall not be used by customers from 23:00 until the closure of the premises on a Friday and Saturday.
 - ii) Signage shall be displayed asking customers to keep noise to a minimum to ensure no disturbance to nearby residential properties.
- 3.3 The two conditions proposed by Environmental Health which have not been agreed by the applicant are as follows:
- i) The terrace shall not be used by customers from 22:00 until the closure of the premises from Sunday to Thursday.
 - ii) Noise and vibration shall not be permitted to emanate from the premises to such an extent that it would cause a nuisance to nearby properties (this replaced the proposed condition reference monitoring of the terrace as proposed in **Annex E**).
- 3.4 The applicant maintains they would like the terrace to remain open for use until 23:00 every day of the week.

4 RELEVANT BRACKNELL FOREST BOROUGH COUNCIL POLICIES

- 4.1 In determining applications, the Licensing Authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned. (2.5)
- 4.2 The Council, as Licensing Authority, recognises that conditions attached to licences will be focused on matters which are within the control of individual licensees. (2.7)
- 4.3 If it is reasonably considered that the licensing objectives cannot be met unless additional specific conditions are attached, then the Licensing Authority may consider attaching those which are appropriate for the promotion of the licensing objectives, proportionate to the individual style and characteristics of the event or premises concerned. (11.3)

5 RELEVANT NATIONAL GUIDANCE

- 5.1 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation. (9.37)
- 5.2 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
 - a) the steps that are appropriate to promote the licensing objectives;
 - b) the representations (including supporting information) presented by all the parties;
 - c) the Guidance issued under section 182 of the Licensing Act 2003;
 - d) its own statement of licensing policy. (9.38)
- 5.3 A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations. (9.4) It is the responsibility of each responsible authority to determine when they have appropriate grounds to make a representation. (9.11)
- 5.4 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. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, 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 licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination. (9.44)
- 5.5 The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to

impose conditions to promote one or more of the four licensing objectives. (10.8)

- 5.6 Licensing conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. They should be proportionate, justifiable and be capable of being met, and they should not replicate offences set out in the 2003 Act or other legislation. (1.16)
- 5.7 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. (2.15)
- 5.8 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health. (2.16)
- 5.9 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate. (2.18)
- 5.10 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave. (2.19)

6 RECOMMENDATION

- 6.1 The Licensing Authority must, having regard to the representations, take such steps as it considers necessary for the promotion of the licensing objectives, either:
 - a) to grant the licence subject to the conditions as proposed, or
 - b) to grant the licence subject to modified and/or additional conditions, or
 - c) to grant the licence but exclude any of the licensable activities sought, or
 - d) to reject the application.

Background Papers

Licensing Act 2003

Guidance issued under section 182 of the Licensing Act 2003

Regulations (cited as the Licensing Act 2003 [various] Orders 2005)

Bracknell Forest Borough Council Licensing Policy (January 2016)

Contact for further information

Laura Driscoll, Principal Licensing Officer, 01344 352517

laura.driscoll@bracknell-forest.gov.uk