

**REPORT TO:** LICENSING SUB-COMMITTEE

**DATE:** 14 NOVEMBER 2022

**TITLE:** APPLICATION FOR A PREMISES LICENCE: THE QUEENS HEAD PUBLIC HOUSE, 26 CHURCHGATE STREET, HARLOW, ESSEX, CM17 0JT

**LEAD OFFICER(S):** MICHAEL PITT, ASSISTANT DIRECTOR ENVIRONMENT (01279) 446114

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### **EXECUTIVE SUMMARY**

An application has been received from Easy Rusty Bar Ltd under Section 17 of the Licensing Act 2003 (“The Act”) for a new premises licence in respect of The Queens Head Public House, 26 Churchgate Street, Harlow, Essex, CM17 0JT. The Sub-Committee is requested to consider the application following representations which have been received during the consultation period.

### **RECOMMENDED that:**

- A** The Licensing Sub-Committee consider the application for a new Premises Licence, including any relevant representations and evidence received to determine what steps, if any, it considers are appropriate to promote the Licensing Objectives for the overall interests of the community.
- B** In carrying out its licensing functions, the Sub-Committee should give appropriate weight and consideration to:
- The Licensing Act 2003 (“The Act”),
  - Secondary regulations issued under the Act,
  - The Section 182 guidance issued to local authorities under the Act,
  - The Harlow Council Licensing Policy 2019 – 2024,
  - The steps that are appropriate to promote the licensing objectives,
  - The premises licence application, and
  - Relevant representations (and any supporting evidence) submitted by all parties.

## BACKGROUND

1. Acting in the capacity of the Licensing Authority, to carry out its functions under the Act members must seek to promote the Licensing Objectives. The Licensing Objectives are:
  - a) The prevention of Crime and Disorder
  - b) Public Safety
  - c) The Prevention of Public Nuisance
  - d) The Protection of Children from Harm
  
2. Where appropriate, there are a number of options available to the Sub-Committee under s18(4) of the Act in relation to a premises licence application for the promotion of the licensing objectives:
  - a) Grant the licence, subject to conditions consistent with the operating schedule.
  - b) Grant the licence but modify the conditions as appropriate for the promotion of the licensing objectives.
  - c) Grant the licence but modify the hours of licensable activity as appropriate for the promotion of the licensing objectives
  - d) Grant the licence but exclude one or more requested licensable activities
  - e) Grant the licence but to refuse to specify a person as a premises supervisor
  - f) Reject the application

For the purposes of step b) above the conditions are modified if any of them are altered or omitted or where any new condition is added. (S18(5) Licensing Act 2003)

3. Due to deregulatory changes in 2015 that amended the Licensing Act 2003. No licence is required for live music and recorded music where:-
  - There is a premises licence in place permitting 'on sales'
  - The premises are open for the sale or supply of alcohol for consumption on the premises
  - Live or recorded music is taking place between 8am and 11pm
  - If the music is amplified live music or recorded music, the audience consists of no more than 500 people
  
4. The Queen's Head Public House is a grade II listed building. It is situated within a small residential area, with housing to the front and on both sides of the pub. A driveway provides vehicular and pedestrian access to the rear patio courtyard and beer garden. Beyond that there is a dedicated car parking area for a small number of vehicles. A location map can be viewed at **Appendix A**

- Easy Rusty Bar Ltd currently hold a premises licence HARLOW/PREM/0074 for The Queen's Head Public House, transferred to them on 3 August 2022. The current DPS is Sathit Suwannakul.

## ISSUES

### Application

- On 20 September 2022, under Section 17 of the Licensing Act 2003, a valid application for a new Premises Licence was submitted by Easy Rusty Bar Ltd in respect of the Queens Head Public House, 26 Churchgate Street, Harlow, Essex, CM17 0JT to this authority.
- A copy of the original application is included in **Appendix B**
- During the consultation, the hours applied for the sale or supply of alcohol, had been shortened by 30 minutes for Monday to Sunday, to reflect the discrepancy displayed on the applicants' blue public notice displayed on site.
- In summary, the licensable activities, days and timings applied for are:

<b>Sale or Supply of Alcohol (On and Off Sales)</b> Monday to Saturday Sunday	11:00 - 23:30 12:00 - 22:30
<b>Non-Standard Timings for 31 December</b> On New Year's Eve from the end of permitted hours to the start of permitted hours on the following day, which would be 11am. If New Year's Day falls on a weekday or 12 noon if a Sunday.	

<b>Opening Hours</b> Monday to Saturday Sunday	11:00 - 00:30 11:00 – 23:00
<b>Non-Standard Timings for 31 December</b> On New Year's Eve from the end of permitted hours to the start of permitted hours on the following day, which would be 11am. If New Year's Day falls on a weekday or 12 noon if a Sunday.	

### Consultation

- In accordance with the Licensing Act 2003 regulations, public notices have been displayed and published. Responsible authorities were notified of the application. The consultation period ended on the 18 October 2022.

11. The Council has received six representations from other persons who are Churchgate Street residents.

The representations predominately relate to the prevention of public nuisance objective and have been summarised as shown below:

- Late night noise disturbance and anti-social behaviour in the early hours
- People sitting out the front on pub now until 23:00 hours it makes sleeping almost impossible
- Lack of pub parking, additional noise from people and vehicles leaving the premises
- Recent issues concerning premises use as a Sports bar

The representations are available in full at **Appendix C1-C6**

12. No representations have been received from any Responsible Authorities.
13. Essex Police, as a Responsible Authority have not made any representations. However, they have proposed a reduced footprint (licensable area) to the car park with the applicant. An agreed updated floor plan has been provided.  
**Appendix D**
14. The applicant and any other person who submitted a representation were sent a Statutory Notice of Hearing, inviting them to attend.

## **PROPOSALS**

### **Determine the application**

15. Any decision is to be made with regard to the Licensing Act 2003, the Secretary of State's Revised Guidance issued under Section 182 of the Licensing Act 2003, and the Council's adopted Statement of Licensing Policy. Some points of reference are included in this report.
16. Members are reminded that should any conditions be added or modified, they should be practical, enforceable, and appropriate to promote the Licensing Objectives.

### **Statement of Licensing Policy**

17. Para 5 under Prevention of Public Nuisance –

*The Council intends to interpret “**public nuisance**” in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.*

*Applicants need to be clear that the Council will normally apply stricter conditions, including controls on licensing hours, where licensed premises are in residential areas and where relevant representations have been received.*

*Conversely, premises for which it can be demonstrated effective measures planned to prevent public nuisance are in place, may be suitable for longer opening hours.*

### **Secretary of State's Section 182 Guidance for the Licensing Act 2003**

18. The Sub-Committee's attention is directed towards Chapter 9 'Determining applications' and Chapter 10 'Conditions attached to premises licences and club premises certificates' and Chapter 16 'Regulated Entertainment' in the Section 182 Guidance
19. Para 2.16 **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...
20. Para 9.4 ...*There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.*
21. Para 9.37 *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 and should be allowed sufficient time to do so, within reasonable and practicable limits.*
22. Para 9.42 *Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.*
23. Para 9.43 *The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.*
24. Para 9.44 *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...*

25. Para 10.8 *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. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises. This provision also applies to minor variations.*
26. Para 10.9 *It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.*
27. Para 16.5 *There are a number of exemptions that mean that a licence (or other authorisation) under the 2003 Act is not required. This Guidance cannot give examples of every eventuality or possible entertainment activity that is not licensable. However, the following activities are examples of entertainment which are not licensable:...*
- *Television or radio broadcasts – as long as the programme is live and simultaneous;...*
  - *Games played in pubs, youth clubs etc. (e.g. pool, darts and table tennis);...*
28. Para 16.6 *As a result of deregulatory changes that have amended the 2003 Act, no licence is required for the following activities: ...*
- *Indoor sporting events: no licence is required for an event between 08.00 and 23.00 on any day, provided that those present do not exceed 1000.*
- ...
- *Live music: no licence permission is required for:*
    - *a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises.*
    - *a performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.*
    - *a performance of amplified live music between 08.00 and 23.00 on any day, in a workplace that does not have a licence, provided that the audience does not exceed 500.*
    - *a performance of amplified live music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.*
- ...
- *Recorded Music: no licence permission is required for:*
    - *any playing of recorded music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.*
    - *any playing of recorded music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the*

*audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises*

## **Legal Considerations**

29. Members should provide reason(s) for any decision taken and should set out the reasoning where they determine to depart in any way from the Policy or Guidance.
30. In addition to determining the application in accordance with the legislation, the Sub-Committee must have regard to the:
  - common rules of natural justice
  - provisions of the Human Rights Act 1998
  - considerations in Section 17 of the Crime and Disorder Act 1998
31. The Human Rights Act 1998, which requires authorities to take into account the rights of individuals to respect for their private and family life (Article 8), a right to a fair trial/hearing (Article 6) and to protection of their property (Article 1, Protocol 1).
32. There is a statutory obligation placed on the Local Authority under section 17 of the Crime and Disorder Act 1988 to exercise its various functions doing all that it can to prevent Crime and Disorder, and Anti-Social Behaviour, behaviour adversely affecting the environment as well as the misuse of drugs, alcohol and re-offending in the Local Environment.
33. Under section 181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal for the applicant or a party to the hearing against a decision of the Licensing Sub-Committee to the Magistrate's Court within 21 days of being notified.

## **IMPLICATIONS**

### **Strategic Growth and Regeneration**

None specific.

**Author: Andrew Bramidge, Director of Strategic Growth and Regeneration**

### **Finance**

In the event of an appeal being lodged against the Committee's decision then should that appeal be successful costs could be awarded against the Council. In such circumstances costs would in the first instance be met from within existing budgets.

**Author: Simon Freeman, Deputy to the Chief Executive and Director of Finance**

### **Housing**

As outlined in the report.

**Author: Andrew Murray, Director of Housing**

## **Communities and Environment**

As outlined in the report.

**Author: Jane Greer, Director of Communities and Environment**

## **Governance and Corporate Services**

Members must have due regard to the application for a new Premises Licence and the proposed licensable activities, the representations received and determine the application in accordance with the promotion of the licensing objectives. Further legal advice in relation to any aspect of this application may be provided by an Officer at the Sub-Committee hearing to enable the process to be fair to all parties.

**Author: Simon Hill, Director of Governance and Corporate Services**

## **Appendices**

Appendix A - Location Map

Appendix B - Premises Licence Application Form

Appendix C - C1-C6 Representations from other persons

Appendix D - Updated Floor plan from the Applicant

## **Background Papers**

[Crime and Disorder Act 1998 section 17](#)

[Harlow Council Statement of Licensing Policy](#)

[Licensing Act 2003](#)

[Licensing Act 2003 Councillor's Handbook](#)

[Secretary of State's Revised Guidance issued under Section 182 of the Licensing Act 2003](#)

## **Glossary of terms/abbreviations used**

DPS – Designated Premises Supervisor