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**Our reference:**  
**Your reference:**  
**Date:** 11 July 2011

To all Members of the Alcohol & Entertainments Licensing Sub Committee

Dear Councillor

A meeting of the Alcohol & Entertainments Licensing Sub Committee will be held on Thursday 21 July 2011 at 10.00 am in the Council Chamber, Civic Centre, Pavilion Road, West Bridgford to consider the following items of business.

Yours sincerely

Head of Corporate Services

### **AGENDA**

1. Appointment of Chairman
2. Procedure

A copy of the procedure notes is attached (pages 1 – 5).

3. Hearing

Application for the Grant of a Premises Licence at the Commercial Buildings Upper Saxondale

Application to Vary Premises Licence

- a) Report of the Senior Licensing Officer is attached (pages 6 - 11).
- b) Application is attached (pages 12 - 38).
- c) Objections are attached (pages 39 - 64).
- d) Notice of Hearing is attached (pages 65 - 68).

### Membership

Councillors B Buschman, I I Korn and E A Plant

## Meeting Room Guidance

**Fire Alarm - Evacuation** - in the event of an alarm sounding you should evacuate the building using the nearest fire exit, normally through the Council Chamber. You should assemble in the Nottingham Forest car park adjacent to the main gates.

**Toilets** - Facilities, including those for the disabled, are located opposite Committee Room 2.

**Mobile Phones** – For the benefit of other users please ensure that your mobile phone is switched off whilst you are in the meeting.

**Microphones** - When you are invited to speak please press the button on your microphone, a red light will appear on the stem. Please ensure that you switch this off after you have spoken.

**RUSHCLIFFE BOROUGH COUNCIL**

**ALCOHOL AND ENTERTAINMENTS LICENSING  
SUB-COMMITTEE**

***Procedure for hearing of application to vary premises licence***  
(Licensing Act 2003, ss. 34 and 35)

**Definitions:**

“the Act” means the Licensing Act 2003

“interested party” has the meaning given in section 13(3) of the Act

“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

“party to the hearing” means those persons to whom notice of hearing is to be given in accordance with regulation 6 of the Regulations

“the Regulations” means the Licensing Act 2003 (Hearings) Regulations 2005

“relevant representations” has the meaning given in section 35(5) of the Act

“responsible authority” has the meaning given in section 13(4) of the Act

**General:**

The hearing will normally take place in public.

The hearing will be by way of a discussion led by the Chairman.

Cross-examination will not be permitted unless the sub-committee considers that cross-examination is required for it to consider the representations, application or notice as the case may require.

The sub-committee will determine the application by considering the relevant representations received.

Relevant representations in this case means representations which -

- are about the likely effect of the grant of the application on the promotion of the licensing objectives;
- are made by responsible authorities or interested parties within the prescribed time periods;

- have not been withdrawn; and
- in the case of interested parties, are not representations which are, in the opinion of the licensing authority, frivolous or vexatious.

### **Introductions:**

1. The Chairman (or Legal Adviser to the sub-committee) will explain the reason for the hearing.
2. The Chairman (or Legal Adviser to the sub-committee) will identify the parties to the hearing, their representatives/persons assisting them, any witnesses or other persons who wish to speak/appear.
3. The sub-committee will decide whether permission to appear should be given to any person present who is not a party to the hearing.
4. The Chairman (or Legal Adviser to the sub-committee) will enquire whether the parties have received, read and understand this procedure note and will answer any questions and give further guidance on the procedure to be followed as appropriate.
5. The Chairman (or Legal Adviser to the sub-committee) will check that the parties have received all relevant documentation.
6. The Chairman (or Legal Adviser to the sub-committee) will enquire of the parties (and those to whom the sub-committee has given permission to appear) how long they anticipate they will be in:-
  - (a) giving further information in support of their application, representations or notice in response to any notice given by the licensing authority under regulation 7(d) of the Regulations
  - (b) questioning another party
  - (c) addressing the sub-committee
7. The sub-committee will seek to agree with the parties a maximum period of time for the parties to exercise those rights.

### **Procedure:**

#### ***Licensing Officer***

8. The **Licensing Officer** will outline the relevant details of the application and relevant representations received in respect of it and give such advice and assistance in relation to the authority's licensing policy, government guidance and the law as appropriate.

#### ***The Applicant's Case***

9. The Chairman will then ask **the applicant** to

- outline their application
- give further information in response to any request for clarification on a point from the authority
- address the relevant representations
- call any witnesses/give evidence, as permitted by sub-committee

10. **After each speaker or witness** the Chairman will:-

- enquire whether any of the **responsible authorities** have any **questions** for that speaker or witness and may then permit such questions as the sub-committee deem appropriate to be put
- enquire whether any of the **interested parties** have any **questions** for that speaker or witness and may then permit such questions as the sub-committee deem appropriate to be put
- enquire whether any member of the **sub-committee** or the Legal Adviser have any **questions** for that speaker or witness and may then permit such questions as the sub-committee deem appropriate to be put

11. The **applicant** will then be permitted to clear up any points arising from the questioning.

### ***The Responsible Authorities***

12. The Chairman will then ask each of **the responsible authorities** in turn to

- outline their relevant representation
- give further information in response to any request for clarification on a point from the authority
- address the relevant part of the application or notice
- call any witnesses/give evidence, as permitted by sub-committee

13. **After each speaker or witness** the Chairman will:-

- enquire whether any of the **other responsible authorities** appearing have any **questions** for that speaker or witness and may then permit such questions as the sub-committee deem appropriate to be put
- enquire whether any of the **interested parties** have any **questions** for that speaker or witness and may then permit such questions as the sub-committee deem appropriate to be put
- enquire whether the **applicant** have any **questions** for that speaker or witness and may then permit such questions as the sub-committee deem appropriate to be put
- enquire whether any member of the **sub-committee** or the Legal Adviser have any **questions** for that speaker or witness and may then

permit such questions as the sub-committee deem appropriate to be put

14. The officer for the **relevant authority** will then be permitted to clear up any points arising from the questioning.

### ***Interested Parties***

15. The Chairman will then ask each of **the interest parties** in turn to

- outline their relevant representation
- give further information in response to any request for clarification on a point from the authority
- address the relevant part of the application or notice
- call any witnesses/give evidence, as permitted by sub-committee

16. **After each speaker or witness** the Chairman will:-

- enquire whether any of the **other responsible authorities** appearing have any **questions** for that speaker or witness and may then permit such questions as the sub-committee deem appropriate to be put
- enquire whether any of the **interested parties** have any **questions** for that speaker or witness and may then permit such questions as the sub-committee deem appropriate to be put
- enquire whether the **applicant** have any **questions** for that speaker or witness and may then permit such questions as the sub-committee deem appropriate to be put
- enquire whether any member of the **sub-committee** or the Legal Adviser have any **questions** for that speaker or witness and may then permit such questions as the sub-committee deem appropriate to be put

17. The **interested party** will then be permitted to clear up any points arising from the questioning.

### ***Closing Statements***

18. The Chairman will invite closing statements from the parties in the following order:-

- interested parties;
- responsible authorities;
- applicant

### ***Exclusion of Public***

19. The sub-committee will then normally declare that there is an overriding public interest in excluding the public from their deliberations in determining the application, which outweighs the public interest in that part of the hearing taking place in public.

### ***Decision***

20. The sub-committee will then retire to consider its decision.
21. The sub-committee will then return to give its decision in public. The Chairman will inform those present that the reasons for the decision will be transmitted in writing to the parties in due course.

**NB - The Chairman may vary the procedure as considered appropriate to promote the discussion.**



**ALCOHOL & ENTERTAINMENT LICENSING SUB COMMITTEE**

**21 JULY 2011**

**APPLICATION FOR THE GRANT OF A PREMISES LICENCE AT THE COMMERCIAL BUILDINGS UPPER SAXONDALE**

**3**

**REPORT OF THE SENIOR LICENSING OFFICER**

**THE APPLICATION**

**Applicant**

A F Hunt (Builders) Limited

**Premises**

The Commercial Buildings, Westminster Drive, Upper Saxondale, Nottingham

**History**

The premise to which the application relates has benefited from a licence to sell alcohol for many years. Since 2005 the premises has had a number of owners and designated premises supervisors and has operated primarily as a restaurant with a terminal hour of 2300 for the sale of alcohol, and regulated entertainment with the closing hours of the premises at 2330. The licence was surrendered on 12 January 2011 and copy of the previous licence is attached.

**Application**

This application is for the grant of a new Premises Licence under Section 17 of the Licensing Act 2003 for the above premises

**The operating schedule shows**

The premises will be run as a restaurant/bar and will be operated in line with all current legislation. The premises will be adequately ventilated to prevent nuisance and any noise from licensable activities will be monitored in order to prevent nuisance and customers will be encouraged to leave the premises quietly. A proof of age policy will be in place in regard to the sale of alcohol.

**Relevant licensable activities**

The application indicates that the following activities are applied for with the relevant start times and terminal hours:

The sale of alcohol and regulated entertainment:

Monday to Sunday 10:00 – 00:00



Late night refreshment:

Monday to Sunday 23:00 – 00:00

The hours the premises will be open to the public are:

Monday to Sunday 10:00 – 00:30

## **RELEVANT REPRESENTATIONS:**

The following are summaries of the representations made; the full representations are attached to the hearing papers.

### **Responsible authorities**

No representations have been made by any of the Responsible Authorities, however the Environmental Health Service have agreed conditions with the applicant as follows:

#### **Environmental Health Service**

1. Any noise from musical indoor regulated entertainment shall not cause a public nuisance inside the nearest noise sensitive premises.
2. All relevant doors and windows should be kept closed during musical regulated entertainment except for access and egress and in the event of an emergency.
3. Signage will be displayed advising customers to be respectful to residents and to leave the area in a quiet and orderly manner.

### **Interested parties**

Mr John Ayland: Objects to off sales at the premises and the proposed hours as this will lead to nuisance. Mr Ayland has indicated he will **not** be attending the hearing but wishes his objection to be considered.

Kirsty and Craig Lord: The hours proposed will cause disturbance and the hours should be restricted to the current hours allowed under the planning permission.

Richard and Andrea Ellis: The proposed hours are unreasonable and noise will be unacceptable from this type of establishment. Off sales could lead to further issues.

Dr J Smith: Public nuisance and noise will occur with the extended hours which are totally unacceptable and do not belong in the area. Off sales may lead to further problems.

Debra Petrucci: With the proposed hours we are now at risk from late night noise. Live music should be restricted to a single performer, and the hours are not resident friendly. Mrs Petrucci has indicated she will **not** be attending the hearing but wishes her objections to be considered.

Mr and Mrs Shaw: The terminal hour of 12.30am will lead to public nuisance and they have suffered disturbance after midnight from the premises under the previous

licence. Off sales will cause both a public nuisance and lead to crime and disorder with a potential for youths gathering in open spaces drinking.

David Shutter: Objects as the noise generated by the proposed activities will cause a public nuisance. Suggest if approved, the premises should operate between 6pm and 11pm only. Mr Shutter has indicated he will **not** be attending the hearing but wishes his objection to be considered.

Stuart Foster: The proposal to have live music together with extended hours will be offensive and disturbing to residents.

Fay Harrison: Has concerns regarding off sales that will lead to underage drinking and vandalism, and the potential from noise from entertainment.

Lezley Noon: The proposed hours are inappropriate and may lead to noise. Crime and disorder is a further worry.

Faye Handfield: Objects to the later hours as it will encourage prolonged drinking and a greater likelihood of crime and disorder. Off sales will lead to abandoned drinks and smashed glass in the area.

Mr and Mrs Lakin: Loud music could be intolerable and off sales will lead to vandalism.

Nicholas Cookson: Feels the proposed hours will cause disruption to residents unless the hours were more suitable.

## **Local Policy Considerations**

1.1 The Act provides that Rushcliffe Borough Council has a duty to carry out its functions under the Act with a view to promoting the prescribed licensing objectives:

- The prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

## **Human Rights**

The Authority will have particular regard to the following relevant provisions of the European Convention on Human Rights when determining applications.

- Article 1 of the First Protocol - that every person is entitled to the peaceful enjoyment of his or her possessions, including for example the possession of a licence.
- Article 6 - that in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
- Article 8 - that everyone has the right to respect for his home and private life.

## Consideration of the impact of licensing activities

The characteristics of an area and the impact that the premises may have upon that area are a major fundamental consideration in determining whether a licence should be granted and if so what conditions should be attached to the licence. Conditions to be attached to various authorisations will be focussed on matters that are **within the control of individual licensees** and others in possession of relevant authorisations. Accordingly these matters will centre on the premises being used for licensable activities and the vicinity of those premises. What amounts to the “vicinity” will be a question of fact to be determined in the light of the individual circumstances of the case. Consideration will primarily be given to the direct impact of the licensed activity on members of the public living, working or engaged in normal activity in the area concerned.

This policy provides information and guidance to licence applicants, objectors and interested parties on the general approach that the Authority will take in terms of licensing. Each application will be considered individually on its own merits, and the Authority in adopting this licensing policy is indicating that wider considerations will be taken into account in making an appropriate determination, where relevant objections have been made.

### POLICY 2 (Section 6)

When preparing or considering applications, applicants, interested parties, relevant bodies and the Licensing Authority should, where appropriate, take into account the following matters in assessing both the potential for the licensing objectives to be undermined and the necessity for, and proportionality of, any conditions which may be imposed on any resulting licence, certificate or permission: -

- (i) The nature of the area within which the premises are situated
- (ii) The precise nature, type and frequency of the proposed activities
- (iii) Any measures proposed by the applicant as outlined in the operating schedule.
- (iv) The nature (principally in terms of the age and orderliness) and number of any customers likely to attend the licensed premises
- (v) Means of access to and exit from the premises
- (vi) Transport provision in the area and the likely means of public or private transport that will be used by customers either arriving or leaving the premises
- (vii) Parking provision in the area.
- (viii) The potential cumulative impact (not applicable at this time)
- (ix) Other means and resources available to mitigate any impact.
- (x) Such other matters as may be relevant to the application.

**REASON: To ensure that all relevant matters are taken into consideration during the application process**

### National Guidance

1.15 Each application must be considered on its own merits and any conditions attached to licenses and certificates must be **tailored to the individual style and characteristics** of the premises and events concerned. This is essential to avoid the imposition of **disproportionate** and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed, may be unlawful

where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case.

- 1.16 The licensing authority should only impose conditions on a premises licence or club premises certificate which are **necessary and proportionate** for the promotion of the licensing objectives.
- 10.4 Under the former licensing regimes, the courts have made it clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided.
- 10.11** The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. **It may only impose conditions that are necessary to promote one or more of the four licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute.**
- 10.12 It is perfectly possible that in certain cases, because the test is one of necessity, 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.
- 13.40 With regard to licensing hours, the statement of policy should generally emphasize the consideration which will be given to the individual merits of an application. The Government strongly recommends that statements of policy should recognize that, in some circumstances, flexible licensing hours for the sale of alcohol can help to ensure that the concentrations of customers leaving premises simultaneously are avoided. This can help reduce friction at late night fast food outlets, taxi ranks and other sources of transport which lead to disorder and disturbance. (See Rushcliffe Policy 4.3 and 4.4)
- 13.23 There can be confusion about the difference between **“need”** and the “cumulative impact” of premises on the licensing objectives, for example on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel. This is **not a matter** for a licensing authority in discharging its licensing functions or for its statement of licensing policy. **“Need”** is a matter for planning committees and for the market. (Note Rushcliffe does not have a cumulative impact policy)
- 13.64 The statement of licensing policy (see Rushcliffe Policy statement 4.2) should indicate that planning, building control and licensing regimes will be **properly separated** to avoid duplication and inefficiency. Applications for premises licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned. However, applications for licences may be made before any relevant planning permission has been sought or granted by the planning authority.

## Observations

The committee is obliged to determine this application with a view to promoting the licensing objectives in the overall interests of the local community, and must give appropriate weight to:

- the representations presented by all the parties;
- the guidance;
- the statement of licensing policy;
- the steps that are necessary to promote the licensing objectives.

Of course the Committee must also have regard to all of the representations made and the evidence it hears.

The Committee must take such of the following steps as it considers necessary for the promotion of the, licensing objectives:

- (a) Grant the application as submitted
- (b) Modify the conditions of the licence, by altering or omitting or adding to them.
- (c) Reject the whole or part of the application.

The Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

Section 35(5)(a) the Licensing Act 2003 “relevant representations” means representations which, are about the likely effect of the grant of the application on the promotion of the licensing objectives.

### **Other matters**

It will be noted that a number of the objections received a make reference to the fact that the proposed hours are in conflict with the current planning permission. As stated above the guidance issued under section 182 of the Licensing Act 2003 is quite clear in that the two regimes should be kept separate. The development control department of the Council has advised the applicant of the conflict in hours.