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Our reference:
Your reference:
Date: 1 April 2014

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 Wednesday 9 April 2014 at **10.00 am** in the Council Chamber, Civic Centre, Pavilion Road, West Bridgford to consider the following items of business.

Yours sincerely

Executive Manager Operations and Corporate Governance

AGENDA

1. Appointment of Chairman
2. Procedure

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

3. Hearing

Application for the variation of a Premises Licence

Carluccio's, 20 Central Avenue, West Bridgford, Nottingham NG2 5GR

- a) Report of the Senior Licensing Officer is attached (pages 6 - 11).
- b) Application is attached (pages 12 - 29).
- c) Objections are attached (pages 30 - 36).
- d) Notice of Hearing is attached (pages 37 - 41).

Membership

Councillors R A Adair, T Combella and D J Mason

Meeting Room Guidance

Fire Alarm Evacuation: in the event of an alarm sounding please 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 are located opposite Committee Room 2.

Mobile Phones: For the benefit of others 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

9 April 2014

Application for the variation of a premises licence at Carluccio's Central Avenue West Bridgford

3

Report of the Senior Licensing Officer

The Application

Applicant

Carluccio's Limited

Premises

Carluccio's, 20 Central Avenue, West Bridgford, Nottingham, NG2 5GR

History

The premise to which the application relates was a retail store for many years until it closed in the July 2013. The premises remained empty and in October 2013 the restaurant group Wagamama made an application for a premises licence. This was granted without any objections on 1st November 2013. On 13th February 2014 the premises licence was transferred to Carluccio's. On the 14th February 2014 Carluccio's made two applications. One for a minor variation to the layout of the premises as previously approved in the Wagamama application, this application was approved without objection on 28th February 2014. The second application is for a full variation which is the subject of this hearing.

Application

The current application is to vary the Premises Licence under Section 34 of the Licensing Act 2003 to increase the opening hours and the hours for the sale of alcohol in the morning only. In addition the application is to remove Recorded Music from the current licence. The current licence is subject to the following conditions:

1. A CCTV system must be installed and operative in the premises when it is open to the public. The system will provide coverage throughout the premises. The CCTV images will be retained for a period of not less than 31 days. Images will be supplied to the Police when requested pursuant to the Data Protection Act 1998.
2. All staff members engaged in the selling of alcohol on the premises will receive training in age restricted sales.
3. Signage shall be displayed advising customers to be respectful to residents and to leave the area in a quiet and orderly manner.
4. All staff members will be trained to ask customers to leave the premises quietly.

The operating schedule shows

The applicant has considered the impact of the proposed variation and do not feel that there will be any increase risk. No further steps will be necessary to promote the licensing objectives and the existing measures will continue. These include the conditions 1 to 4 in the previous paragraph.

Relevant licensable activities

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

Supply of alcohol

Monday to Saturday		08.00 – 23.00
Sunday	08.00 – 22.30	amended to 09.00 – 22.30

Premises opening hours

Monday to Saturday		08.00 – 23.30
Sunday	08.00 – 23.00	amended to 09.00 – 23.00

Since the application was submitted the applicant has reduced the hours of operation on Sundays see above. The hours on Sundays will also be applicable to all Bank Holidays. These hours of operation are now in line with the current planning permission as granted.

Relevant Representations:

The following is a summary of the representation made; the full representations are attached to the hearing papers.

Responsible authorities

None of the responsible authorities have made any representations regarding this application.

Residents

Flora Muir

Ms Muir lists numerous points which she wishes to be considered in her representation against the grant of the variation of the licence. These include customers from other venues on Central Avenue cause disturbance when leaving the premises travelling down Albert Road. The opening of these premises will encourage more drunken behaviour in and around the area. In addition it will reduce the amenity to the general area for residents by encouraging more people over a longer timeframe when local residents have a reasonable expectation of quiet enjoyment. It will encourage noise from emptying glass bottles. Ms Muir also alludes to numerous problems of parking in the area. In particular she objects to the premises opening before 10am and after 10pm on a Sunday.

Ms Muir strongly objects to the extension of hours in the morning and quotes the standard hours of other premises in the area.

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.

Representations

Where representations are received the characteristics of an area and the impact that the premises may have upon that area will be a fundamental consideration in determining whether a licence should be granted and if so what conditions should be attached to it. Conditions will be focussed on matters that are within the control of individual licensees and others in possession of relevant authorisations. These matters will centre on the premises being used for licensable activities and the vicinity of those premises. 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 other persons 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 in Rushcliffe)
- (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

1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall”, and “will”, is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives
- must be precise and enforceable
- must be unambiguous and clear in what they intend to achieve
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation
- must be tailored to the individual type, location and characteristics of the premises and events concerned.
- should not be standardized and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case:
- should not replicate offences set out in the 2003 Act or other legislation
- should be proportionate, justifiable and be capable of being met (for example, whilst beer glasses may be available in toughened glass, wine glasses may not)
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

- 1.17 Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy. Conditions attached to licenses and certificates must be tailored to the individual type, location 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 appropriate for the promotion of the licensing objectives in any individual case.
- 10.08 The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representation and it has been 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.
- 10.09 It is possible that in certain cases, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions are appropriate to promote the licensing objectives.
- 10.11 The Government acknowledges that different licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case by case basis and standardised conditions which ignore these individual aspects should be avoided. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community, or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.
- 10.12 Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and /or different hours from those requested.
- 13.18 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 and is a matter for a planning authority in discharging its licensing functions or for its statement of licensing policy and for the market. This is not a matter for a licensing authority in discharging its licensing authority in discharging its licensing functions or for its statement of licensing policy. (Rushcliffe does not have a cumulative impact policy)
- 13.55 The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa.
- 13.56 There are circumstances when as a condition of planning permission; a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning

permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.

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 steps that are appropriate to promote the licensing objectives.
- the representations (including supporting information) presented by all the parties;
- the guidance;
- the statement of licensing policy;

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

Ms Muir makes reference in her representations to ‘standard hours’ for premises in the area. Since the Licensing Act 2003 came into force in November 2005 there are no longer ‘standard hours’. For general information of this hearing listed below are other licensed premises in the area giving the time alcohol sales can commence:

Copper	0800 daily
Belle and Jerome	0800 daily
Mud Crab	0830 daily 1000 Sunday
Escabeche	1000 daily 1200 Sunday
Monkey Tree	0700 daily
Pearl Bar	0800 daily
Fire and Ice	0800 daily