

CAMBRIDGE CITY COUNCIL

REPORT OF: The Licensing Manager

TO: Licensing Sub-Committee

17th January 2011

APPLICATION: Application to vary Premises licence:
The Bun Shop, 1 King Street, Cambridge

WARD: Market

1 INTRODUCTION

1.1 To consider and determine this application to vary the premises licence for the Bun Shop, taking into account the representation of the interested party detailed in paragraph 5 and the policy considerations detailed in paragraph 6 of the report.

1.2 TLT, solicitors acting for Punch Taverns plc, are seeking to vary the existing premises licence for the Bun Shop as follows:

To vary the layout and design of the premises in accordance with the submitted plan.

The variation is to be of no effect until the work has been completed.

1.3 A copy of the relevant application, plan and existing licence is attached at Appendix A. Locations of fire safety and other safety equipment will be subject to change in accordance with the requirements of the responsible authorities or following a risk assessment.

1.4 The Sub-Committee's decision must be made with a view to promoting one or more of the four licensing objectives, namely:

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

2 BACKGROUND

2.1 The Bun Shop is situated in King Street and has been operating as a public house for many years. There are no planning restrictions on use or hours of opening. King Street is within a cumulative impact area.

2.2 The existing premises licence was converted from a Justices' on licence with a variation request to extend the hours and include regulated entertainment and late night refreshment. It was granted following a hearing in August 2005, having received representations from seven residents and has since undergone a

number of changes of Designated Premises Supervisor (DPS). A request has now been submitted to vary the layout and design of the premises. No changes are proposed to the licensable activities or operating times.

- 2.3 King Street is situated within a cumulative impact area and is therefore subject to a special policy on cumulative impact. The special policy creates a rebuttable presumption that applications within cumulative impact areas for new premises licences will normally be refused if relevant representations are received about the cumulative impact on the licensing objectives, unless the applicant can demonstrate why the operation of the premises involved will not add to the cumulative impact already being experienced. Applicants will need to address the special policy issues in their operating schedule in order to rebut such a presumption. The special policy is set out in section 5 of the Council's Statement of Licensing Policy.

3. LICENSING OBJECTIVES ADDRESSED BY APPLICANT

- 3.1 The Operating Schedule submitted by the applicant in part P of the application addresses the four licensing objectives. Paragraphs 8.41-8.45 and Section 10 of the Government Guidance refer to the operating schedule and licence conditions. Proposals will very often translate directly into conditions that will be attached to the premises licence. They should be realistic and within the control of the applicant/management responsible for running the premises. The steps proposed in support of the licensing objectives are the same as those on the existing licence. Cumulative impact is not referred to.

4. REPRESENTATIONS FROM RESPONSIBLE AUTHORITIES

- 4.1 No representations have been received from Cambridgeshire Constabulary, Cambridgeshire Fire & Rescue, the Environmental Health Managers, Planning, Child Protection and Trading Standards, the Responsible Authorities.

5. REPRESENTATIONS FROM INTERESTED PARTIES

- 5.1 One representation attached at Appendix B has been received from an 'interested party' defined as: a person living in that vicinity; a person involved in the business in that vicinity; a body representing persons living in, or involved in such a business, or a member of the relevant licensing authority. The representation has been attached in its entirety. Not all matters raised within the representation may be relevant matters for consideration under the Licensing Act 2003.

6 POLICY CONSIDERATIONS

- 6.1 In carrying out its licensing functions, the Licensing Authority must have regard to its Statement of Licensing Policy and any statutory guidance issued under Section 182 of the Licensing Act 2003.

- 6.2 **The Council's Statement of Licensing Policy:** the following sections/paragraphs are applicable to this application:

- Objectives, section 2
- Fundamental principles, section 4
- Cumulative impact, Section 5
- Licence Conditions, section 8

6.3 The Statutory Guidance: the following sections/paragraphs are applicable to this application:

Sections 2.32 – 2.40 of the guidance cover public nuisance. Section 2.32 considers it important that that licensing authorities focus on impacts of the licensable activities at the premises on persons living and working in the vicinity that are disproportionate and unreasonable.

Section 8.5 - 8.15 covers interested parties.

Section 9 covers the determination of applications, with sections 9.3 – 9.13 giving guidance to cover situations where representations have been made. Sections 9.4 –9.6 address the issues of relevance and vicinity. Section 9.12 recommends that in borderline cases the benefit of doubt should be given to the interested party making the representation. The subsequent hearing would provide an opportunity for the person to amplify and clarify it. If it then emerged that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application.

Section 10.15 – 10.18 covers duplication and other statutory provisions. The Guidance states that the Licensing Act 2003 does not affect the continued use of the powers of an environmental health officer in respect of statutory noise nuisance under the Environmental Protection Act 1990. However these general duties will not always adequately cover specific issues arising in connection with, for example, certain types of entertainment. It is only where additional and supplementary measures are necessary to promote the licensing objectives that necessary, proportionate conditions will need to be attached to a licence. If existing law places responsibilities on the employer/operator of the premises, then it cannot be necessary to impose the same or similar duties on the premises licence.

Sections 13.24 -13.39 cover cumulative impact. Section 13.29 sets out the effects of adopting a cumulative impact policy. There is a rebuttable presumption that applications for new premises licences or variations that are likely to add to the existing cumulative impact, will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

Annex D covers conditions relating to the prevention of public nuisance. The Environmental Protection Act 1990 and the Clean Neighbourhoods and Environment Act 2005 provide some protection to the general public from the effects of noise nuisance. The police can close premises that are causing nuisance resulting from noise emanating from the premises. The Secretary of States guidance states that these matters should be considered before deciding whether or not conditions are necessary for the prevention of public nuisance.

6.4 Members should only impose conditions, which are proportionate and are necessary to promote the licensing objectives (10.11). Conditions which are imprecise or difficult to observe should be avoided (10.4).

7. CONCLUSIONS

- 7.1 The Licensing Authority has a duty under the Licensing Act 2003 by promoting the Licensing Objectives. Each objective has equal importance. In carrying out its licensing functions, the Licensing Authority must also have regard to its Statement of Licensing Policy, any Statutory Guidance under the Licensing Act 2003 and is bound by the Human Rights Act 1998. The Council must also fulfill its obligations under Section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in Cambridge.

8. OPTIONS

- 8.1 Members should, having regard to the representations, take such steps as they consider are necessary for the promotion of the licensing objectives. The steps are to modify the conditions of the licence or to reject the whole or part of the application. Conditions are modified if they are altered, omitted or any new condition added. (Licensing Act 2003 section 35(4)).
- 8.2 Members should consider Section 13.29 of the Guidance and Section 5 of Cambridge City Council's Statement of Licensing Policy relating to cumulative impact. Licences will normally be refused, following relevant representation, unless the applicant can demonstrate in the operating schedule (see section 3 above) that there will be no negative cumulative impact on one or more of the licensing objectives.

9 RECOMMENDATION

- 9.1 That members' determine the application on its individual merits.

BACKGROUND PAPERS:

The following are the background papers that were used in the preparation of this report:

Guidance issued under section 182 of the Licensing Act 2003

The Council's Statement of Licensing Policy

To inspect these documents contact Christine Allison on ext. 7879.

The author and contact officer for queries on the report is Christine Allison, on extension 7879.

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