



Licensing Committee

Report title: Fantastic Morley Chicken, 307 Stanstead Road, SE23 1JB

Date: 18 June 2020

Key decision: No.

Class: Part 1.

Ward(s) affected: Sydenham

Contributors: Community Services – Crime, Enforcement & Regulation Service, Head of Law.

Outline and recommendations

Determination of Full Variation Application - After having regard to all the representations heard, Members must take such steps as they consider appropriate to promote the Licensing Objectives. The Licensing Committee's powers are set out in the paragraph below, titled 'Recommendations'

Timeline of engagement and decision-making

The Application was advertised in accordance with regulation 25 of the Licensing Act 2003.

The last day for representations was 19 May 2020.

This matter must be heard with 20 days from the day after the last day of representations (this hearing was postponed due to the Covid 19 pandemic in the public interest to be held by remote hearing on 18 June 2020).

1. Summary

1.1 The premises is currently licenced for the following activities:

Provision of late night refreshment

23.00 - 02.00 Monday

23.00 - 02.00 Tuesday

23.00 - 02.00 Wednesday

23.00 - 02.00 Thursday

23.00 - 03.00 Friday

23.00 - 03.00 Saturday

23.00 - 02.00 Sunday

1.2 The particulars applied for under the Full Variation application are:

To Add Alcohol sales for delivery, collection and take away only

11:00 - 02:00 Sunday – Thursday

11:00 - 03:00 Friday & Saturday

1.3 Representations were received from five interested persons living nearby and all representations made on grounds of all four licensing objectives. The representations received from interested parties have been examined by Officers and are considered not to be vexatious or frivolous. These representations were all received within the specified time.

1.4 Conditions were agreed between the applicant, Police and Crime, Enforcement & Regulation Service to promote licensing objectives.

2. Recommendations

2.1 After having regard to all the representations heard, Members must take such steps as they consider appropriate to promote the licensing objectives. The steps available to the Licensing Authority:

- (a) to modify the conditions of the licence; or
- (b) to reject the whole or part of the application.

and for this purpose, the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

2.2 There is a right of appeal to the Magistrates Court against a decision either to give a counter notice or to allow the temporary event to go ahead.

3. Policy Context

3.1 Decisions by Members of the Licensing Committee should have regard to the Licensing Act 2003 and the promotion of the four Licensing Objectives at all times, which includes the following:

- Protection of Children from Harm
- Prevention of Crime and Disorder
- Prevention of Public Nuisance

- Public Safety

3.2 Members should also have regard to the Licensing Authority's Statement Licensing Policy 2015-19.

3.3 Decisions made will link in with the following objectives under the Council's Corporate Strategy – Building an Inclusive Local Economy and Building Safer Communities.

4. Financial implications

4.1 Applicants have the right of appeal against any decision by the Licensing Committee. Therefore there would likely be costs for the Authority in seeking legal support should an appeal be brought by the applicant.

5. Legal implications

5.1 The Licensing Authority is a public authority under the Human Rights Act 1998. Therefore the licensing authority is required to act compatibly with the convention rights in the exercise of their functions. Article 6 (1) of the Convention provides that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial hearing established by law.

5.2 A Premises Licence is a possession for the purpose of the Human Rights Act 1998. The right to hold a licence is a qualified rather than an absolute right. Therefore the right to hold a licence may be interfered with if it affects the interests of local residents or others. Such interference may be justified if it is necessary and proportionate to promote the licensing objectives.

6. Equalities implications

6.1 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

6.2 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

6.3 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above.

6.4 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must

understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

- 6.5 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

- 6.6 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- [The essential guide to the public sector equality duty](#)
- [Meeting the equality duty in policy and decision-making](#)
- [Engagement and the equality duty: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

- 6.7 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

7. Climate change and environmental implications

- 7.1 Any decision made by Members must fall in line with the Licensing Act 2003, to that end there are no climate change or environmental considerations.

8. Covid-19 implications

- 8.1 With the implementation of new guidance and protocols by the Government to counter the Covid-19 pandemic, temporary powers have been granted to local authorities to assist Officers and Members in complying with their duties and

obligations under the Licensing Act 2003 in these exceptional times. This will include how meetings are to be held, restrictions on the freedom of movement and social distancing strictures and the power to enable police to attend meetings remotely. Therefore decisions by Members of the Licensing Committee will have regard to:

- The Coronavirus Act 2020;
- Protocol for Licensing Applications and Hearings Under The Licensing Act 2003 During The Covid – 19 Pandemic, 8 April 20 (Update 2);
- Approaches to Managing Licensing and Related Issues During The Covid – 19 Pandemic Guidance;
- The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020;
- The Local Authorities and Police And Crime Panels (Coronavirus) (Flexibility Of Local Authorities and Police And Crime Panel Meetings) (England and Wales) Regulations 2020;

9. Crime and disorder implications

- 9.1 Under the Licensing Act 2003, one of the 4 licensing objectives is the Prevention of Crime and Disorder.
- 9.2 It is a requirement of the Licensing Act 2003 that any decision made by the Licensing Committee must not negatively impact on the Licensing objectives.

10. Background papers

- 10.1 Application received 21 April 2020.
- 10.2 Representation received as served
- 10.3 Conditions agreed between applicant, Police and Crime, Enforcement & Regulation Service.

Glossary

Term	Definition
Appeal	asking a court to overturn a lower court's decision. If the decision of a court is disputed it may be possible to ask a higher court to consider the case again by lodging an appeal.
Applicant	A person who carries on, or proposes to carry on, a business which involves the use of a premises for licensable activities to which the application relates or, a person who makes an application pursuant to any statutory function discharged by that person relating to those licensable activities, or a person who applies for the grant of a Personal Licence from a Licensing Authority.
Designated Premises Supervisor	The person named on the Premises Licence as being the person with ultimate responsibility for the running of the premises. He or she must hold a Personal Licence. There can only be one Designated Premises Supervisor for each premises.

Term	Definition
Licence	an authority to do something.
Licence Objectives	<p>Under section 4 of the 2003 Act the Licensing Authority must promote the following 4 objectives:</p> <ul style="list-style-type: none"> • Prevention of crime and disorder • Public safety • Prevention of public nuisance • Protection of children from harm
Licensable Activities	Activities undertaken at premises which require the authority of a Premises Licence, Club Premises Certificate or Temporary Event Notice.
Licensee	the holder of a licence to do something.
Licensing Authority	The Council (London Borough of Lewisham) under section 3 of the 2003 Act, the licensing authority's area is the area for which the authority acts.
Licensing Committee	A committee of not less than ten and not greater than 15 Council members to which the discharge of the licensing function is delegated by the Council. The whole committee may sit or delegate its responsibility to sub committees consisting of at least three members.
Licensing Policy	Document published by the Local Authority detailing how the licensing regime will be delivered at a local level.
Interested Person	<ul style="list-style-type: none"> • A person who lives in the vicinity of the premises • A body who represents the persons who live in that vicinity • A person involved in a business in that vicinity • A body representing businesses in that vicinity • An elected member of the council

Term	Definition
Mandatory Conditions	Conditions applied to every Premises Licence and Club Premises Certificate.
Premises Licence	A written authorisation from the Licensing Authority allowing a premises to carry out Licensable Activities.
Relevant Representation	A representation that is specific to the premises in question, related to the four licensing objectives and/or the local licensing policy.
Responsible Authorities	<p>Public bodies that must be notified of all applications and who are entitled to make representations in relation to Premises Licences, as follows:</p> <ul style="list-style-type: none"> • Licensing Authority • Chief Officer of Police • London Fire Brigade • Trading Standards • Planning Authority • Public Health • Environmental Enforcement (with respect to Noise) • Children’s Services • Home Office Immigration
Variation	Application to make changes to an existing premises licence. A minor variation is one where the application does not negatively impact on licensing objectives, and as such, only requires a 10 day consultation period. A full variation is one that is deemed could negatively impact on licensing objectives and therefore requires a full 28 day consultation process.

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