

AGENDA ITEM NO. 3

LICENSING COMMITTEE

Date **01 OCTOBER 2013**

Title **DETERMINATION OF AN APPLICATION TO VARY A PREMISES LICENCE UNDER THE PROVISIONS OF THE LICENSING ACT 2003**

1. PURPOSE/SUMMARY

To consider an application to vary an existing premises licence in respect of Georges, March.

2. KEY ISSUES

- There has been an application submitted for the variation of the existing premises licence;
- There has been a relevant representation received regarding the application;
- It is the responsibility of all premises licence holders to demonstrate that suitable and sufficient measures are undertaken to uphold the four Licensing Objectives of the Licensing Act 2003;
- There is a requirement to hold a hearing to determine the application for the grant of an application to vary a premises licence.

3. RECOMMENDATION

That the committee determines the application, having regard to this report, the evidence presented by the parties to the hearing and the relevant legislation and guidance applicable to this process.

Ward Affected	
Forward Plan Reference No. (if applicable)	N/A
Portfolio Holder	Councillor David Oliver, Cabinet member with responsibilities for Licensing.
Report Originator	Kim Winterton, Licensing Team Leader, tel: 01354 622564 email: kwinterton@fenland.gov.uk
Contact Officer	Dan Horn, Head of Housing & Neighbourhood Services, 01354 654321, dhorn@fenland.gov.uk Alan Pain, Corporate Director, 01354 622302, alanpain@fenland.gov.uk
Background Papers	Section 182 Guidance to the Licensing Act 2003 Licensing Act (Hearings) Regulations 2005 Fenland District Council's Statement of Licensing Policy

1 DETAILS OF APPLICATION

- 1.1 The application relates to the proposed variation of a premises licence in respect of Georges, 61 High Street, March, PE15 9JJ.
- 1.2 The applicant is Georges (March) Limited, 61 High Street, March PE15 9JJ
- 1.3 A copy of the application to vary the licence is **Appendix A** to this report.

2 DESCRIPTION OF PREMISES AND SUMMARY OF CURRENT ACTIVITIES

- 2.1 The premise is a high street public house in a busy area of the Town providing bar snacks and full meals in a restaurant all on the ground floor with amusement machines and enclosed rear patio/beer garden and recently licensed front beer garden area.
- 2.2 A copy of the existing licence is at **Appendix B** to this report.

4 DETAILS OF PROPOSALS CONTAINED WITHIN APPLICATION

- 4.1 The applicant proposes a variation to amend the licensed and trading hours.
- 4.2 Times applied for: (Everything marked in red is part of the variation request)

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Sale of alcohol – off the premises	09:00-23:59	09:00-23:59	09:00-23:59	09:00-01:30	09:00-01:30	09:00-01:30	09:00-23:59
Live Music (indoors)	10:00-23:59	10:00-23:59	10:00-23:59	10:00-01:00	10:00-01:00	10:00-01:00	10:00-23:59
Recorded Music (indoors)	08:00-23:59	08:00-23:59	08:00-23:59	08:00-02:00	08:00-02:00	08:00-02:00	08:00-23:59
Dancing (indoors)	08:00-23:59	08:00-23:59	08:00-23:59	08:00-01:00	08:00-01:30	08:00-01:30	08:00-23:59
Hours premises are open to the public	08:00-23:59	08:00-23:59	08:00-23:59	08:00-02:00	08:00-02:00	08:00-02:00	08:00-23:59

- 4.3 Seasonal times applied for:

	From the end of prescribed hours New Years Eve to the start of prescribed hours the following day.	Bank holidays to finish at 1:30am
Sale of alcohol – off the premises	✓	✓
Live Music (indoors)	✓	
Recorded Music (indoors)	✓	
Dancing (indoors)	✓	
Hours premises are open to the public	✓	

4.4 Conditions currently imposed on the licence that the applicant believes could be **removed** as a consequence of the proposed variation:

4.4.1 **Annexe 2, Condition 2:-** No controlled drugs to be allowed on the premises (this condition to be removed due to the proposed CCTV condition)

4.4.2 **Annexe 2, Condition 10:-** Proof of age policy agreed by the Police and the Council to be implemented (in favour of new condition 9)

4.4.3 **Annexe 2, Condition 11:-** No unaccompanied children to be allowed on the premises at any time whilst the premises are open for business (the premises to trade as a family friendly public house)

4.5 **Proposed conditions:-**

4.5.1 **In place of Annexe 2, Condition 1:-**No glass drinking vessels to be allowed to leave the premises after 11pm

4.5.2 **In place of Annexe 2, Condition 3:-** No visibly intoxicated person to be supplied alcohol or allowed to remain in the premises (this will cover all forms of abuse of drugs and not just alcohol)

4.5.3 **In place of Annexe 2, Condition 9:-** **Age** verification policy "Challenge 25" will be in place whilst such a scheme is in operation and all staff members to be trained accordingly.

4.5.4 **In place of Annexe 2, Condition 12:-** Black out blinds to be used after 01:00hrs

4.5.5 **In place of Annexe 2, Condition 13:-** All windows and doors to be kept shut after 23:00hrs when music is not classed as background music in operation.

5 CONSULTATION

5.1 In accordance with the requirements of the Licensing Act 2003, details of the application were advertised in a newspaper circulating in the vicinity of the premises and a public notice was displayed on the frontage of the premises for the duration of the statutory representation period.

5.2 Results of the consultation exercise are as follows:

(a) Police	No representation
(b) Social Services	No representation
(c) Fire and Rescue Services	No representation
(d) Trading Standards	No representation
(e) Environmental Health (Health and Safety)	No representation
(f) Environmental Health (Environmental Protection)	Representation Received
(g) Development Services	No representation
(h) Other Persons	Representation Received

- 5.3 The representation referred to at 5.2(f), consists of a letter of objection from Laura Harwood, Environmental Health Officer for Fenland District Council. A copy of this can be viewed at **Appendix C**
- 5.4 The representation referred to at 5.2(h) consists of emails and letters of objection. A copy of all the representations may be viewed at **Appendix D** to this report.
- 5.5 The Licensing Act 2003 encourages discussion between applicants and objectors with the aim of resolving issues of concern, to strike the balance between enabling the applicant to operate his/her premises in a manner that meets his/her business needs/aspirations and the necessary protection of the community.
- 5.6 In accordance with the principle of seeking to “negotiate away” objections to this licensing application, officers forwarded details of the representation received to the applicant.
- 5.7 Officers of the Council are able to confirm that a mediation meeting took place between the applicant and a panel of Relevant Authority Officers on the 11 April 2013 prior to submission of this application to discuss the proposals for variation. A copy of the minutes of the meeting is at **Appendix E** to this report.

6 POLICY IMPLICATIONS

- 6.1 The Council’s Statement of Licensing Policy expects applicants to demonstrate in their Operating Schedule that suitable and sufficient measures have been identified and will be maintained to:
- (1) reduce or prevent crime and disorder on, and in the vicinity of, their premises, relevant to the individual style and characteristics of their premises and events.
 - (2) ensure public safety, relevant to the individual style and characteristics of their premises and events.
 - (3) prevent public nuisance, relevant to the individual style and characteristics of their premises and events.
 - (4) protect children from harm, relevant to the individual style and characteristics of their premises and events

7 COMMUNITY IMPACT

- 7.1 The Act gives greater freedom to operators and users of premises, which is balanced by greater responsibilities for licensees and tempered by strengthened protection for the community.
- 7.2 The Licensing Act 2003 seeks to provide public protection by way of the four licensing objectives:
- the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance
 - the protection of children from harm.

8 DETERMINATION OF APPLICATION

8.1 In undertaking its statutory function, the Licensing Authority must promote the Licensing Objectives as defined in the Licensing Act 2003

8.2 When determining an application, due regard should be given to the Council's Licensing Policy and the Secretary of State's Guidance.

8.3 The committee's determination can take one of the following forms:

- to modify the conditions of the licence; or
- 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.

8.4 The hearing will be conducted in accordance with the approved Procedure.

PROCEDURE FOR DETERMINATION OF APPLICATIONS TO VARY A PREMISES LICENCE MADE UNDER THE LICENSING ACT 2003

INTRODUCTION

- Meetings of the Licensing Committee, whether the full committee of 11 members or panels of 3 members drawn from the full committee, shall be held in public unless the Licensing Authority deems that it is not in the public interest to do so. Reasons for exclusion of the public must be given at the hearing by the Chairman of the committee. Determinations will be made in private at conclusion of the hearing but announced in public thereafter.
- All hearings convened will be heard by a panel (but still referred to as the Licensing Committee) of 3 members drawn from the full committee of 11. The quorum of the committee/panel is 3 members. Therefore, 4 members of the Licensing Committee will usually be invited to attend each hearing (i.e. one as a reserve), in case of one of those invited subsequently needing to tender an apology for absence or, on being informed of the details of the application or meeting the applicant or objector (or for some other reason), deciding that s/he possesses a personal and prejudicial interest in the matter that prevents him/her participating in the hearing. At the beginning of each committee/hearing a Chairman will be appointed by those members present unless the Chairman of the whole committee is present.
- Members of the committee shall endeavor to be present throughout an individual hearing. If a member of the committee is required to leave a hearing temporarily, the Chairman shall adjourn the hearing for the duration of the member's absence. If a member is not present for the whole of an item of business they will not be able to debate or vote on that item of business.
- Where a committee undertakes a site visit prior to a hearing, a member shall be precluded from taking part in the hearing if he/she has not attended that site visit.
- To avoid taking into account "local" factors that could influence improperly his/her judgement, a member cannot serve on the committee undertaking a hearing at which a matter is being discussed that relates to a Premises Licence, Club Premises Certificate, Temporary Events Notice or Personal Licence where either the premises are or the person is resident in the ward which that member represents on Fenland District Council.

Member Services staff, when selecting members to participate in a hearing, will ensure there is compliance with this requirement.

NOTE: All questions and statements will be directed through the Chairman.

- (1) The Chairman will, at the beginning of the meeting, welcome all those present and explain both the reason for the hearing and the procedure to be followed. He/she will also inform attendees of any changes to committee membership (if any) since publication of the Notice of Meeting. He/she will also seek confirmation that everyone present has received this procedure and the "what you need to know" document.
- (2) The Chairman will introduce to all present the members of the committee.

- (3) The Chairman will then introduce and explain the respective roles of
 - (i) the Legal Adviser to the committee
 - (ii) the Clerk to the committee
 - (iii) the officer representing the Licensing Authority (“the Licensing Officer”).
- (4) The Chairman will invite those present to introduce themselves (i.e. to give name and address and explain whether applicant/responsible authority representative/witness/objector) and ask them to indicate if they wish to speak during the hearing.
- (5) Each party will be asked by the Chairman for a time estimate for the presentation of his/her/body’s case. After hearing all estimates, the committee will allocate each party an equal amount of time to speak.
- (6) The Licensing Officer will outline the case, by presenting the report which refers to the premises and the proposed variation of the premises licence.
- (7) The Chairman will invite members of the committee to ask relevant questions to clarify the content of the Licensing Officer’s report.
- (8) The Chairman invites the applicant (or his/her representative) to put the case in support of the application to vary the premises licence.
- (9) The applicant to be invited to call any witness(es) (if any) to give evidence in support of his/her case.
- (10) Once the applicant has presented his/her case, the Chairman invites questions to the applicant or his/her representative from
 - (1) responsible authorities (or their representatives);
 - (2) other interested persons (or their representatives);
 - (3) members of the committee.
- (11) The Chairman will invite questions to the witnesses (if any) from
 - (1) responsible authorities (or their representatives);
 - (2) other interested persons (or their representatives);
 - (3) members of the committee.

Questions should be relevant to the application and repetition will be discouraged by the Chairman.

- (12) Each of the interested persons (or their representatives) wishing to address the committee may do so in an order determined by the Chairman, which should **allow the responsible authorities before any local objectors**. They too must be willing to be questioned by other parties in the same order. Local objectors may not, however, question each other.

Questions should be relevant to the application and repetition will be discouraged by the Chairman.

This will operate as follows:

- each party will present his/her/body's case.
 - each party's witnesses (if any) will give evidence in support of the party's case.
 - firstly, each party and, secondly, their witnesses may be questioned by the other interested parties, prior to questioning by members of the committee.
- (13) The applicant (or his/her representative) is invited to ask relevant questions of those parties (or the parties' representatives).
- (14) The Chairman then invites the responsible authorities and interested persons (or their representatives) to sum up their case. They may comment upon what has been said but no new evidence should be introduced. Each party will be allowed 5 minutes to sum up.
- (15) The Chairman then invites the applicant (or his/her representative) to sum up the case. He/she may comment upon what has been said but no new evidence should be introduced. He/she will be allowed 5 minutes to sum up.
- (16) The Chairman seeks confirmation from all parties that they are satisfied that they have said all that they wished to.
- (17) The Chairman will then thank all those who have spoken and invite the committee to retire in private to determine the application. The committee members will then debate the case presented to them at the hearing and seek to reach a determination. When the committee has reached a proposed determination with reasons or has decided to defer a determination, it shall call in the Legal Adviser to clarify the proposed determination/decision.
- (18) Once a determination/decision has been reached, the committee will return to the room and the Legal Adviser will announce in public any legal advice that he/she has given in private.
- (19) The Chairman will read out the determination and the reasons for such (unless the committee is unable to reach a determination at conclusion of the hearing).
- (20) If the committee is unable to reach a determination at that time, the Chairman will explain that all interested parties will be notified as soon as possible in writing (but within 5 working days) of the determination and the reasons for such.

NOTES

- (A) A decision may be deferred to:
- receive further documentation referred to in the meeting
 - enable a site visit to take place
 - invite the applicant (or his/her representative) to appear if he/she had not done so at the meeting (only once).
- (B)
- No further debate may be heard on further documentation or at a site visit
 - Adjournments should generally be granted if to refuse would deny the applicant a fair hearing.