

## LICENSING SUB-COMMITTEE

WEDNESDAY 25 MARCH 2015

### REPORT OF THE DIRECTOR ASSETS & ENVIRONMENT

**CONSIDERATION OF AN APPLICATION FOR GRANT OF A PREMISES LICENCE  
EPHESUS TAKEAWAY 11A CHURCH STREET TAMWORTH B79 7DH UNDER THE  
LICENSING ACT 2003**

#### **EXEMPT INFORMATION**

Not applicable

#### **PURPOSE**

To consider the grant of an application for a premises licence in respect of Ephesus Takeaway 11A Church Street Tamworth Staffordshire B79 7DH.

#### **RECOMMENDATIONS**

**If the representations have not been withdrawn, the Committee must take any of the following steps it considers appropriate for the promotion of the licensing objectives:**

- **Grant the application in accordance with the original request;**
- **Modify the conditions of the licence. Conditions of the licence are modified if any of them is altered or omitted or any new condition is added. Conditions can only be placed on the licence if they are appropriate to promote the licensing objectives;**
- **Reject the whole or part of the application.**

#### **EXECUTIVE SUMMARY**

On 4 February 2015 an application was received by the Licensing Authority for a new premises licence in respect of Ephesus Takeaway 11A Church Street Tamworth. The description of the premises given in the application is of a small premises selling hot food to the general public in the town centre. Following the required 28 day consultation period, representations have been received from Staffordshire Police. This application has not been granted under officers' delegated powers because representations have been received from a responsible authority. As a consequence the matter must be considered by a Licensing Sub Committee at a hearing.

#### **RESOURCE IMPLICATIONS**

If the decision of the Licensing Committee is appealed there will be a cost implication.

#### **LEGAL/RISK IMPLICATIONS BACKGROUND**

The following parties are entitled to appeal against the decision of the Licensing Sub Committee

- The applicants for the premises licence

- Staffordshire Police who have made the representation.

Although there is no reference in the statute, the appeal to the Magistrates' Court is a complete rehearing.

### **SUSTAINABILITY IMPLICATIONS**

The effective regulation of licensing activities contributes to the strategic priority of being healthier and safer in Tamworth

### **CONCLUSIONS**

The Committee is obliged to determine this application with a view to promoting the four licensing objectives which are:

- The prevention of crime and disorder;
- The prevention of public nuisance (odour, noise, litter, light pollution);
- Public safety; and
- The protection of children from harm.

However, the committee should focus on those steps needed to promote the particular licensing objectives which have given rise to the representations, namely:

- The prevention of crime and disorder;
- Public safety.

### **BACKGROUND INFORMATION**

The location of Ephesus is shown shaded in grey on the location plan given in **Appendix 1**. Buildings including residential accommodation are shaded in pink. A copy of the application for a premises licence to be granted under the Licensing Act 2003 is given at **Appendix 2**. Page 4 of the application form gives the description of the proposed premises as being a small premises selling hot food to the general public in the town centre.

On the 4 February 2015 Tamworth Borough Council received an application for the grant of a premises licence from June Clarke Licensing Consultant based in Warrington. June Clarke is acting on behalf of the applicant who is a Mr Abdulla Palas. The application was accepted as being duly made.

The application seeks to provide the licensable activity of the provision of late night refreshment from the premises at the following times:

**Sunday – Saturday 23:00 hours – 02:30 hours.**

The hours that the premises will be open to the public as stated in the application are

**Sunday – Saturday 15:00 hours – 02:45 hours.**

### **Steps to Promote Licensing Objectives**

The applicant has detailed on page 11 of the application form any additional steps they intend to take in order to promote the four licensing objectives if the application is granted.

In August 2014 Mr Palas submitted a joint application with a Mr Darioglu for the grant of a new premises licence for Ephesus 11A Church Street Tamworth. This application was considered by a Licensing Sub Committee at a hearing on 1 October 2014 when it was refused.

### ***Responsible Authorities***

Ordinarily, if no representations to an application for a premises licence are received the licensing authority is required to issue the premises licence as requested by the applicant.

On this occasion, relevant representations were received from Staffordshire Police. Consequently, the decision whether or not to grant the premises licence has not been made under Officer's delegated powers because the Licensing Act requires that the decision must be made at a licensing hearing.

A copy of the Police representation is given in **Appendix 3**. The grounds for the police representation are that the application for this premises licence undermines following licensing objectives:

- the prevention of crime and disorder;
- public safety;

In their representation, Staffordshire Police outline the reasons why they are of the opinion that the applicant is not fit and proper to hold the position of a premises licence holder.

The Planning Service of the Council did not submit a formal representation but commented that the current planning permission for the premises restricts the opening hours to 14:30 – 02.30. The proposed hours that have been requested in the application for the premises to be open to the public are until 02:45. This finish time falls outside of the hours which the current planning permission allows. Planning permission would therefore be required to vary the permitted opening hours if the applicant wishes the premises to be open past 02.30am. The agent acting for the applicant has been made aware of this matter.

The current Guidance issued by the Home Office under section 182 of the Licensing Act 2003 to Licensing Authorities states in paragraph 13:56 that *“Licensing Committees are not bound by decisions made by a Planning Committee and vice versa”*. Paragraph 13:57 states that *“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”*.

The need for a hearing can only be dispensed with by the agreement of the licensing authority, applicant and all of the parties who made relevant representations. However, the regulations require that representations must be withdrawn 24 hours before the first day of the hearing. If they are withdrawn after this time the hearing must proceed. At the time of writing this report, we are not aware of any amendments to the application being agreed between the parties concerned that would make it possible for the representation to be withdrawn.

The licensing committee must consider the application, confining its deliberations to the crime prevention and public safety objectives, and determine which of the following steps to take in relation to the premises licence:

- Grant the licence in accordance with the applicants original request;
- Modify the conditions of the licence (including the times licensable activities are permitted,). Conditions of the licence are modified if any of them is altered or omitted or any new condition is added. Conditions can only be placed on the licence if they are appropriate to promote the licensing objectives;
- Reject the whole or part of the application.

In making its decision with a view to promoting the licensing objectives in the overall interests of the local community, the Committee is required to give appropriate weight to:

- The steps that are appropriate to promote the licensing objectives;
- The representations and any additional supporting information provided by Staffordshire Police and the applicants
- The National Guidance; and
- The Council's own licensing policy.

### **Local Policy Consideration**

A copy of the Licensing Authority's Statement of Licensing Policy (2015 – 2020) can be found in **Appendix 4**. Please refer to **Appendix 5** for the sections within the Licensing Policy that are considered relevant to this application.

### **National Guidance**

A copy of the Home Office Amended Guidance Issued under Section 182 of the Licensing Act 2003 (October 2014) can be found in **Appendix 6**.

Please refer to **Appendix 7** for a list of paragraphs within the Home Office Guidance that are considered relevant to this application.

Home Office Guidance now gives greater weight to Police representations. Paragraph 9.12 states:

“In their role as a responsible authority, the Police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The Police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The Police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regards to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the Police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives.”

The licensing authority must deviate from the national guidance and Tamworth Borough Council's own licensing policy if the facts of the case demand it in the interests of the promotion of the licensing objectives. If the committee does depart from the guidance and Tamworth Borough Council's policy it must be able to provide full reasons.

In making its decision, the Committee must consider the Licensing Authority's own licensing policy and have regard to national guidance. In particular, the Committee should have due regard to the first paragraph in Section 3 of the Statement of Licensing Policy and paragraph 1.17 of the Home Office Guidance which state that each application must be considered on its own merits.

## Right of Appeal

There is a right of appeal against the decision made by this Licensing Sub Committee. The Sub Committee is therefore expected to record in full the reasons for any decision that it makes.

An appeal against the Licensing Sub Committee's decision may be made by:

- The applicants for the premises licence;
- Staffordshire Police who have made representations

Any such appeal must be made to the Magistrates' court within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

The determination made by the committee does not have effect until the end of the 21 day appeal period, or if the decision is appealed against, until the appeal is disposed of.

## REPORT AUTHOR

*"If Members would like further information or clarification prior to the meeting please contact Colin John Environmental Health Officer Telephone: 01827 709429."  
Email: colin-john@tamworth.gov.uk*

## LIST OF BACKGROUND PAPERS

- Tamworth Borough Council Licensing Policy, **2015 - 2020 (Appendix 4)**
- Home Office Guidance October 2014 – Amended Guidance Issued Under Section 182 of the Licensing Act 2003 ( **Appendix 6**)

## Appendices

Appendix 1	Location plan
Appendix 2	Application form
Appendix 3	Staffordshire Police representation
Appendix 4	Local policy (full document)
Appendix 5	Local policy summary table
Appendix 6	National policy guidance document (full document)
Appendix 7	National policy guidance summary table

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