

Licensing Sub-Committee

Agenda

Date: Wednesday, 5th May, 2010
Time: 9.30 am
Venue: The Silk Room - Town Hall, Macclesfield SK10 1DX

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Appointment of Chairman**

To appoint a Chairman for the meeting.

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests and for Members to declare if they have pre-determined any item on the agenda.

3. **Application for a Premises Licence-Allen's Fried Chicken, 1-3 Brook Street, Macclesfield** (Pages 5 - 12)

To consider an application for a premises licence for Allen's Fried Chicken, 1-3 Brook Street, Macclesfield.

For requests for further information

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CHESHIRE EAST COUNCIL

PROCEDURE FOR HEARINGS – LICENSING ACT 2003

The Licensing Committee

The full Licensing Committee consists of fifteen elected Members of the Council. From this full Committee will be drawn sub-committees of three members to deal with licensing functions under the Licensing Act 2003. The Chairman and Vice Chairman of the Licensing Committee shall have the discretion to refer a matter up to a hearing of the full Licensing Committee.

Officers at Hearings

- **The Committee Officer** introduces all parties and records the proceedings
- **The Legal Adviser** provides independent advice to the Members on legal matters and procedure.
- **The Licensing Officer** will introduce the matter and outline the application; the officer will also answer any questions Members may have.

PROCEDURE

NOTE: If the Sub-Committee has not already elected a Chairman, that will be the first item of business.

1	Chairman	The Chairman will: (i) call the matter to be considered; (ii) call for any declarations of interest; (iii) ask all parties to introduce themselves; (iv) summarise the procedure to be followed at the hearing; (v) will consider any request made by a party for another person to appear at the hearing; (v) will advise the parties of any maximum period of time in which it has to present its case (if a maximum is imposed this shall be equal for all parties).
2	Licensing Officer	Will introduce and summarise the application, highlighting areas of contention or dispute.
3	Committee Members	May ask questions of the Licensing Officer
4	Applicant	Will present his/her case, calling witnesses, as appropriate. <i>(If necessary, applicant will produce any notices required by law. Legal Adviser will draw attention to this if required.)</i>
5	Responsible Authorities (who have made representations)	Each in turn may ask <u>questions</u> of the applicant, by way of clarification.

6	Local residents (ie. defined as “interested parties”)	To be invited to ask <u>questions</u> of the applicant, by way of clarification. <i>It is normal practice for a spokesperson only to speak on behalf of a group of residents.</i>
7	Committee Members	Each in turn may ask <u>questions</u> of the applicant.
8	Applicant	May make a <u>statement</u> or ask his witnesses to clarify any matters which he feels are unclear, or may have been misunderstood.
9	Responsible Authorities	Will make their representations.
10	Applicant	Or his representative or witnesses to ask <u>questions</u> of Responsible Authorities represented at the meeting, by way of clarification.
11	Local residents (ie. defined as “interested parties”)	May ask <u>questions</u> of the Responsible Authorities represented at the meeting, by way of clarification. (Note: This is not the point at which local residents should be stating their objections.)
12	Committee Members	May ask <u>questions</u> of the Responsible Authorities represented at the meeting
13	Local residents (ie. defined as “interested parties”)	The local residents who are objecting to the application will be invited <u>to make observations on the application</u> and present the bases of their objections.
15	Applicant	Or his representative or witnesses may ask <u>questions</u> of the Local Residents, by way of clarification.
16	Committee Members	May ask <u>questions</u> of the Local Residents.
17	Chairman	To invite both Responsible Authorities and Local Residents to make their closing addresses.
18	Applicant	Or his representative will <u>briefly summarise the application</u> and comment on the observations and any suggested conditions.
19	Committee	<u>Will retire</u> to consider the application. The Committee may request the Legal Advisor to advise on legal issues.
20	Committee	Will return to <u>give its decision</u> , with reasons, which will be announced by the Chairman and subsequently confirmed in writing to the applicant and to all the parties that made representations.

		In cases where a decision cannot be given at the end of the hearing, parties will be advised of the decision within five working days.
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Notes

1. The hearing shall normally be held in public. There may be occasions on which the Committee find it necessary to exclude members of the press and public; any such decision will be taken on the basis that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing taking place in public.
2. The Chairman may require any person behaving in a disruptive manner to leave the hearing and may (a) refuse to permit that person to return, or (b) permit him/her to return only on such conditions as the authority may specify, but any such person may submit in writing any information which they would have been entitled to provide orally if they had not been required to leave.
3. Prior to the hearing each party shall have given notification and served documentation (eg statements of witnesses or reports of experts) as required. Late representations and evidence will only be considered with the agreement of all parties.
4. Anyone entitled to be heard may be represented by any person, whether or not that person is legally qualified.
5. Hearsay will be permitted but the Sub-Committee will be reminded to give it appropriate weight.
6. Due note shall be taken of the provisions of the Hearings Regulations 2005.
7. The Chair may, in the interests of expediency or convenience of the parties, vary the procedure from time to time, provided notice is given to the parties and the rules of natural justice are observed.

SUMMARY OF PROCEDURE

- 1 Chairman appointed (if this has not been done previously).
- 2 Chairman to call for declarations of interest and request that all parties introduce themselves.
- 3 Chairman summarises the procedure for the hearing
- 4 The Licensing Officer summarises the application
- 5 Applicant to present his/her case.
- 6 Applicant to be questioned by all parties (to clarify points only) following which, he/she can clarify any other matters which he/she feels may have been misunderstood when the application was presented.
- 7 Applicant to be questioned by the Committee.
- 8 Responsible Authorities to make their representations following which they can be questioned by all parties by way of clarification.
- 9 **Local residents** (defined as interested parties) will be invited to present the bases of their objections, following which they can be questioned by all parties by way of clarification.
- 10 The applicant will be invited to sum up his/her case
- 11 Committee/Sub-Committee withdraws to make its decision
- 12 Committee/Sub-Committee returns to announce its decision to all present.

CHESHIRE EAST COUNCIL

REPORT TO: LICENSING SUB-COMMITTEE

Date of Meeting:	Wednesday 5 th May 2010 at 09.30am
Report of:	Mrs N Cadman, Licensing Officer
Subject/Title:	Application for a Premises Licence – Allen's Fried Chicken, 1-3 Brook Street, Macclesfield, SK11 7AA.

1.0 Report Summary

- 1.1 The report provides details of an application for a premises licence together with information as to representations received in relation to the application.

2.0 Recommendations

The Licensing Sub-Committee is requested to determine the application for a Premises Licence by Mr Wajid Iqbal in respect of Allen's Fried Chicken, 1-3 Brook Street, Macclesfield, SK11 7AA

3.0 Reasons for Recommendations

- 3.1 The Licensing Sub-Committee has the power to determine this application in accordance with the provisions of the Licensing Act 2003.

4.0 Wards Affected

- 4.1 Macclesfield Town

5.0 Local Ward Members

Cllr Mrs C Tomlinson
Cllr D A Neilson
Cllr S Broadhurst

6.0 Policy Implications

- 6.1 The Licensing Authority has adopted a Statement of Licensing Policy in accordance with section 5 of the Licensing Act 2003 and Guidance issued under section 182 of the Act.

7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)

- 7.1 Not applicable.

8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)

- 8.1 Not applicable.

9.0 Legal Implications (Authorised by the Borough Solicitor)

- 9.1 In accordance with the provisions of section 18 of the Licensing Act 2003 the Licensing Authority must, having regard to the representations, take such steps (if any) as it considers necessary for the promotion of the licensing objectives. Section 18(4) provides that the authority may (a) grant the licence subject to conditions; (b) exclude from the scope of the licence any of the licensable activities to which the application relates; (c) to refuse to specify a person in the licence as the premises supervisor; or (d) to reject the application.

10.0 Risk Management

- 10.1 Section 181 and Schedule 5 of the Licensing Act 2003 make provision for appeal to the Magistrates' Court of any decision made by the Licensing Authority.

11.0 Background and Options

- 11.1 The application is for Premises Licence under section 17 of the Licensing Act 2003.
- 11.2 The operating schedule indicates that the relevant licensable activities applied for are: Late Night Refreshment (to take place both indoors and outdoors)
- 11.3 The hours applied for are as follows:
Monday to Thursday 23.00 to 01.00
Friday and Saturday 23.00 to 04.00
Sunday 23.00 to 24.00
New Years Eve extend terminal hour to 04.00
- 11.3.1 Designated Premises Supervisor: Not applicable – no sale of alcohol
- 11.4 The operating schedule includes the following steps to promote the licensing objectives:
- (a) Prevention of crime and disorder
1. There shall be a colour CCTV system installed with digital images recorded for 60 days of 24 hour recordings.
 2. Staff shall be trained to deal with troublesome customers.
- (b) Public safety
3. There shall be fire extinguishers maintained at the premises.
 4. There shall be emergency lighting, fire alarm, disabled person alarm in compliance with building regulations.
- (c) Prevention of public nuisance
5. Packaging and wrappers shall be marked with the premises name.
 6. There shall be an out of hours rubbish collection service.
 7. There shall be rubbish bins inside and outside of the premises.

8. Signs shall be installed requesting customers to leave quietly.

11.6 Relevant Representations:

Responsible Authorities

11.6.1 The Police state in their response: Application received 24th March 2010 for a Premises Licence at Allen's Fried Chicken, 1-3 Brook Street, Macclesfield. The application is for Late Night Refreshments only, the current owner Wajid Iqbal b. 07/08/1973 want to open until 01:00 hours Monday to Thursday, to 04:00 hours Friday and Saturday and until 24:00 hours Sundays, with New Years Eve/Day extended to 04:00 hours. There are no police objections.

11.6.2 The Environmental Health Officer states: Environmental Health would wish to raise strong objection to the above application for Allen's Fried Chicken, 3 Brook Street, Macclesfield under the licensing objective of the 'Prevention of Public Nuisance'.

Concerns were expressed to the planning department at the time of the original planning application for the application site for a change of use from a hairdressers shop to an A5 hot food takeaway use (approved in March 09) in terms of the fact that there are residential properties in close proximity to the application site and as such the residents of which would be subjected to potential noise nuisance, odour nuisance, loss of amenity and potential sleep disturbance / prevention from patrons' attendance at the hot food takeaway during sensitive hours. The application at that time sought a 04.00 hours termination time in trading hours. The application was subsequently approved but as a means of controlling / minimising noise disturbance and also in line with the termination time imposed as a condition on a neighbouring pizza take-away, a termination time of 23.00 hours was recommended by Environmental Health. The decision notice of the planning approval (dated 25th March 2009) included a condition (number 3) to restrict the termination time to 23.00 hours.

The applicant then submitted a further planning application (in April 2009) to vary condition 3 - relating to the opening hours of the hot food take away - to a termination time of 02.00 hours from Monday to Wednesday, 04.00 hours from Thursday to Saturday and midnight on Sundays. Environmental Health recommended a refusal of the application for the same reasons of the high potential for noise nuisance, odour nuisance, loss of amenity and sleep disturbance to be caused to nearby residents. The noise concerned related to the attendance of patrons to the shop during sensitive hours but also from the fans and air movement along the ducting of the kitchen extraction system which is in close proximity to the bedrooms of adjoining residencies. The application was therefore refused.

The applicant subsequently lodged an appeal to the Planning Inspectorate in relation to the condition 3 - opening hours. The inspector's decision was to allow an extension of the termination time to 00.00 hrs from Monday to Sunday inclusive. In his reasons, the inspector stated " The proposal would reasonably be expected to result in a level of late night business activity with associated pedestrian and vehicular visits that would cause a significant degree of additional noise and disturbance as people arrive and leave the locality. This would include conversations in the street and the opening and closing of car doors. I consider that

the additional late night noise and disturbance would be sufficient to be unacceptably harmful to the living conditions of the residents of the accommodation around the takeaway."

The applicant also submitted a further planning application to change the use of the upper floors of 1-3 Brook Street, Macclesfield from office use to two residential apartments - which was granted approval in October 2009. The approved residential apartments are directly above the Allen's Fried Chicken shop and the occupiers of those apartments are in even closer proximity to be affected by patron noise and also noise from the operation of the kitchen extract system.

This application for a premises licence in terms of the provision of late night refreshment proposes to operate until 0100 hours from Monday to Thursday inclusive, 04.00 hours on Fridays and Saturdays and until midnight on Sundays. Also a 04.00 hours termination time on New Years Eve.

I would recommend a refusal of the application to vary the premises licence for the aforementioned reasons that:-

1. Trading during such sensitive hours (i.e. beyond midnight) would have high potential to result in noise nuisance, odour nuisance, loss of amenity and sleep prevention / sleep disturbance to the residents of dwellings directly above the application site and to the residents of nearby dwellings on Brook Street and Sunderland Street.

2. Planning approval is not granted to allow for the opening hours which have been applied for - a condition of the planning approval for the site is that trading ceases at midnight from Monday to Sunday inclusive.

11.6.3 Cheshire Fire Service – Premises recently audited, no comment to the above application.

11.6.4 Local Planning Authority – Application 09/0713M was appealed by the applicant and was part allowed by the Planning Inspectorate with a condition which restricted the hours of opening from 09.00 to 00.00hrs Monday to Sunday. The above hours are therefore his lawful operating hours and the business should not be opening outside of these times. The 08/2680P application allowed opening hours from 09.00 to 23.00 however the above appeal decision for application 09/0713M supersedes this condition.

11.6.5 Local Safeguarding Children Board – As Police response.

11.6.5 Health and Safety Officer – No comments.

11.6.6 Trading Standards – I confirm receipt of the premise licence application below and that we make no representation.

Interested Parties

The Licensing Authority has not received any representations from interested parties.

12.0 Overview of Year One and Term One Issues

12.1 Not applicable

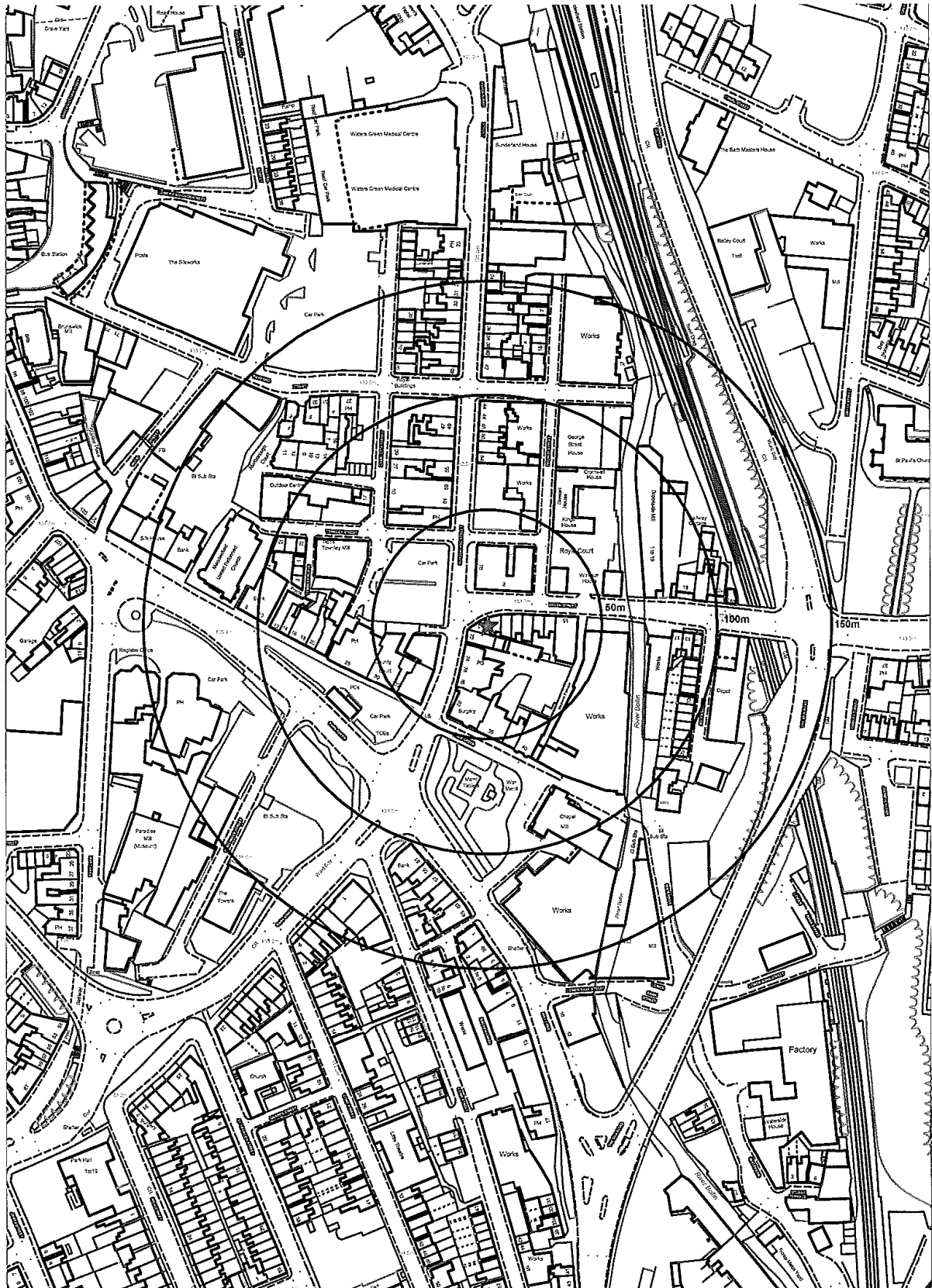
13.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Mrs N Cadman
Designation: Licensing Officer
Tel No: 01625 504206
Email: nikki.cadman@cheshireeast.gov.uk

APPENDICES

Appendix 1 – Plan of area.



ALLEN'S FRIED CHICKEN, 1-3 BROOK STREET, MACCLESFIELD, SK11 7AA

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