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Licensing Act Sub Committee

Date of Meeting: 23rd June 2022 – 10.00am

Report Title: Application for a full variation of the Premises Licence – Porters Service Station, Padgbury Lane, Congleton CW12 4HX

Senior Officer: Paul Bayley – Director of Neighbourhood & Environmental Services

1. Report Summary

1.1. The report provides details of an application for a Premises Licence, under section 34 of the Licensing Act 2003 and outlines the evidence presented by the parties in relation to the variation application.

2. Recommendations

2.1. The Licensing Act Sub-Committee is requested to determine the application to vary a premises licence by ARKA Licensing on behalf of Shinon Forecourt Retail Ltd, in respect of in respect of:

Porters Service Station
Padgbury Lane
Congleton
CW12 4HX

2.2. The Licensing Act Sub-Committee is requested to consider the application and any relevant representations and determine what steps, if any, it considers are appropriate to promote the Licensing Objectives.

2.3. Acting in the capacity of the Licensing Authority, Members must seek to promote the Licensing Objectives and where Members consider that matters

have engaged one or more of the Objectives, they may exercise their discretion. The Licensing Objectives are:

- a) The prevention of crime and disorder
- b) Public Safety
- c) The prevention of public nuisance
- d) The protection of children from harm

2.4. Members of the Licensing Sub-Committee are reminded that they may not exercise discretion in any case, merely because it considers it desirable to do so. Careful consideration should be given to the application and the evidence presented by the parties in relation to the application.

2.5. Finally, Members are also reminded that in determining the application, consideration also needs to be given to:

- a) The rules of natural justice;
- b) The provisions of the Human Rights Act 1998.

3. Reasons for Recommendations

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

4. Other Options Considered

4.1. Not applicable.

5. Background

5.1. Porters Service Station in an established premises located in Congleton and benefits from an existing premises licence.

5.2. On 1st April 2022 an application was received, by the Licensing Team, for the variation of the Premises Licence. This application was submitted along with an application to Transfer the Premises Licence and an application to vary the premises licence to specify a new Designated Premises Supervisor (DPS).

5.3. On 4th April 2022 the Licensing Team emailed the applicant to advised them that they had under paid the variation application fee and the form was not completed correctly due to the details of the new premises licence holder being a mixture of an individual and a business. The applicant was asked to confirm who the premises licence holder will be.

- 5.4. The applicant paid the remainder of the application fee on 4th April 2022 and confirmed who would be named as the premises licence holder.
- 5.5. On 5th April 2022 the Licensing Team emailed the applicant to advise them that the variation application needed to be resubmitted with the correct premises licence details. The applicant responded on 6th April 2022 stating that a Transfer application had been submitted to change the premises licence holder details. It came to light that the Transfer application form was also completed incorrectly with a mixture of individual and company details, therefore the Licensing Team advised the applicant that until a valid transfer application was received, the process for dealing with the Variation application could not be commenced.
- 5.6. The Licensing Team did not receive any communication from the applicant until 29th April 2022 when they submitted the correctly completed Transfer application. The Licensing Team contacted the applicant requesting that a variation form be submitted with the correct details.
- 5.7. On 29th April 2022, the applicant submitted a completed variation application form. Unfortunately, there was a delay in processing the newly completed variation application and as a result the applicant was advised that the consultation period commenced on 9th May 2022 with the closing date for representations to be made as 7th June 2022.
- 5.8. The applicant contacted the Licensing Team disagreeing with the commencement date of the application and the subsequent closure of the representation period as they had been advertising the application, by way of public notices and a public notice in the newspaper since 29th April 2022. As a result, the matter was considered by the Team Leader and a decision was taken that the application should start from 29th April 2022 due to an administrative error by the Licensing Team.
- 5.9. The application was distributed to the Responsible Authorities for consultation and they were informed of the correct closing date for representations as being 27th May 2022.
- 5.10. During the consultation period, the application was advertised on the Council's website.
- 5.11. On 12th May 2022 a Licensing Officer visited the premises to check that the public notices were being displayed at the premises. At the time of the visit the Licensing Officer noted that the notices were not being displayed and subsequently deemed the application as invalid. A letter confirming this was sent to the applicant, via email, on 12th May 2022.

- 5.12. The applicant contacted the Licensing Team and advised that the original notices had been taken down that day in order for them to be amended to show the correct date for representations as being 27th May 2022, as the original notices had a closing date of 29th April 2022. Therefore, the applicant disputed the fact that the notices weren't being displayed correctly as the Licensing Officer happened to visit the premises when the notices were being amended. The matter was referred to the Team Leader for consideration and it was agreed that, provided the replacement notices were being displayed by no later than midday on 13th May 2022, the application process would be allowed to continue unaffected. The applicant provided images of the notices being displayed, by way of email, on 12th May 2022.
- 5.13. The Courts have previously considered a situation where notices were not displayed correctly. In the case of R (on the application of Akin) v Stratford Magistrates Court [2014] WWHC 4633 (Admin) confirms that substantial compliance with the relevant regulations is sufficient for the process to be deemed valid. This follows and reiterates previous case law concerning procedural defects.
- 5.14. The Licensing Team have confirmed that the newspaper notice was published in accordance with the legislative requirements.
- 5.15. A copy of the full application and plan is attached to this report at **Appendix 1**.
- 5.16. A map of the area in which the premises is located is attached to this report at **Appendix 5**.
- 5.17. The operating schedule indicates that the relevant licensable activities applied for are:
- Provision of Late Night Refreshment (outdoors)
 - Provision of the Supply of alcohol (for consumption off the premises)
- 5.18. The hours applied for are as followed:
- 5.18.1. **Standard days and timings**
- Provision of late night refreshment (Outdoors)
Monday to Sunday - 23:00 to 05:00
 - Provision of the Supply of Alcohol (For consumption off the premises)
Monday to Sunday - 00:00 to 00:00

5.19. The operating schedule indicates that the hours the premises are open to the public are:

- Monday to Sunday – 00:00 to 00:00

5.20. The premises currently benefits from an existing premises licence, a copy of which is attached to this report at **Appendix 2**.

5.21. On 10th June 2022 the Licensing Team received an email from the applicant's agent advising that the applicant had considered all the concerns raised by local resident and as a result will be withdrawing the request for a 24 hour licence. The applicant wishes to amend the hours within the application to 06.00hrs to 00.00hrs Monday to Sunday for both licensable activities and the hours the premises are open to the public.

5.22. Responsible Authorities:

5.22.1. The Licensing Authority has received a representation from the Environmental Protection Team. A copy of the representation is attached at **Appendix 3**.

5.22.2. As a result of the request to amend the hours within the application the Environmental Protection Team have now withdrawn their representation.

5.23. Other Persons:

5.23.1. The Council has received six (6) representations against the application from members of the public. Copies of the representations are attached to this report at **Appendix 4**.

5.23.2. As a result of the request made by the applicant to amend the hours within the application, details of the amendment was sent to the six members of the public and they are not willing to withdraw their representation.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1 In accordance with the provisions of section 35(3)(b) of the Licensing Act 2003 the Licensing Authority must, having regard to the representations, take such steps (if any) as it considers appropriate for the promotion of the licensing objectives. Section 35(4) provides that the authority may:

- a) Modify the conditions of the licence
- b) Reject the whole or part of the application

6.1.2 Members are also reminded of the statutory obligation placed on the Local Authority under section 17 of the Crime and Disorder Act 1988 to through all of its various functions, and Licensing is one of those functions to do all that it can to prevent Crime and Disorder, Anti-Social Behaviour, behaviour adversely affecting the environment and re-offending.

6.3.1 Members are reminded that should any conditions be added, they should be practical, enforceable and appropriate to promote the Licensing Objectives.

6.1.4. Members must give reasons for their determination and notice of it must be communicated to the parties to this application.

6.2. Finance Implications

6.2.1. There are no financial implications.

6.3. Policy Implications

6.3.1. The Licensing Authority has adopted a Statement of Licensing Policy in accordance with section 5 of the Licensing Act 2003.

6.3.2. The Licensing Authority must also have due regard to the guidance issued under section 182 of the Licensing Act 2003.

6.3.3. Members should provide reason(s) for any decision taken and should set out the reasoning where they determine to depart in any way from the Policy or Guidance.

6.4. Equality Implications

6.4.1. There are no direct equality implications.

6.5. Human Resources Implications

6.5.1. There are no human resources implications.

6.6. Risk Management Implications

6.6.1. The Licensing Sub-Committee will hear representations made on behalf of both the applicant and the 'relevant person' who has submitted their representation and will make a decision on the basis of the evidence presented to it. The Licensing Act 2003 makes provision for appeal to the Magistrates' Court of any decision made by the Licensing Authority.

6.7. Rural Communities Implications

6.7.1. There are no direct implications for rural communities.

6.8. Implications for Children & Young People/Cared for Children

6.8.1. There are no direct implications for children and young people.

6.9. Public Health Implications

6.10.1 There are no direct implications for public health.

6.10. Climate Change Implications

6.10.1. There are no direct implications for Climate Change.

7. Ward Members Affected

7.1. Congleton West - Councillor Suzie Akers Smith
Councillor George Hayes
Councillor Sally Holland

8. Consultation & Engagement

8.1. Consultation in respect of submitting an application to Vary a Premises Licence is prescribed in the Licensing Act 2003 and has been fully complied with.

9. Access to Information

9.1. The background papers relating to this report can be made available by contacting the report writer.

10. Contact Information

10.1. Any questions relating to this report should be directed to the following officer:

Name: Amanda Andrews
Job Title: Licensing Enforcement Officer
Email: Amanda.andrews@cheshireeast.gov.uk

Appendix 1 – Application and plan of premises
Appendix 2 – Copy of existing premises licence
Appendix 3 – Representation from Environmental Protection
Appendix 4 – Representation from members of the public
Appendix 5 - Map of Area