

SUBJECT:	APPLICATION FOR A NEW PREMISES LICENCE at: Barn A, Rackleys Farm, Marlow Road, Cadmore End, HP14 3PP
REPORT OF:	Application under section 17, Licensing Act 2003
Responsible Officer	Brian Whittall – Licensing Officer
Report Author	Brian Whittall – Licensing Officer
Ward/s Affected	Chiltern Villages

1. Purpose of Report

To provide Members with information enabling the determination of an application for a new Premises Licence, in respect of which relevant representations have been received.

The Application has been submitted by The Sargent Charitable Trust (“the applicant”) by their Solicitors, Blandy & Blandy LLP, One Friar Street, Reading, RG1 1DA in respect of Barn A, Rackleys Farm, Marlow Road, Cadmore, HP14 3PP (“the premises”).

2. Background

2.1 Planning application reference: 17/08376/FUL. This application approved demolition of single storey buildings on site and existing flat roof extension to the main barn. Erection of single storey side extension to each end of west elevation, construction of mezzanine floor & basement area to main barn & single storey infill extension to south elevation of building B, all in connection with change of use of site to wedding venue including ground floor of farmhouse & Managers flat over, alteration to existing access & creation of associated car parking.

2.2 The premises is situated in Cadmore End, a village and civil parish in Buckinghamshire. Cadmore End is close to the M40, but largely unseen from the motorway. The hamlet remains small and dispersed, much of it being a Conservation Area

A location plan showing the premises location is attached to this report marked **Appendix 1**.

3. The Application

3.1 This application is for a new Premises Licence to commence with immediate effect upon the decision to grant by this licensing authority. A copy of the application, including a premises plan is attached to this Report marked **Appendix 2**.

3.2 The licensable activities sought are as follows:

<u>Proposed activity</u>	<u>Proposed hours</u>
Supply of alcohol (Both on & off the premises)	10:00 - 23:30 Daily
Exhibition of Films (Indoor)	11:00 – 23:00 Daily
Provision of Live Music (Indoor)	11:00 – 23:30 Daily
Playing of Recorded Music (Indoor)	11:00 – 23:30 Daily
Late Night Refreshment (Indoor)	23:00 – 23:30 Daily
Hours premises are open to the public	
Standard days and timings:	09:00 – 00:00 (Midnight) daily

4. Relevant Representations

4.1 Responsible Authorities:

4.1.1 **The Chief Officer of Police:** Response received - no objection

4.1.2 **The Licensing Authority:** No objection

4.1.3 **The Fire and Rescue Authority:** Response received – no objection

4.1.4 **The Local Planning Authority (Head of Sustainable Development):** No response received - no comment

4.1.5 **The Local Environmental Health Authority (Head of Environmental Health):** No response received - no comment

4.1.6 **Weights and Measures Authority (Trading Standards Officer):** No response received - no comment

4.1.7 **The Safeguarding and Child Protection Unit:** No response received - no comment

4.1.8 **The Primary Care Trust:** No response received - no comment

4.1.9 No responses were received from any other Responsible Authority.

4.2 Any other persons: Five (5) objections were received during the 28-day consultation process which ended on 18 April 2021 a copy of which are attached marked **Appendix 3**.

4.3 No letters of support were received.

5. Licensing Officer's Observations:

5.1 The Relevant Representations received raise the follows issues:

- *The prevention of public nuisance*
Representations mentioned concerns regarding noise and light pollution occurring on the premises.

Residents living nearby have expressed concerns that their right to enjoy the peaceful possession of their property is undermined, and that a statutory nuisance may occur as a result of the granting of the application.

Residents have sighted the following specific concerns: Would patrons leaving the area quietly; Pollution from security lighting; vehicle traffic leaving the area; car door noise.

Government Guidance states the following: That any licence holder "cannot manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff" and "Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law"

The Council's own Statement of Licensing Policy states, "Licensing is not a mechanism for the general control of anti-social behaviour by individuals beyond the direct control the licensee of the premises concerned."

5.2 Licensing and Planning

A great number of representations received have made reference to the hours requested not corresponding to those permitted in planning permission for the premises. Matters pertinent to planning are to be dealt with under planning legislation and to that end they have their own enforcement powers.

Licensing and Planning are separate statutory regimes.

The Council's Statement of Licensing Policy makes reference to planning as follows:

1.12 Licensing applications should not be seen as a re-run of the planning application process and there is a clear separation of the planning and licensing regimes to avoid duplication and inefficiency. If premises do not have planning permission, applicants are strongly advised to apply for this prior to submitting their Premises Licence application

- 5.3 In addition to the Mandatory Conditions, the Licensing Sub-Committee should consider those conditions offered in the operating schedule and decide whether they are appropriate for the promotion of the licensing objectives and address any valid representations made by Interested Parties.

6. Policy Considerations

- 6.1 Regard must be had to the Council's adopted Licensing Policy published December 2018 when determining this application. Of particular relevance (but not limited to) *are* sections 6.6 and 6.9, which detail the Council's approach to licensing hours.

In relation to shops and other retail outlets supplying alcohol for consumption off the premises, the general policy will be to allow sales of alcohol at all times that the premises are open for business unless there is evidence to suggest that this would not promote the crime and disorder objective (e.g. where there is evidence of antisocial drinking in the morning hours). Any decision not to allow sales of alcohol at particular times will be based on evidence of the need to prevent crime, disorder and public nuisance

Section 6.9 of the policy states, "Fixed trading hours will not be set for particular geographical areas. Account will be taken, however, of any guidelines that are adopted in respect of licensing hours. It should be stressed that each case will be decided on its own merits based on whether the licensing objectives can be met. Stricter conditions however are likely to apply where the premises are situated in mainly residential areas to minimise disturbance to local residents. There is no presumption that longer hours should be permitted".

- 6.2 Regard must also be had to the national Guidance issued by the Home Office under Section 182 of the Licensing Act 2003, as amended.

7. Links to Council Policy Objectives

- 7.1 The Authority regards existing and future environmental qualities and character of the District to be important when consideration is given to granting licences for any purpose. When considering licensing applications where relevant representations have been made, the Authority will consider its effect on the licensing objectives and in particular the effect the licence will have on the public nuisance objective. In order to consider these matters, it is necessary to consider the environment of the area in which the premises are or will be situated.

8. Resources, Risk and Other Implications

- 8.1 **Resource:** The only resource implications to date have been officer time however if the applicant or persons making relevant representations appeals against the decision of the Licensing Sub – Committee this would result in legal fees to defend the appeal and further costs. In the event of a successful appeal the Council may also have to pay the applicant/other party's costs.

- 8.2 **Human Rights:** The Licensing Sub-Committee's decision regarding this application will have Human Rights implications in respect of both the Applicant and the persons making relevant representations which also need to be considered equally and fairly so that the decision is proportionate and the right balance is met. The referral of this matter to the Sub-Committee is laid down in the Licensing Act 2003, as amended and is also in accordance with Article 6 of the Human Rights Act 1998, the right to a fair hearing, which is an absolute right. The Applicant and the persons making relevant representations have been notified of the Hearing and invited to make representations. A statutory right of appeal to the Magistrates Court and the right (if it arises) to challenge the Sub-Committee's decision by way of Judicial Review to the High Court also ensure a fair hearing to both the Applicant and the persons making relevant representations.
- 8.3 Article 8 and Article 1 of the First Protocol - the right to respect for private/family life and peaceful enjoyment of property/possessions (including Licences) - also needs to be considered. The persons making relevant representations have a right to respect for their private and family life and their home. They are entitled not to be disturbed by unreasonable noise and/or nuisance. However, this is a qualified right and has to be balanced against the rights of others including the rights of businesses in the area to operate.
- 8.4 Article 14 of the Human Rights Act 1998 - the right to freedom from discrimination (which is an absolute right) also needs to be considered. The human rights provided under the Human Rights Act 1998 must not be subject to discrimination under various headings, including race, national or social origins, association with a national minority group or other status.
- 8.5 Interference with these rights is acceptable within the terms of the Human Rights Act 1998 if it safeguards the rights of others, is legitimate, proportionate and balanced in that there is a need to find a fair balance between the protection of individual rights and the interests of the community at large – other than rights under Article 6 and 14 which are absolute rights and can not be interfered with.
- 8.6 Therefore if Members refuse to grant the application for a new Premises Licence in whole or part or grant it subject to conditions, this will be a breach of the rights of the Applicant unless such refusal (in full or part) is, and/or the conditions imposed are, appropriate, proportionate and can be justified, on balance, by being outweighed by the rights of the community at large to peaceful enjoyment of their property/possessions. Any restriction placed upon the Premises Licence must not go beyond what is strictly necessary to achieve its legitimate purpose in order to mitigate the interference with the community at large's enjoyment of their property/possessions.
- 8.7 By taking into consideration all the material considerations relating to this application and balancing the interests/rights of all parties involved it is considered that the Licensing Sub-Committee's decision will be both proportionate and justified having had regard to the Human Rights Act 1998.

- 8.8 The Equality Act 2010, including the Council's Public Sector Equality Duty, must be taken into account when making decisions in relation to licensing applications.

9. Determination by the Licensing Sub-Committee

- 9.1 The Sub Committee is obliged to determine applications in the light of the above and any other material considerations with a view to promoting the four licensing objectives. Which are:

- The prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

Regard must also be had to the Council's Licensing Policy, Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended, relevant representations received and the evidence presented at the Hearing.

- 9.2 Each application must be considered on its own merits and any conditions attached to premises licences must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to promote the licensing objectives in any individual case.

- 9.3 The Sub-Committee must avoid duplication of other legal requirements and should only impose conditions on a premises licence which are appropriate and proportionate for the promotion of the licensing objectives and where additional and/or supplementary measures are required in order to promote the licensing objectives.

- 9.4 The following options are available to the Licensing Sub Committee:

9.4.1 Grant the Premises Licence - subject to any conditions which are consistent with the Operating Schedule and which are considered appropriate and proportionate for the promotion of the four licensing objectives in response to relevant representations received - and any relevant mandatory conditions.

9.4.2 Exclude from the scope of the Premises Licence granted under Para 9.4.1 above any of the licensable activities to which the application relates.

9.4.3 Refuse to specify a person in the Premises Licence granted under Para 9.4.1 as the premises supervisor.

9.4.4 Reject the whole of the Application.

9.4.5 Grant the Premises Licence subject to different conditions for different parts of the premises or the different /reduced licensable activities if this is

considered appropriate and proportionate to promote the four licensing objectives and in response to the representations received).

- 9.5 The Sub-Committee is asked to note that it may not reject the whole or part of the application or attach conditions - merely because it considers it desirable to do so. It must actually be **appropriate and proportionate** in order to promote the 4 licensing objectives and be in response to the representations received and full reasons must be given for the Sub-Committees decision.

THE SCHEDULE

The Mandatory Conditions

For the purposes of this schedule;

"the Act" means the Licensing Act 2003;

"Anti-Social Behaviour" has the meaning given in section 36 of the Anti-social Behaviour Act 2003;

"Disability" has the meaning given in section 1 of the Disability Discrimination Act 1995;

"Relevant Premises" has the meaning given in paragraphs (a) and (b) of the definition in section 159 of the Act;

"Responsible Person" has the meaning given in paragraphs (a) and (b) of the definition in section 153(4) of the Act (the relevant parts of which are attached to this licence)

Mandatory Condition – s19 of the Licensing Act 2003

No supply of alcohol may be made under the premises licence:

- (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
- (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every supply of alcohol under the premises licence must be made authorised by a person who holds a personal licence

MANDATORY CONDITIONS SPECIFIED BY THE LICENSING ACT 2003 (MANDATORY LICENSING CONDITIONS) ORDER 2010 AS AMENDED BY THE LICENSING ACT 2003 (MANDATORY LICENSING CONDITIONS)(AMENDMENT) ORDER 2014:

Mandatory Condition 1

- (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
- (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
 - a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

- d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
- e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability)

Mandatory Condition 2

The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

Mandatory Condition 3

- (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
 - (a) a holographic mark, or
 - (b) an ultraviolet feature

Mandatory Condition 4

The responsible person must ensure that—

- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml;
- (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
- (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.”

MANDATORY CONDITIONS SPECIFIED BY THE LICENSING ACT 2013 (MANDATORY CONDITIONS) ORDER 2014:

Mandatory Condition 5

- 1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price
- 2. For the purposes of the condition set out in paragraph 1—

(a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;

(b) "permitted price" is the price found by applying the formula—

$$P = D + (D \times V)$$

where—

(i) P is the permitted price,

(ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence—

(i) the holder of the premises licence,

(ii) the designated premises supervisor (if any) in respect of such a licence,

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994

3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny

4.— (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Proposed conditions

1. Alcohol shall be sold from within the Premises (identified as 'Barn A', and delineated red, on the licensing plans) for consumption in the Premises; in terms of any consumption of alcohol off the Premises, such consumption shall take place within those buildings and areas as delineated in blue, on the licensing plans.

2. The Designated Premises Supervisor (DPS) shall ensure that all staff involved in the sale or supply of alcohol at the Premises receive an induction in the Responsible Sale of Alcohol procedures, prior to undertaking the sale of alcohol, and refresher training at least every 12 months. This training shall cover the terms of this Licence; 'Challenge 25' and the measures in place at the Premises to protect children from harm. Training records shall be maintained and regularly reviewed by the DPS, and shall be made available to the Police and authorised Council Officers on reasonable request. The records shall be retained for at least 12 months.

CCTV

3. The Premises shall have CCTV coverage for all areas to which guests have access (except toilets) which shall be properly maintained in good working order. All images shall be stored for a minimum of 31 days.
4. CCTV shall comply with Data Protection Act 2018 and shall be working and recording correctly when the Premises is open to the public. If the CCTV is not working, the DPS shall notify the Police and shall comply with their reasonable requests before any licensable activities are resumed.
5. The DPS, or in her absence, her nominated deputy shall be able to show Police recent data footage with the minimum of delay if requested to do so.

Refusals Register, Incident Log and Complaints Record.

6. A Refusals Register (which shall be regularly reviewed by the DPS) shall be kept at the Premises to record details of any refusals to sell alcohol. This Register shall contain the date and time of the incident, a description of the person attempting to purchase alcohol; the name of the staff member who refused the sale, and the reason the sale was refused. The Register shall be made available to the Police and authorised Council Officers on reasonable request.
7. An Incident Log will be maintained by the Applicant that details incidents of note that have occurred in the Premises. This shall include any disorder incidents and shall be available for inspection by an authorised Council Officer on reasonable request.

Noise Management

8. To minimise the risk of any undue disturbance to local residents/businesses, entrances/exits to the Premises shall be closed (except to allow access/egress) at 21:30;
9. Regulated entertainment (in the form of live or recorded music or the exhibition of film) shall only take place within the Premises; with external doors and with doors between the Barn and its conservatory closed (save for access/egress), to reduce the risk of noise emanation.
10. At all times that Regulated Entertainment is taking place in the form of live or recorded music and/or DJ, this shall be provided through an electronic noise limiter. The electronic noise limiter shall be calibrated upon installation and set at a level of 80dB(A)eq15. The noise limiter should be recalibrated every 12 to 24 months thereafter with the level only increased with the agreement of the Environmental Health Officer at the Licensing Authority.
11. A Complaints Record shall be maintained at the Premises. This should record details of any complaint (relating to the use of the Premises for licensable activities) made to the Premises Licence Holder; its Management and/or to the DPS by any local resident or local business; a summary of the complaint and/or any formal response made, and shall be made available for inspection by an authorised Council Officer or Police officer, on reasonable request.

12. Prior to any event taking place at the Premises involving licensable activities, a risk assessment shall be carried out by the DPS and/or her Event partners, as to the nature of the proposed event; numbers and demographic of guests attending; staffing requirements etc. with a view to ensuring the promotion of the Licensing Objectives at the event.

Informative/s

Officer Contact:	Brian Whittall (01494 421 346) – email address: brian.whittall@buckinghamshire.gov.uk
Background Papers:	Application Ref 21/00326/LAPREN Licensing Act 2003, as amended Licensing Policy – Wycombe Area Published December 2018. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.