

SUBJECT:	APPLICATION FOR A NEW PREMISES LICENCE at: Wendover Beers, 19 Wood Lane, Wendover, Buckinghamshire, HP22 5PW
Report of:	Application under section 17, Licensing Act 2003
Report Author	Kerryann Ashton – Licensing Officer
Ward/s Affected	Wendover, Halton and Stoke Mandeville

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 Wendover Beers Ltd (“the applicant”) in respect of Wendover Beers, 19 Wood Lane, Buckinghamshire, HP22 5PW (“the premises”).

2. Background

- 2.1 The proposed site consists of a small Garden building in back garden of residential dwelling.
- 2.2 The premises is located in Wood Lane, Wendover just off Trenchard Avenue in a residential area.

A location plan showing the premises location is attached to this report marked **Appendix 1**. A layout plan is attached as **Appendix 2**.

3. The Application

- 3.1 This application is for a new Premises Licence. A copy of the application form is attached to this Report marked **Appendix 3** (NOTE this is a revised application form submitted during the consultation period to remove on sales, revised hours and amend operating schedule).
- 3.2 The licensable activities sought are as follows:

<u>Proposed activity</u>	<u>Proposed hours</u>
Supply of alcohol (off the premises)	
Standard days and timings:	Wednesday to Friday 1700 - 2100 Saturday 1100 – 1800 Sunday 1100 - 1600

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: Response received - 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):** Response received - no comment
- 4.1.5 **The Local Environmental Health Authority (Head of Environmental Health):** Response received - no objection
- 4.1.6 **Weights and Measures Authority (Trading Standards Officer):** Response received - no comment
- 4.1.7 **The Safeguarding and Child Protection Unit:** Response received - no comment
- 4.1.8 **The Primary Care Trust:** Response received - no comment
- 4.1.9 **No responses were received from any other Responsible Authority.**

4.2 **Any other persons:** Ten objections were received during the 28 day consultation period which ended on 16 May 2021.

4.3 During the consultation period the applicant drafted a letter to send to all the objectors explaining how the business would operate. A copy of the letter is attached as **Appendix 4**.

All ten objectors were sent a copy of the letter and a copy of the revised application form and asked to confirm if they wished to withdraw their objection. After receiving this information eight of the objectors have requested their objections be withdrawn.

A copy of the remaining two representations are attached marked **Appendix 5**.

4.4 No letters of support were received during the 28 day consultation period.

5. Licensing Officer's Observations:

5.1 The Relevant Representations received raise the follows issues:

- The prevention of public nuisance

5.2 In addition to the Mandatory Conditions, which together with the Conditions proposed by the applicant and the Responsible Authority are considered appropriate for recommendation to the Licensing Sub-Committee to address concerns raised in the objections if a Premises Licence is granted.

6. Policy Considerations

6.1 Regard must be had to the Council's adopted Licensing Policy published November 2015 when determining this application. Of particular relevance is paragraph 8.7 The Licensing Authority will expect individual applicants to address the licensing objectives in their Operating Schedule having regard to the type of premises, the licensable activities to be provided, the operational procedures, the nature of the location and the needs of the local community.

Also of relevance under public nuisance is paragraph 7.23 Public nuisance is a nuisance involving noise, light pollution, odour and litter affecting (or which is likely to affect) at least a few people locally. The Licensing Authority is concerned to protect the amenity of residents and businesses in the vicinity of licensed premises. At the same time the Licensing Authority is aware of the importance of the licensed trade to the local economy and its culture and leisure aspirations. Accordingly, it will try and work together with statutory agencies, licensed businesses and residents' groups to ensure a mutual co-existence. And paragraph 7.24; In considering all licence applications, the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for nuisance and/or anti-social behaviour having regard to all circumstances of the application.

6.2 Regard must also be had to relevant parts of the Statutory Guidance issued by the Home Office under Section 182 of the Licensing Act 2003, as amended. In relation to Prevention of Public Nuisance the Statutory Guidance states:

2.15 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area

around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

- 2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

In relation to internet sales the Statutory Guidance states:

- 3.9 The place where the order for alcohol, or payment for it, takes place may not be the same as the place where the alcohol is appropriated to the contract (i.e. the place where it is identified and specifically set apart for delivery to the purchaser).

It will be the premises at this location which need to be licensed; for example, a call centre receiving orders for alcohol would not need a licence but the warehouse where the alcohol is stored and specifically selected for, and despatched to, the purchaser would need to be licensed. These licensed premises will, as such, be subject to conditions including the times of day during which alcohol may be sold. The premises licence will also be subject to the mandatory licence conditions.

- 3.10 Persons who run premises providing 'alcohol delivery services' should notify the relevant licensing authority that they are operating such a service in their operating schedule.

7. Links to Council Policy Objectives

- 7.1 Licensing contributes to the Council's aims of planning for a thriving and sustainable Buckinghamshire Council and helping to provide a clean and decent district where there is pride in and ownership of our surroundings and public space. Efficient and effective licensing arrangements link to the Council's main aim to create safer and stronger communities.

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 need 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 cannot 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. 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 where there is no need for such conditions. 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. (On a "without prejudice" basis, a draft list of suggested Conditions is attached to this Report marked "The Schedule").

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-Committee's decision.

THE SCHEDULE

The Mandatory Conditions

Mandatory Condition - s19 of the Licensing Act 2003 - Supply of Alcohol

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 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 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(a);
 - (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, or 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(b).
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

Applicants operating schedule – (as per the application form in appendix 2)

General

Secure the premises when not in use. I will be requesting identification from all customers if I believe they look younger than 25 when delivering their order. No products will be on display from the adjacent street - the building is behind a locked residential fence and there is only 2 small windows in the property fitted with blinds. The premises is not intended as a venue for consuming alcohol, only the sale of alcohol online for consumption off the premises, which will be delivered to customers via my own personal transport.

The prevention of crime and disorder

The building is made from double clad insulated timber frame with uPVC door and window, is lockable and completely secure. The alcoholic beverages will be stored behind lockable mesh shelves as an extra deterrent for thieves. I have also installed a Ring Doorbell Camera and Ring CCTV inside and out of the property as an additional security measure. We have a gravel path at both entrances to the garden which is an anti theft measure.

Public safety

The alcohol is for sale for consumption off the premises ONLY and i will sell with fair judgment to ensure it does not end up in the hands of people who would not drink

responsibly. My aim is to promote responsible drinking and I do not see such a business venture as any risk to public safety since 100% of the sales activity will be conducted via an e-commerce website.

The prevention of public nuisance

100% of the sales will be conducted online, all orders will be delivered by the director personally until such a need arises to employ a dedicated driver. An increase in sales above limited storage per week would render the business inoperable from the premises and at such a point the business would need a commercial premises to continue to operate.

The business does not intend to carry out any activity which could cause a public nuisance. Supplier deliveries to the premises will be minimal due to the available space for stock, there are no plans to expand the premises to accept more than 2 deliveries monthly.

Deliveries for customers will be conducted in the early evening from the Directors personal vehicle ONLY.

All packaging bought & used for delivery will be 100% recyclable Cardboard or Paper to reduce plastic waste and any commercial waste will be removed by the director personally from the premises, rather than a commercial contractor, since it will consist of minimal cardboard and plastic.

The protection of children from harm

The building is fully lockable and will contain mesh shelving inside which is also lockable. I will not be allowing any access into the building for anyone under the age of 18 years of age. There will be signs to this effect on the exterior of the building as well as the 'Proof of Age 25' requirements.

Officer Contact:	Kerryann Ashton (01296 585 560) - email address: <u>kerryann.ashton@buckinghamshire.gov.uk</u>
Background Papers:	Application Ref PR202104-251428 Licensing Act 2003, as amended Licensing Policy - Aylesbury Vale Area Published November 2015. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.