

SUBJECT:	APPLICATION FOR A PREMISES LICENCE at: 4 Pauls Row, High Wycombe, Buckinghamshire, HP11 2HQ
REPORT OF:	Application under section 17, Licensing Act 2003
Responsible Officer	Brian Whittall – Licensing Officer
Report Author	Brian Whittall – Licensing Officer
Ward/s Affected	Abbey

1. Purpose of Report

To provide Members with information to enable the determination of an application for a Premises Licence that has been submitted by JL Licence & Retail, 77 Womack Gardens, St Helens, WA9 5UY (Licensing Agent) on behalf of their client AK South Yorkshire Ltd, 4 Whitchurch Parade, Whitchurch Lane, Edgware, HA8 6LR (“the applicant”), in respect of 4 Pauls Row, High Wycombe, HP11 2HQ (“the premises”).

2. Background

2.1 The premises are located in the High Wycombe town centre in close proximity of a number of licensed premises.

A location plan showing the premises location is attached, marked **Appendix 1**.

3. The Application

3.1 This application is for a Premises Licence, as marked **Appendix 2** which is attached to this Report, including the premises plan, as marked **Appendix 3**.

3.2 The proposed licensable activities are as follows:

<u>Licensable activity</u>	<u>Standard days and timings</u>	
<i>Supply of alcohol (Off sales only)</i>	Every Day	24 Hours
<i>Provision of Late Night Refreshment</i>	Every Day	23:00 – 05:00
<i>Hours premises are open to the public</i>	Every Day	24 Hours

4. Relevant Representations

4.1 Responsible Authorities:

- 4.1.1 **The Chief Officer of Police:** Response received in relation to the prevention of crime and disorder objective (**Appendix 4**)
- 4.1.2 **The Fire and Rescue Authority:** No Response received: No comment
- 4.1.3 **The Local Planning Authority (Head of Sustainable Development):** No Response received: No comment
- 4.1.4 **The Local Environmental Health Authority (Head of Environmental Health):** No Response received: No comment
- 4.1.5 **Weights and Measures Authority (Trading Standards Officer):**
No response received. No comment
- 4.1.6 **The Safeguarding and Child Protection Unit:**
No response received. No comment
- 4.1.7 No responses were received from any other Responsible Authority.

4.2 **Any other persons:** No responses were received

4.3 No letters of support were received.

*** Both the Police and the agent acting on behalf of the applicant have engaged in constructive mediation since the end of the consultation period. Whilst both parties have made some progress, they remain currently not in agreement of a proposed solution to which both can agree. It shall therefore be for the panel to determine that application in accordance with procedure and in regard to the legislation, Council policy, and the Statutory Guidance as issued under s.182.*

5. Relevant Policy Considerations:

5.1 The Relevant Representations received raise the follows issues:

- *The Prevention of Crime and Disorder*
Representations mention concerns regarding the security of alcohol and that it shall be an easy target for theft, especially if products are on display. There is also a concern regarding what happens to alcohol if the stall holder is away for any reason.

The panel should note that mediation has been undertaken, but currently not found a mutually agreeable position on what conditions can be draft that shall promote the objective to prevent crime and disorder.

In relation to the Prevention of Crime and Disorder the Statutory Guidance states:

- 2.3 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.
- 2.5 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.

In relation to the relevant licensing objectives and the determination of applications, the Council's Statement of Licensing policy states:

- 1.6 This Policy and the Council's functions as Licensing Authority seek to achieve control of premises, qualifying clubs and temporary events within the terms of the Act. Terms and conditions will focus on achieving the licensing objectives with reference to
- matters within the control of individual licensees
 - the specific premises and the places used
 - the direct impact of the activity taking place at the licensed premises, in particular on public who live, work and carry out normal activity in the area concerned.
- 1.8 The objective of the licensing process is to allow the carrying on of retail sales of alcohol in a way which ensures compliance with the Act. It is the Council's wish to facilitate well-run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents.
- 2.8 In considering licence applications where representations have been received, the Licensing Sub-Committee will consider the adequacy of measures proposed to deal with the potential for nuisance and/or crime and public disorder, prevention of harm to children and public safety having regard to all the circumstances of the case. The Council will expect operating schedules to satisfactorily address these issues from the design through to the daily operation of the business. Particular consideration will be given to:

In relation to the prevention of crime and disorder the guidance states (p.10)

- 2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).

- 2.3 Conditions should be targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.
- 2.5 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.

In relation to the prevention of crime and disorder (page 9) the policy states that:

- 3.7 If, upon receipt of a relevant representation, there is a likelihood of crime and disorder increasing as a result of the application being granted, the Authority will refuse the application, unless there are exceptional circumstances or it can be demonstrated that additional conditions will alleviate the concerns. In cases where conditions are attached to licences, the conditions will aim to reflect local crime prevention strategies.
- 3.10 In considering licence applications, the Authority will particularly take into account the following where relevant:-
- The measures proposed to prevent the consumption or supply of illegal drugs, including any search procedures and entry policies.
 - The measures proposed to prevent or reduce violence and public disorder in the vicinity of the premises, e.g. the provision of door supervisors, security lighting and signage both inside and outside the premises.
 - Physical security features such as the use of CCTV; where a licensed premises is required to have CCTV as a condition of the licence then unless there are good reasons provided to the satisfaction of the Licensing Committee, the premises must be equipped to a standard and in a manner in accordance with established Thames Valley Police guidance in relation to CCTV.
- 2.9 The weight to be attached to individual representations will be determined by the Members at any hearing and will vary on a case by case basis taking the matters referred to in the Policy into account - representations are encouraged to be specific to the subject premises and if possible supported by written records of previous complaints/problems where these are alleged (including dates, times and to whom the complaint was made and when and what the outcome of any such complaint was if any) – equally applicants are encouraged in completing their operating schedules to detail

steps proposed to address potential concerns.

5. Resources, Risk and Other Implications

5.1 **Resource:** The only resource implications to date has been officer time. If the applicant or persons making relevant representations appeals against the decision of the Licensing Sub – Committee, however, 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.

5.2 Human Rights

The Panel should consider its responsibilities under the Human Rights Act when considering the fair balance between the interests of the applicant and the rights of local residents.

Any decision taken must be appropriate and proportionate to the objective being pursued. In particular the following should be taken onto consideration:

Article 6 - the right to a fair hearing

Article 8 - respect for private and family life

Article 1, First Protocol - peaceful enjoyment of possessions (which can include the possession of a licence)

5.3 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.

5.4 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.

5.5 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.

5.6 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.

6. Determination by the Licensing Sub-Committee

6.1 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 Statement of 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.

- 6.2 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.
- 6.3 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.
- 6.4 The following options are available to the Licensing Sub Committee:
- 6.4.1 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.
- 6.4.2 Exclude from the scope of the Premises Licence granted under Para 6.4.1 above any of the licensable activities to which the application relates.
- 6.4.3 Refuse to specify a person in the Premises Licence granted under Para 6.4.1 as the premises supervisor.
- 6.4.4 Reject the whole of the Application.
- 6.4.5 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).
- 6.5 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.

Informative/s -

Background Papers:	Application Ref 21/01157/LAPREN Licensing Act 2003, as amended
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	<p>Licensing Policy –Wycombe District Area Published December 2018. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.</p>
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