

SUBJECT:	APPLICATION FOR A VARIATION OF A PREMISES LICENCE at: The Royal British Legion Club, 48 Beech Tree Road, Holmer Green, Buckinghamshire, HP15 6UT
REPORT OF:	Application under section 34, Licensing Act 2003
Responsible Officer	Brian Whittall – Licensing Officer
Report Author	Brian Whittall – Licensing Officer
Ward/s Affected	W035 - Penn Wood & Old Amersham

1. Purpose of Report

To provide Members with information enabling the determination of an application for a variation of a Premises Licence, in respect of which relevant representations have been received. The Application has been submitted by licensing agents Innpacked Limited of Suite F8, 10 Whittle Road, Wimborne, BH21 7RU on behalf of their client; Holmer Green Royal British Legion Club Ltd, 48 Beech Tree Road, Holmer Green, Buckinghamshire, HP15 6UT (“The Applicant”) in respect of Holmer Green Royal British Legion of the same address (“the premises”).

2. Background

2.1. The premises consist is an accredited member of the national Royal British Legion and has been authorised for licensable activities since the transitional period in 2005. The premises was in receipt of a Club Premises Certificate in 2005, which was formally surrendered to the authority in in 2019 as a Premises Licence had been granted to replace this certificate IN 2016. The premises has operated under a Premises Licence since June 2016.

2.2. Copy of the current licence can be found at **Appendix 1**.

3. The Application

This application is for a variation of a Premises Licence to commence with immediate effect upon any decision to grant by this licensing authority. The application is to allow for to add the licensable activity of recorded music. To vary current licensable activities and opening times on Sundays to 10:00am. To modify the non-standard timings for New Year’s Eve, New Year’s Day, Christmas Eve, Christmas Day, Boxing Day, Easter Weekends and Bank Holiday’s. The times for licensable activities and conditions as set out in the current authorisation found in Appendix 1 shall remain.

A copy of the application is attached to this report marked **Appendix 2**.

3.1. The licensable activities sought to be amended are as follows:

Proposed activity	Proposed hours
Supply of alcohol (On the premises only)	Sunday 10:00 – 23:30 New Year's Day, Christmas Eve, Christmas Day, Boxing Day, Easter Weekends and Bank Holiday and New Year's Eve to be extended by one hour after standard licenced timings
Live Music (Indoors & outdoors)	Sunday 10:00 – 23:00 New Year's Day, Christmas Eve, Christmas Day, Boxing Day, Easter Weekends and Bank Holiday and New Year's Eve to be extended by one hour after standard licenced timings
Recorded music (Indoors & outdoors)	Sunday - Thursday 10:00 – 00:00 Friday – Saturday 10:00 – 00:30 New Year's Day, Christmas Eve, Christmas Day, Boxing Day, Easter Weekends and Bank Holiday and New Year's Eve to be extended by one hour after standard licenced timings
Performance of dance (Indoors & outdoors)	Sunday 10:00 – 23:30 New Year's Day, Christmas Eve, Christmas Day, Boxing Day, Easter Weekends and Bank Holiday and New Year's Eve to be extended by one hour after standard licenced timings
Late night refreshment (Indoors & outdoors)	New Year's Day, Christmas Eve, Christmas Day, Boxing Day, Easter Weekends and Bank Holiday and New Year's Eve to be extended by one hour after standard licenced timings
Performance of a Play (Indoors & outdoors)	Sunday 10:00 – 23:30 New Year's Day, Christmas Eve, Christmas Day, Boxing Day, Easter Weekends and Bank Holiday and New Year's Eve to be extended by one hour after standard licenced timings
Exhibition of a Film (Indoor)	Sunday 10:00 – 23:30 New Year's Day, Christmas Eve, Christmas Day, Boxing Day, Easter Weekends and Bank Holiday and New Year's Eve to be extended by one hour after standard licenced timings
Indoor Sporting Event	Sunday 10:00 – 00:00 New Year's Day, Christmas Eve, Christmas Day, Boxing Day, Easter Weekends and Bank Holiday and New Year's Eve to be extended by one hour after standard licenced timings.
Similar Entertainment	Sunday 10:00 – 23:30 New Year's Day, Christmas Eve, Christmas Day, Boxing Day, Easter Weekends and Bank Holiday and New Year's

	Eve to be extended by one hour after standard licenced timings
Opening Hours	Sunday 10:00 – 00:00 New Year’s Day, Christmas Eve, Christmas Day, Boxing Day, Easter Weekends and Bank Holiday and New Year’s Eve to be extended by one hour after standard licenced timings

* The Panel should note that the playing of recorded music and performance of live music are de-regulated between the hours 0800 and 2300 hours and therefore fall outside of the jurisdiction of the Licensing Act 2003 unless subject to a Review application under section 51.

4. Relevant Representations

4.1. Responsible Authorities:

- 4.1.1. The Chief Officer of Police: No objection to the application received
- 4.1.2. The Licensing Authority: No response received
- 4.1.3. The Local Environmental Health Authority (Head of Environmental Health): No objection to the application received.
- 4.1.4. The relevant enforcing authority under the Health and Safety at Work etc. Act 1974: No response received
- 4.1.5. The Fire and Rescue Authority: No response received
- 4.1.6. The Local Planning Authority (Head of Sustainable Development): No response received
- 4.1.7. Weights and Measures Authority (Trading Standards Officer): No response received.
- 4.1.8. The Safeguarding and Child Protection Unit: No response received.
- 4.1.9. The Primary Care Trust: No response received.

4.2. **Any other persons:** One objection were received during the 28 day consultation process from the Parish Council, attached at **Appendix 3**.

4.3. No letters of support were received.

4.4. Location of the premises is attached, **Appendix 4**

5. Licensing Officer’s Observations:

5.1. The Relevant Representations received raise the following issues:

5.2. The prevention of public nuisance

Residents living nearby may experience additional noise nuisance as a result of the proposed changes.

6. Policy Considerations

- 6.1. Regard must be given to the Council's Statement of Licensing Policy (published 4th March 2022) when determining this application. Of particular relevance (but not limited to) are the sections relating to licence conditions (page 25) and the Council's approach to licensing hours (page 23).
- 6.2. In relation to licence conditions, the policy confirms that any conditions should be proportionate and appropriate to both the specific premises and the proposed activities. The applicant is responsible for demonstrating, through their operating schedule, how they intend to uphold the licensing objectives and prevent any harm, crime or disorder through the operation of their business.
- 6.3. In relation to nuisance, that Council's policy confirms at section 3.36 that much weight is placed on recommendations made by Environmental Health Officers. Particular issues referred to in this respect include the escape of noise from premises, the movement of patrons arriving at and departing from the premises and customer parking and its likely impact on local residents.
- 6.4. In making decisions in respect of permitted hours (section 3.11) the Licensing Authority will generally take a more stringent approach to licensing hours in areas of higher residential density where there is greater risk of public nuisance. Consideration will be given to representations made by residents in the vicinity of the premises as well as the applicant. It is also noted that premises with activities which attract younger customers are more likely to result in nuisance issues.
- 6.5. In relation to expected management standards, the policy specifies at section 3.14 that the Licensing Authority will take account, amongst other things, of the applicant's level of relevant knowledge and experience and their ability to follow expert advice and to run their business lawfully and in accordance with good business practice.
- 6.6. Regard must also be had to the national 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.

- 2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 2.18 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.
- 2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.
- 2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

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 relation to local residents and businesses.

8. Resources, Risk and Other Implication

- 8.1. **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.

Human Rights

- 8.2. 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).
- 8.3. 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.
- 8.4. 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.
- 8.5. 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. 8.6 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.

9. Determination by the Licensing Sub-Committee

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

- 9.1. 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.
- 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 proposed activities. 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. Reject the whole of the Application.
- 9.4.2. Grant the Premises Licence subject to different conditions for different parts of the premises or for different /reduced licensable activities if it 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 licensing objectives and be in response to the representations received and full reasons must be given for the Sub-Committee’s decision.

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Background Papers:	Application reference (22/00315/LAPVA) Licensing Act 2003, as amended Licensing Policy published 04 March 2022. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.