

SUBJECT:	APPLICATION FOR A VARIATION OF A CLUB PREMISES CERTIFICATE at: Marlow Sports Club, Pound Lane, Marlow, SL7 2AE
Report Of:	Application Under Section 34 Licensing Act 2003
Responsible Officer:	Kerryann Ashton - Licensing Officer
Report Author	Kerryann Ashton - Licensing Officer
Ward/s Affected	Marlow Ward

1. Purpose of Report

To provide Members with information enabling the determination of an application for a variation to a Club Premises Certificate, in respect of which relevant representations have been received. The application has been submitted by Marlow Sports Club (“the applicant”) in respect of **Marlow Sports Club** (“the premises”).

2. Background

2.1 The premises is located within the Town of Marlow. The Premises consist of Main Pavilion, Old Pavilion and sports fields which offer a floodlit hockey pitch, four flood-lit all-weather tennis courts, petanque terrains, and cricket pitch and outfield with practice nets. and on-site car parking for 100 cars.

2.2 The premises are not located within a cumulative impact policy area.

2.3 A location plan showing the premises is attached to this report marked “Appendix 1”. The current layout plan is attached as Appendix 2.

2.3 The premises currently have the benefit of a Club Premises Certificate granted in 2005. A copy of the current club premises certificate is attached as Appendix 3.

Supply of Alcohol to club members:

Monday-Saturday: 10:00 - 23:00

Sunday: 12:00 - 22:30

Good Friday: 12:00 - 22:30

3. The Application

3.1 This application is for a variation of the current premises licence to take immediate effect. A copy of the application is attached as Appendix 4.

3.2 The variations sought are as follows:

- Vary the defined area of the premises, which is currently only the building, to include an area of the grounds outside and adjacent to the building. See images of outside bar locations attached as Appendix 5 and a revised additional licence layout plan attached as Appendix 6.

Add opening hours to the licence:

Monday to Saturday 10:00 to 23:00

Sunday 12:00 – 22:30

3.3 The steps the applicant intends to take to promote the licensing objectives are set out in the operating schedule.

4. Relevant Representations

4.1 Responsible Authorities:

- 4.1.1 **The Chief Officer of Police:** Response received: No objection.
 - 4.1.2 **The Fire and Rescue Authority:** Response received: No objection.
 - 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):** Response received: No objection.
 - 4.1.5 **Weights and Measures Authority (Trading Standards Officer):** No response received.
 - 4.1.6 **The Safeguarding and Child Protection Unit:** No response received: No comment.
 - 4.1.7 **The Licensing Authority:** Response received: No objection.
 - 4.1.8 No responses were received from any other Responsible Authority.
- 4.2 **Other persons:** One valid objection was received during the 28-day consultation period which ended on the 16 April 2024. A copy of the representation is attached marked **Appendix 7**.
- 4.3 During the consultation period we received two representations in support of the application. A copy of the representations is attached to the report market Appendix 8.

5 Licensing Officer's Observations:

5.1 The Relevant Representation from other parties mainly raises the follows issues:

The prevention of public nuisance

Stating the change of licence could result in noise and light pollution. The request to extend alcohol service to the outside of the club could significantly impact the residential aspect of the area.

The Prevention of crime and disorder

The change could lead to an increase in crime or disorderly conduct. The increase in outside space may attract a larger crowd and excessive alcohol consumption.

Public safety

Issue relating to controlling crowds.

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 given to the Council's Statement of Licensing Policy (published 4th March 2022) when determining this application. Part C - promoting the licensing objectives Para 3.14 states the Licensing Authority seeks to encourage the highest standards of management in licensed premises and expects this to be demonstrated through the operating schedule.

Para 3.19 In preparing their applications, applicants are strongly encouraged to consider the terms of this Policy in general and this chapter in particular. In considering applications, the Licensing Authority will also take this Policy as a starting point.

3.23 In considering variation applications, decision concerning conditions will be confined to the subject matter of the application as per case law ([Taylor vs Manchester City Council \[2012\]](#)). In practice this means that conditions will not be imposed in response to a variation application that do not relate to the application sought.

Prevention of crime and disorder Para 3.27 states Applicants are expected to demonstrate in their operating schedule how they intend to promote the crime prevention objective in relation to the licensable activities provided. Applicants should also consider local circumstances, for example such as the terminal hour of other licensed premises in close proximity, local crime and anti-social behaviour 'hot spots' and the position of taxi ranks and other transport hubs.

3.28 The Licensing Authority will treat the police as the main source of advice on conditions to be applied in order to promote the crime prevention objective. Conditions imposed on licences will, so far as possible, reflect any local crime prevention strategies and the local Police and Crime Plan published by the Police and Crime Commissioner for Thames Valley.

In relation to the prevention of a public nuisance licensing objective, section 3.36, the Licensing Authority will consider whether the measures proposed to deal with the potential for public nuisance having regard to all circumstances of the application, are adequate. Much weight will be placed on recommendations made by Environmental Health Officers in terms of preventing public nuisance.

Under Public Safety para 3.33 states applicants must be able to demonstrate that they have undertaken a thorough assessment of the risk to public safety presented by their intended activities.

At para 3.37 the Policy sets out particular measures which an applicant may wish to consider including:

Outside areas

The Licensing Authority supports the use of outside areas such as gardens and forecourts however robust management controls are usually required to ensure that the use of

these areas does not cause a nuisance. Control measures may include adequate supervision, regular glass collections, curfews and last entry conditions.

Deliveries and waste collections

As far as possible delivery and collection times should be arranged to minimise the risk of noise nuisance to residents and other businesses in the vicinity. Staff should avoid placing glass bottles and other waste outside late at night unless suitable noise mitigation measures are in place.

Litter

Measures should be in place to manage the risk of littering associated with the premises. This includes having sufficient waste receptacles to avoid overflowing refuse containers and litter sweeps in the immediate vicinity to clear cigarette butts, food receptacles and flyers associated with the premises.

Lighting

Outside lighting needs to be carefully planned and managed, including security lighting, to avoid causing nuisance.

- 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.

In relation to Prevention of Public Nuisance the Statutory Guidance states:

- 2.15 The 2003 Act enables licensing authorities and responsible authorities, through 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. 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.
- 2.18 As with all conditions, those relating to noise nuisance may not be appropriate 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. 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.

Crime and Disorder

- 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).

Public safety

- 2.8 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

- 2.10 The measures that are appropriate to promote public safety will vary between premises and the matters listed above may not apply in all cases. Applicants should consider when making their application which steps it is appropriate to take to promote the public safety objective and demonstrate how they achieve that.

Resources, Risk and Other Implications

- 7.0 **Resource:** The only resource implications to date have been officer time however if the applicant or persons making relevant representations appeal 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.

- 7.1 **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.
- 7.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 Therefore if Members refuse to grant the application to vary the 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.
- 7.6 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.
- 7.7 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.

8.0 Determination by the Licensing Sub-Committee

8.1 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.

8.2 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.

8.3 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.

8.4 The following options are available to the Licensing Sub Committee:

8.4.1 Grant the Variation Application in full or part - subject to any Conditions to be attached to the premises licence (which modify or add to or vary the Conditions already imposed on it) 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 **proposed Conditions** is attached to this Report marked "The Schedule".

8.4.2 Reject the whole of the Variation Application.

8.4.3 Grant the Variation Application subject to different conditions for different parts of the premises or licensable activities if this is considered appropriate and proportionate to promote the four licensing objectives and in response to the representations received).

9.0 The Sub-Committee is asked to note that:

9.1 It may not reject the whole or part of the application or modify or add to or vary the existing conditions - merely because it considers it desirable to do so. It must actually be **appropriate and proportionate** in order to promote the four licensing objectives and be in response to the representations received and full reasons must be given for the Sub-Committee's decision.

- 9.2 When determining the application to vary the Premises Licence consideration must be given to the effect of the variations proposed. Any modification or variation to Conditions or any additional Conditions to be added to the Premises Licence must also be as a result of the effect of the variation if granted on the promotion of the four licensing objectives.

Conditions offered in the Operating Schedule

Prevention of crime and disorder

- Customers will not be permitted to remove from the premises drinks supplied by the premises (alcoholic or otherwise) in open containers.

Public nuisance

- Empty glasses and bottles shall be regularly collected from outside areas.
- Notices, at least A4 in size, shall be prominently displayed at all exits requesting customers to respect the needs of local residents and businesses and leave the area quietly.

Protection of children from harm:

- A Challenge 21 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.

Informative/s -

This Premises Licence does not purport to grant planning permission for the use of the premises hereby permitted by this Licence and/or for the hours of operation hereby permitted by this Licence and the Applicant is advised to contact the Planning Department to check compliance with the relevant planning legislation/requirements and to submit any necessary planning applications prior to operation.

Officer Contact: Kerryann Ashton (01296 585 560)

email address: kerryann.ashton@buckinghamshire.gov.uk

The Schedule

Annex 1 – Mandatory conditions

Conditions for Clubs selling alcohol for consumption off the premises

- 1 The supply of alcohol must be made at a time when the premises are open for the purposes of supplying alcohol, in accordance with the club premises certificate, to members of the club for consumption on the premises.
- 2 Any alcohol supplied for consumption off the premises must be in a sealed container
- 3 Any supply of alcohol for consumption off the premises must be made to a member of the club in person

Proposed Conditions

General – all four licensing objectives

- Licensing objectives and their compliance will be added to the commercial risk assessment. The steps listed below will be regularly checked by the commercial team to ensure that licensing objectives are met. Those checks and their findings will be logged in our minuted meetings as a record. This will include details of any remedial action where required. Reporting to the trustee board will take place where any breaches are identified in order to maintain governance and assist in compliance with charity commission rules.

The prevention of crime and disorder

- The use of SIA door staff will be risk assessed and regularly reviewed.
- Where SIA registered door supervisors are used at the premises, a record must be kept of their SIA registration number and the dates and times when they are on duty and they will be made aware of the maximum capacity of the premises and ensure that this number is not exceeded.
- Customers will not be permitted to remove from the premises any drinks supplied by the premises (alcoholic or otherwise) in open containers.
- Empty glasses and bottles will be regularly collected from tables and outside areas.
- We actively promote responsible drinking and do not expect to be implementing any drink promotions that would encourage binge drinking. Drunkenness and anti-social behaviour will not be accepted on the premises. Should anyone be observed using or in possession of drugs they will be asked to leave immediately.
- Any evidence of the sale of drugs on the premises will be immediately reported to the local police authority.
- Members & guests will be reminded not to leave valuables in their vehicle, and we will be happy to look after them inside the building during their visit but will hold no responsibility for loss or damage of any possessions on the premises.

Public safety

- Fire exits and routes will be kept clear, well indicated and maintained. All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.
- First aid boxes are provided. Checks of the boxes are made at regular intervals and a log of checks is held.

- All Health and Safety certificates will be up to date and the business will be fully compliant with all legal requirements.
- Risk assessments will be undertaken and requested from contractors/suppliers where applicable.

The prevention of public nuisance

- Notices, at least A4 in size, shall be prominently displayed at all exits requesting customers to respect the needs of local residents and businesses and leave the area quietly
- Music is not normally played and when it is, it will be at a suitable level until a socially acceptable time.
- Between the hours of [insert hours] no waste/glass bottles will be moved or deposited outside
- Outside trade areas are of a good distance from residential property and established trees between dampen conversational noise.
- External lighting will be used with great consideration to our neighbours and only on during trading hours.
- Refuse will be held in metal bins with lids and emptied into the trade waste bins at regular intervals to prevent unpleasant odours and improve pest control.

The protection of children from harm

- Under 18's will be very welcome on the premises whilst accompanying an adult.
- The licence holder shall ensure that a written children safeguarding policy is in place for the premises. The policy shall cover the four broad categories of abuse: neglect, physical abuse, sexual abuse and emotional abuse as well as child exploitation and modern slavery. The policy shall include details of staff awareness and refresher training in relation to the policy, including training with specific reference to child exploitation and modern slavery.
- A copy of the policy shall be made available on request to authorised officers of Buckinghamshire Council along with evidence that staff have attended awareness training related to the policy.
- A Challenge 21 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
- Staff engaged in the service of customers at the premises shall be trained in the promotion of the licensing objectives as are relevant to their duties. This shall include training on awareness of local alcohol related issues. The training shall be recorded in a training record which shall not be removed from the premises, except in case of emergency or for the purposes of copying, until a period of 12 months has expired since the last entry that has been recorded.
- The training record shall be made available to Police and authorised council officers on request.

Background Papers:	<ul style="list-style-type: none"> • Application ref PR202403-343069 • Licensing Act 2003, as amended • Licensing Policy – Buckinghamshire Council published March 2022 • Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended
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