

SUBJECT:	APPLICATION FOR A VARIATION OF A PREMISES LICENCE at: The Bricklayers Arms, 19 Walton Terrace, Aylesbury, Buckinghamshire, HP21 7QY
Report Of:	Application under Section 34 Licensing Act 2003
Responsible Officer:	Kerryann Ashton – Licensing Officer
Report Author	Kerryann Ashton – Licensing Officer
Ward/s Affected	Aylesbury North

1. Purpose of Report

To provide Members with information enabling the determination of an application for a variation to the premises licence, in respect of which relevant representations have been received. The application has been submitted by Desmond Power (“the applicant”) in respect of **The Bricklayers Arms, 19 Walton Terrace, Aylesbury, Buckinghamshire, HP21 7QY** (“the premises”).

2. Background

- 2.1 The premises is located within the town of Aylesbury in a mixed area of commercial and residential premises. The premises consist of a pub with a beer garden to the rear of the premises and beyond that car parking for a number of cars.
- 2.2 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 original premises licence was granted in 2005 as a conversion application and authorised the Sale of alcohol (both on and off) between the hours of 10am and 11pm Monday to Saturday and 12pm to 10.30pm on a Sunday. This licence was granted under delegated powers.
- 2.4 The premises applied for a variation of the of the premises licence in January 2015. The variation was to - Extend hours to 01.00 Friday and Saturday for sale of alcohol. Add regulated entertainment on Friday and Saturday from 09.00 to 00.00. Extend to 02.00 hours on Fri, Sat and Sun at Bank Holidays.
- 2.5 This application was modified during consultation period the licence and granted was as follows:

Sale by Retail of Alcohol	Sunday to Thursday	12:00 - 23:00
Sale by Retail of Alcohol	Friday to Saturday	12:00 - 01:00

Performance of Live Music	Sunday to Thursday	09:00 - 23:00
Performance of Live Music	Friday to Saturday	09:00 - 00:00
Playing of Recorded Music	Sunday to Thursday	09:00 - 23:00
Playing of Recorded Music	Friday to Saturday	09:00 - 00:30

Opening Hours	Sunday to Thursday	09:00 - 23:30
Opening Hours	Friday to Saturday	09:00 - 01:30

2.6 A copy of the current licence is attached as **Appendix 3**.

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 form is attached as **Appendix 4**.

3.2 The variations sought are as follows:

- Extend hours for recorded music and for it to be permitted outdoors in the garden (at the rear of the pub)
- Removal of condition on current licence that states that Use of the beer garden will stop at 23:00.

<u>Current activities and hours</u>	<u>Proposed activities and hours</u>	<u>Effect of Variation</u>
Sale of Alcohol Both on and off the premises Sunday to Thursday 12:00 – 23:00 Friday to Saturday 12:00 – 01:00	No change	
Live music (indoors only after 2300 hrs) Sunday to Thursday 09:00 - 23:00 Friday to Saturday 09:00 - 00:00	Under de regulation act live music is permitted both indoors and outdoor between the hours of 8am and 11pm	
Recorded music (indoors only after 2300 hrs) Sunday to Thursday 09:00 - 23:00 Friday to Saturday 09:00 - 00:30	Recorded music (both indoors and outside) Monday to Thursday 15:00 – 23:00 Friday 15:00 – 01:00 Saturday 12:00 - 0100 Sunday 12:00 – 23:00	Extend hours for recorded music and change to both indoors and outside
Hours premises are open to the public Sunday to Thursday 09:00 - 23:30 Friday to Saturday 09:00 - 01:30	No change	

- 3.3 The steps the applicant intends to take to promote the licensing objectives are set out in the operating schedule (see Appendix 4, section 16 of application form).

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:** 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):** Submitted a representation during the consultation period a copy of which is attached as **Appendix 5**.
- 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 **The Licensing Authority:** Response received: No comment
- 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 25 April 2024. A copy of the representation is attached marked **Appendix 6**.
- 4.3 No letters of support were received during the consultation period.

5 Licensing Officer's Observations:

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

- The prevention of public nuisance

The representation states given the close proximity of many houses backing onto the pub's garden the music amplifies vibrations and sound, which directly infiltrate homes. And that the premises are in an area occupied by families and elderly residents and this proposed extension would significantly infringe upon their rights to privacy and the peaceful enjoyment of their properties, inevitably resulting in heightened sleep deprivation and stress. They are concerned about the potential implications this extension could have on the peace and quiet of our neighbourhood. Incidents of disruptive and antisocial behaviour by pub patrons have been reported. These include being loud, breaking glass, leaving rubbish on the road, and, on two occasions, jumping on cars and climbing scaffolding.

I would draw Members attention to the provision in the Licensing Act 2003 under the De Regulation Act that amplified live or recorded music does not require authorisation when playing on licensed premises that are authorised and open for the sale of alcohol on the premises for audiences up to 500, between the hours of 8am and 11pm.

- 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.

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.

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.

3.37 Particular measures include:

Noise escape

The steps taken or proposed to be taken by the applicant to prevent noise and vibration escaping from the premises, including music, noise from ventilation equipment and human voices. Such measures may include the installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices. In appropriate circumstances and where not included in the operating schedule, a condition may be imposed requiring the assessment by the applicant (either with or without the involvement of Environmental Health), of potential noise sources which could cause disturbance to those in the vicinity and to identify and implement appropriate control measures.

Smokers

Arrangements to minimise disturbance from customers smoking outside the premises. These may include supervision, delineated areas for smoking, controls on numbers and preventing customers taking alcohol outside.

Customer departure

The steps taken or proposed to be taken by the applicant to prevent disturbance by customers leaving. Such steps will include proper winding down policies so that customers leave gradually and quietly, notices to customers requesting respect for neighbours, the use of dedicated taxis, management of queues for taxis, direction of customers away from residential areas, supervision of exterior areas, requesting customers to respect neighbours and prevention of customers gathering outside the premises.

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.

- 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:

- 2.21 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.
- 2.22 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.
- 2.23 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.
- 2.24 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.
- 2.25 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.
- 2.27 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. Resources, Risk and Other Implications

- 7.1 **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.
- 7.2 **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.
- 7.3 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.
- 7.4 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.
- 7.5 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.
- 7.6 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.

7.7 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-Committees decision will be both proportionate and justified having had regard to the Human Rights Act 1998.

7.8 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.

8. 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).

8.5 The Sub-Committee is asked to note that:

8.5.1 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.

8.5.2 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.

THE SCHEDULE

The Mandatory Conditions

Annex 1 – 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 - 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 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, or
 - (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

General – All four licensing objectives

The premises shall install and maintain a comprehensive CCTV system in accordance with any minimum requirements of Thames Valley Police. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.

The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises and will include the external area immediately outside the premises entrance.

All recordings shall be stored for a minimum period of 31 days (or other specified time period) with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period (or other specified time period).

The prevention of crime and disorder

A written record of all staff authorised to sell alcohol shall be maintained on the premises and made available to an authorised officer on request.

A manager, nominated in writing by the licence holder, shall be on the premises at all times that it is open to the general public.

The licence holder must ensure any nominated manager has been provided with a copy of the licence conditions.

Empty drinking vessels shall be frequently collected from all public areas on the premises, including any outside areas.

The prevention of public nuisance

Notices, of a minimum A4 size, shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.

The protection of children from harm

A Challenge 21 (or Challenge 25) 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.

Public Safety

All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.

All emergency doors shall be maintained effectively self-closing and not held open other than by an approved device.

Outside furniture shall not be placed in front of any designated emergency exits or prevent easy access for emergency services.

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

Background Papers:	<ul style="list-style-type: none">• Application ref: PR202404-343844• 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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