

# Application for the variation of a premises licence: The White Hart, Harlington

Committee	Licensing Sub-Committee
Officer Contact	Mark McDermott, Licensing Officer
Papers with report	<b>Appendix 1</b> - Application to Vary a Premises Licence <b>Appendix 2</b> - Current Premises Licence <b>Appendix 3</b> - Current Plan <b>Appendix 4</b> - Representations from Interested Party <b>Appendix 5</b> - Map of the area <b>Appendix 6</b> - Photographs <b>Appendix 7</b> - Anti Social Behaviour & Environment Team check.
Ward name	Heathrow Villages

## 1.0 SUMMARY

To consider an Application for a Variation of a Premises Licence in respect of The White Hart, 158 High Street, Harlington UB3 5DP with one representation received from an Interested Party.

## 2.0 RECOMMENDATION

**To grant the variation with an amendment to the Applicant's proffered condition and the addition of a further condition as follows (in bold and underlined):**

Management and staff will exercise vigilance and regularly monitor customers using the rear external area **and ensure patrons do not cause a public nuisance.**

**Notices shall be prominently displayed at all external areas, requesting patrons to respect the needs of local residents.**

## 3.0 APPLICATION

'The Application to Vary the exiting Premises Licence, has been submitted by Poppleston Allen Solicitors, on behalf of the Licence Holder – Fuller Smith & Turner plc. A copy of the Application Form is attached as **Appendix 1**.

The Application has been submitted to vary the Premises Licence to amend a condition under **Annex 2** on the licence, relating to the garden area and add a condition regarding monitoring the outside area. The Applicant states:

1. We therefore seek to amend a condition at Annex 2 'Prevention of Public Nuisance' to read as follows: 'The rear garden shall cease trading at 22.30 hours.' (currently 21.00).
2. To add the following condition: 'Management and staff will exercise vigilance and regularly monitor customers using the rear external area.'

For the avoidance of doubt all Licensable Activities, Permitted Hours, Opening Hours and other conditions will remain as existing'

### 3.1 Type of Application Applied For

Variation of Premises Licence

### 3.2 Description of the premises

The Premise is a detached Pub/bar/restaurant with external areas. It is situated in a residential area, with a car park. There is a front patio area and beer garden at the rear of the premises bordering residential properties.

The current premises licence can be found at **Appendix 2**.

The current Approved Plan of the Premises can be seen at **Appendix 3**.

### 3.4 Licensable Activities

<u>Activity</u>		<u>Proposed variation to existing licence</u>
Sale of alcohol	On and Off Supplies	none
Provision of Late Night Refreshment	indoors	none
Performance of live music	indoors	none
Playing of recorded music	indoors	none

### 3.5 Licensable Activity Hours

	<u>Current hours for Alcohol</u>	<u>Proposed hours for Alcohol</u>
<b>Monday</b>	10:00 to 00:00	No change
<b>Tuesday</b>	10:00 to 00:00	No change
<b>Wednesday</b>	10:00 to 00:00	No change
<b>Thursday</b>	10:00 to 01:00	No change
<b>Friday</b>	10:00 to 01:00	No change
<b>Saturday</b>	10:00 to 01:00	No change
<b>Sunday</b>	10:00 to 00:00	No change

	<u>Current additional non-standard timings hours for Alcohol</u>	<u>Proposed non-standard timings hours for Alcohol</u>
	New Year's Eve - From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.	No change

	<u>Current hours for Regulated Entertainment</u>	<u>Proposed terminal hours for Regulated Entertainment</u>
<b>Monday</b>	23:00 to 00:00	No change
<b>Tuesday</b>	23:00 to 00:00	No change
<b>Wednesday</b>	23:00 to 00:00	No change
<b>Thursday</b>	23:00 to 01:00	No change
<b>Friday</b>	23:00 to 01:00	No change
<b>Saturday</b>	23:00 to 01:00	No change
<b>Sunday</b>	23:00 to 00:00	No change

	<u>Current Additional non-standard timings hours for Regulated Entertainment</u>	<u>Proposed additional non-standard timings hours for Regulated Entertainment</u>
	New Year's Eve - From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.  An additional hour to the terminal time on the commencement of British Summer Time	No change

The provision of recorded music is not time restricted

### 3.6 Opening Hours

	<u>Current</u> hours	<u>Proposed</u> terminal hours for premises licence
<b>Monday</b>	06:00 to 00:30	No change
<b>Tuesday</b>	06:00 to 00:30	No change
<b>Wednesday</b>	06:00 to 00:30	No change
<b>Thursday</b>	06:00 to 01:30	No change
<b>Friday</b>	06:00 to 01:30	No change
<b>Saturday</b>	06:00 to 01:30	No change
<b>Sunday</b>	06:00 to 01:30	No change

	<u>Current Additional non-standard timings</u> for Opening Hours	<u>Proposed additional non-standard timings</u> hours for Opening Hours
	New Year's Eve from 06.00 until 10.00 on New Year's Day.  An additional hour to the terminal time on the commencement of British Summer Time	No Change

### 3.7 Operating Schedule and Conditions

#### **The Prevention of Public Nuisance**

The rear garden shall cease trading at 21.00 hours.

The front patio shall cease trading at 23.00 hours.

The approved sound limitation equipment shall be maintained in effective working order.

#### **Protection of Children from Harm**

A proof of age scheme shall be in operation.

## 4.0 **CONSULTATION**

### 4.1 Closing date for representations

14<sup>th</sup> January 2021

4.2 Public Notice published in local newspaper  
6<sup>th</sup> January 2021 - Uxbridge Gazette

## 5.0 REPRESENTATIONS

5.1 There is one representation from an Interested Party

Mr Stephen Kennedy <b>Local Resident</b>	Prevention of Public Nuisance	<b>Appendix 4</b>
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## 6.0 BACKGROUND INFORMATION

6.1 Other licensed premises nearby.

The Pheasant Inn & Restaurant Heathrow (0.5 miles away).  
The Wheatsheaf (0.3 miles away).

6.2 There has been no recorded Members Enquires for this site.

6.3 Anti-Social Behaviour & Environment Team check can be found at **Appendix 7**.

## 7.0 OFFICER'S OBSERVATIONS

7.1 Observations

This is an Application to vary the existing Licence of an established Public House to allow for an extension of hours for the use of the beer garden at the rear of the premises from 21.00 to 22.30. The garden area is not shown on the deposited Plan but as detailed in the s.182 guidance below (8.35), the sales of alcohol are by way of off sales.

I have checked with the Anti-Social Behaviour & Environment Team and an issue was reported in 2.18 that can be found at **Appendix 7**, but consider the issue immaterial and not relevant to this Application.

7.3 Relevant Representations

The relevant representation received mainly raise the following issues:

The Prevention of Public Nuisance -

- A Representations received from a local resident refers to potential for an increase in nuisance given the closeness of private dwellings to the establishment during the proposed extended hours. The exact extent of this can be seen on the attached map in **Appendix 6**. The resident also explains that there has been dialogue over the years regarding noise nuisance from the garden area with the Licensee and it is disappointing that the applicant did not pre consult ahead of submitting the variation.

## 8.0 Relevant sections of S.182 Guidance

The Guidance issued by the Secretary of State under s.182 of the Licensing Act 2003 states:

### **The purpose of the Guidance**

**At paragraph 1.7**, "This Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public.

It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality."

### **Public nuisance**

**At paragraph 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.

**At paragraph 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.

**At paragraph 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.

**At paragraph 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 the 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.

**At paragraph 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 11pm and 8am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance as customers enter and leave.

**At paragraph 2.20** Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.

**At paragraph 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.

### **Beer gardens or other outdoor spaces**

**At paragraph 8.35** Applicants will want to consider whether they might want to use a garden or other outdoor space as a location from which alcohol will be consumed. The sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract.

In scenarios where drink orders are taken by a member of staff in the garden or outdoor space and the member of staff then collects the drinks from the licensed premises and returns to deliver them to the customer this would be treated as an off-sale and any conditions that relate to off-sales would apply.

**At paragraph 8.36** In such cases it will be not necessary to include the garden or other outdoor space on the plan as part of the area covered by the premises licence. However, it will be necessary for the applicant to include the garden or other outdoor space on the plan as part of the area covered by the premises licence if the intention is to provide a service whereby drinks are available for sale and consumption directly from that area (i.e. the provision of on-sales). This would apply in the case of an outdoor bar or a service whereby a member of staff who is in the garden or outdoor space carries with them drinks that are available for sale (without the need for the staff member to return to the licensed premises to collect them).

**At paragraph 8.37** If the beer garden or other outdoor area is to be used for the consumption of off-sales only, there is no requirement to show it on the plan of the premises, but the prescribed application form requires the applicant to provide a description of where the place is and its proximity to the premises.

### **Determining Actions That Are Appropriate For The Promotion of The Licensing Objectives**

**At paragraph 9.42**, "Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis.

They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be."

**At paragraph 9.43**, "The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve."

**At paragraph 9.44** Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives.

However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business.

Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

### **Proportionality**

**At paragraph 10.10** it states that "The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises.

Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises.

Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives".

## **9.0 Relevant sections of the Licensing Policy**

### **Prevention of a public nuisance**

**At paragraph 9.1** "Licensing Sub Committees will be mindful that licensed premises, especially those operating late at night and in the early hours of the morning, can cause a range of nuisances impacting on people living, working or sleeping in the vicinity of the premises. When addressing public nuisance, the applicant should identify any particular issues that are likely to affect adversely the promotion of the licensing objective to prevent public nuisance. They should then include in the operating schedule how they will deal with those matters. The concerns mainly relate to noise nuisance from within the premises or from the use of any outside areas, light pollution, smoke and noxious smells. Due regard will be given to the impact these may have and the Licensing Authority will expect operating schedules to satisfactorily address these issues."

**At paragraph 9.3** "Applicants should give particular consideration to measures to reduce the occurrence of public nuisance associated with accommodating smokers outside the premises, following the introduction of smoke free areas in enclosed or substantially enclosed places."

**At paragraph 9.7** "Applications referred to the Licensing Sub-Committee will be determined on the individual merit of each case. The Licensing Sub-Committee have the power to impose specific conditions when considered necessary in respect of the Prevention of Public Nuisance objective."

**At paragraph 7.6,** "Applications referred to the Licensing Sub-Committee where relevant objections have been received will be determined on the individual merit of each case. The Licensing Sub-Committee has the power to impose specific conditions when considered necessary in respect of the Crime and Disorder objective."

### **14.0 Representations**

**At paragraph 14.1,** "This policy will not seek to exclude any rights enshrined in the Act or any other legislation for applicants or those making representations against applications. Each application and representation will be treated on its merits taking into account the legislation, the Guidance issued under section 182 of the Licensing Act 2003 and this policy."

**At paragraph 14.2,** "Representations can be made to the Council, as Licensing Authority, by a 'Responsible Authority' or by 'Interested Parties' which include bodies or individuals who

live in the vicinity of such a premises, and residents association, trade associations and other businesses operating in the vicinity. Representations can be made concerning: -

- Applications for new premises licences or club premises certificates
- Applications to vary premises licences or club premises certificates
- Personal licence applications on criminal grounds (only by the Police)"

**At paragraph 14.3,** "Responsible Authorities are the public authorities specifically designated under the Licensing Act 2003 to be consulted on all licence applications and are also entitled to make representations."

**At paragraph 14.10,** "All valid representations will form part of a committee report that will become a public document. It will be given to the applicant, their agent, responsible authorities, other persons making representations and any other party requesting a copy as well as the Licensing Sub-committee 10 working days prior to the hearing. Anonymous representations will not be accepted."

#### Licence Conditions

**At paragraph 17.1,** " Conditions on premises licences and club certificates are determined by:

- a) The measures put forward on the Operating Schedule
- b) Mandatory conditions within the Act
- c) Measures decided at a hearing by the Licensing Sub Committee"

**At paragraph 17.2,** "Any conditions attached to licences following relevant representations will focus on matters within the control of the Premises Licence Holder or Club Management Committees. They will address matters which have a direct impact on those living, working or engaged in normal activities in the vicinity, as well as patrons of the licensed premises. They will not be used as a means of attempting to attach responsibility to Premises Licence Holders or Club Management Committees for matters outside their reasonable control, such as anti-social behaviour once away from the premises or licensable activity".

**At paragraph 17.3,** "The Licensing Authority will not impose standard conditions upon every licence issued, however it may have regard to model conditions produced by the Government and/or the Institute of Licensing and it may choose to impose these in appropriate circumstances".

## 10.0 LEGAL CONSIDERATIONS

The Licensing hearing is governed by the Licensing Act 2003 (Hearings) Regulations. These provide that hearings should be held in public unless the Licensing Authority considers that the public interest in excluding the public outweighs the public interest in the hearing taking place in public.

If a Member of the Sub-Committee has a conflict of interest on the Application being determined, they should not have any involvement in the decision making on the Application.

When considering an application to vary a Premises Licence, the Sub-Committee is required carry out its functions with a view to promoting the Licensing Objectives. The Licensing Objectives are:

- Prevention of crime and disorder

- Public Safety
- Prevention of public nuisance
- Protection of children from harm

Where relevant representations are made, the Licensing Authority must hold a hearing to consider them, unless it is agreed that a hearing is unnecessary. The need for a hearing can be dispensed with by agreement of the authority, the Applicant for the Variation and all of the parties who have made relevant representations.

The Applicant/their Agent, and all persons who have made representations must be informed of the date, time and location of the hearing and their right to attend and be represented.

At the hearing any Interested Party who have made representations are entitled to address the Sub Committee and to ask questions of another party, with the consent of the Sub Committee.

The Sub-Committee must consider all relevant representations made in writing and orally, before taking such steps (if any) to promotion of the Licensing Objectives, when determining the Application.

The Sub-Committee must ensure that all licensing decisions have:

- A direct relationship to the promotion to the promotion of one or more of the four licensing objectives;
- Have regard to the Council's statement of Licensing Policy;
- Have regard to the Secretary of State guidance; and
- Not be made as a result of a blanket policy which is applied so rigidly that an exercise of discretion in each individual case is precluded.

Applications must be considered with regard to the principles of fair process and the Human Rights Act 1998.

When considering an Application for the Variation of an existing Premises Licence, it is only the proposed variation that is subject to determination. Any modification of conditions should be confined to those considered appropriate in respect of the particular variation sought.

The Licensing Officer report will provide the Sub-Committee with recommendations related to this Application. Subject to the above-mentioned factors having been properly considered, the Sub-Committee may depart from the recommendations if there are good reasons for doing so. The Sub-Committee is advised that such departures could give rise to an appeal or judicial review.

The Authority must notify its decision to the Applicant, the Police and any person who has made relevant representations and must give reasons for its decision.

### Section 182 Guidance on Attaching Conditions

10.2 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions that the holder of the premises licence or the club premises certificate will be required to take or refrain from taking in relation to the carrying on of licensable activities at the premises in question.

Failure to comply with any condition attached to a licence or certificate is a criminal offence, which on conviction is punishable by an unlimited fine or up to six months' imprisonment. The courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided.

10.8 The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.

In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises. This provision also applies to minor variations.