

Report of	Meeting	Date
Director of Legal Services	Statutory Licensing Sub- Committee	13 October 2005

APPLICATION TO VARY PREMISES LICENCE IN RESPECT OF THE MALTHOUSE FARM MOSS LANE WHITTLE LE WOODS

PURPOSE OF REPORT

- For members to determine an application for the vary a premises licence.

CORPORATE PRIORITIES

- There are no specific implications for corporate policies arising from this report.

RISK ISSUES

- The issue raised and recommendations made in this report involve risk considerations in the following categories:

Strategy		Information	
Reputation		Regulatory/Legal	✓
Financial		Operational	
People		Other	

- There is a right of appeal to the Magistrates Court by the applicant in respect of a decision to refuse to vary the premises licence or where the conditions of licence are modified. There is also the right of appeal to the Magistrates Court by a person who has made relevant representations against a decision to grant the variation or to modify the conditions of licence.

CURRENT PREMISES LICENCE

- The premises licence was converted under the grandfather provisions. The current licensable activities are as follows:

Supply of alcohol by retail on or off the premises

Monday – Saturday	11.00 – 23.00
Sunday and Good Friday	12.00 – 22.30
Christmas Day	12.00 – 15.00 and 1900 – 22.30

Current embedded conditions and restrictions to be converted

Continued....



Alcohol

The provisions of sections 59-61 inclusive and section 63 of the LA 1964 apply (drinking up time)

Late night refreshment

Food may be sold in line with the alcohol sales plus an extra 30 minutes

Recorded Music

Recorded music may be played throughout the premises without limitation in line with the provisions of the Licensing Act 1964

THE APPLICATION

5. A copy of the application to variation is attached to this report in full in Appendix 1. In summary the application is to conduct the following licensable activities and at the times set out below.

Please note following discussions with the police, the applicant amended the application. The amended application is listed below and Lancashire Police have formally withdrawn their objection. The letters agreeing these changes are included in this report. However, there still remain representations from interested parties which are listed below.

6. Provision of regulated entertainment

- i) Live Music – indoors (E)

07.00 – 01.00 Monday – Thursday
07.00 - 02.00 Friday - Sunday

Limited to a maximum two performers, as currently permitted under s182 LA 1964, and to entertainment at bona fide private events as currently permitted at the premises.

Non Standard Timings

Regulated entertainment allowed an extra hour at new year and 12 other agreed occasions per year, with fourteen days notice and agreement with the Police.

- ii) Recorded Music – Indoors (F)

07.00 – 01.00 Monday – Thursday
07.00 - 02.00 Friday -Sunday

The playing of all descriptions of amplified recorded music as permitted under the existing licence (s). Variation applies to hours of operation only.

Non Standard Timings

Regulated entertainment allowed an extra hour at new year and 12 other agreed occasions per year, with fourteen days notice and agreement with the Police.

iii) Anything of a similar description to that falling within e,f or g – Indoors (H)

07.00 – 01.00 Monday – Thursday
07.00 – 02.00 Friday - Sunday

Live entertainment as permitted under the existing licence (s), and Karaoke.

Non Standard Timings

Regulated entertainment allowed an extra hour at new year and 12 other agreed occasions per year, with fourteen days notice and agreement with the Police.

iv) Provision of facilities for dancing – Indoors (J)

07.00 – 01.00 Monday – Thursday
07.00 - 02.00 Friday - Sunday

As currently permitted at the premises, including at Bona fide private events.

Non Standard Timings

Regulated entertainment allowed an extra hour at new year and 12 other agreed occasions per year, with fourteen days notice and agreement with the Police.

7. Late night refreshment – Indoors (L)

23.00 – 02.00 Monday – Thursday
23.00 - 03.00 Friday - Sunday

Non Standard Timings

Regulated entertainment allowed an extra hour at new year and 12 other agreed occasions per year, with fourteen days notice and agreement with the Police.

8. Supply of Alcohol – Both on and off the premises (M)

07.00 – 01.00 Monday – Thursday
07.00 – 02.00 Friday - Sunday

Non Standard Timings

Regulated entertainment allowed an extra hour at new year and 12 other agreed occasions per year, with fourteen days notice and agreement with the Police.

There are no restrictions on the hours during which alcohol maybe sold to residents and their bona fide guests (not withstanding the fact that residents may be sleeping in a separate annexe).

9. Hours premises are open to the Public

06.00 – 02.00 Monday – Thursday
06.00 - 03.00 Friday - Sunday

Non Standard Timings

Regulated entertainment allowed an extra hour at new year and 12 other agreed occasions per year, with fourteen days notice and agreement with the Police.

Notwithstanding these usual opening times, the premises, in accordance with the converted right may chose to open to the public at any time for non licensable activities/purposes

10. ADDITIONAL STEPS TO BE TAKEN TO PROMOTE LICENSING OBJECTIVES

The applicant has indicated that following additional steps will be taken to promote the licensing objectives:

General

We have applied for an extended period between the cessation of the supply of alcohol and the closure of the premises to give us the option to allow for a more gradual dispersal of customers, the style and operation of pub will not differ significantly during the extended hours. Where this is appropriate, non-alcoholic refreshment will be available in the extended period.

The premises will respect Spirit Group's approach to responsible drinking (copy with the application). Our policies change at regular intervals to reflect current trends and it would be inappropriate to standardise them on a permanent basis. The enclosed policy is included for information only and not as suggested conditions or to form part of any other Operating Schedule.

Prevention of crime and disorder

We are introducing Security Industry Authority (sia) approved door supervisors across our estate, in line with the Government approved implementation plan.

A zero tolerance towards illegal drugs will be enforced at all times.

If a dj is used on any night then he/she will ask customers top leave quietly.

If a CCTV system is installed at this site, it will continue to operate during the additional hours of trading and notices will be displayed.

All instances of crime and disorder will be reported to the Police and will be kept in an incident logbook.

Public Safety

Public safety is integral to the way that the Spirit group runs its business and is reviewed regularly through our health and safety policy. This policy is fully briefed and trained to all Management and staff and we will continue to train our staff to the standards required by relevant legislation.

Free drinking water will be available at all times

The Prevention of public nuisance

Additional patrols will take place by members of staff internally and externally, to limit any noise pollution when entertainment is being offered within the premises.

If appropriate, notices will be displayed asking our customers to respect our neighbours when leaving the premises.

Where already used text/radio pagers will continue to be used for the additional hours of trading and will be monitored by a responsible member of staff.

Soft drinks and non-alcoholic refreshment will be available if we decide to use the option to stay open for an extended period between the cessation of the supply of alcohol and the closure of the premises (see above under general).

All amplified entertainment to cease by 01.00.

Recorded music to be played at a lower/reduced volume for background purposes between 01.00 and 02.00.

Other than New Years Eve all alcohol sales to cease at 02.00.

The protection of children from harm

When children are allowed upon the premises, any entertainment offered within the premises will be suitable for young persons.

Children will be required to be supervised by the accompanying adult at all times.

A no smoking area will be provided.

Soft drinks and non-alcoholic drinks will be available.

A recognised proof of age policy will be enforced.

11. Other Activities that may give rise to concern in respect of children.

Under 18 year olds will not be allowed to play on section 34 permitted AWP machines.

Children will not be allowed in the area immediately adjacent to the bar/severy.

12. Conditions/ Restrictions to be removed on variation.

To remove the restrictions and effects of section 168, 168a and 171 LA 1964 so as to allow the provisions under the LA 2003 to apply in relation to children.

To remove the restrictions on consumption of alcohol as set out in section 63 (1) LA 1964 (drinking up time).

To remove restrictions on credit sales in place by section 166 LA1964.

To extend the terminal hour at the premises in respect of the sale of alcohol and other licensable activities.

To allow limited entertainment in line with current provisions of section 182 LA 1964.

13. Relevant Representations – Responsible Authorities.

There are no relevant representations.

14. Relevant Representations – Interested Parties.

There are **two** representations received to the application to vary from interested parties who reside close to the premises. The objections are relevant to the following licensing objectives - Prevention of public nuisance.

Copies of the representations in full are attached to the report.

15. Policy Considerations.

Section 4 of the Licensing Act 2003 provides that a Licensing Authority must have regard to its Statement of Licensing Policy and to the guidance issued by the Secretary of State under section 182 of the Act.

As members will be aware the four licensing objectives are as follows:

- the prevention of crime and disorder
- public safety
- prevention of public nuisance
- the protection of children from harm.

The Licensing Act 2003 provides that where relevant representations are received the Licensing Authority must hold a hearing to consider them unless the parties agree that a hearing is unnecessary.

The Licensing Authority in determining the application, having have regard to the representations, may take the following steps it considers it necessary for the promotion of the licensing objectives.

- i) reject the application in whole or in part
- ii) modify the conditions.

Members must have regard to the Statement of Licensing Policy when determining this application. In particular, member's attention is drawn to the following paragraphs:

Paragraph 1.3 The policy provides guidance on the general approach the Council, as Licensing Authority, within the meaning of the Act, will take in terms of licensing, However, each application will be considered separately, on its individual merits.

Paragraph 1.4. The Statement of Licensing Policy sets out how the licensing objectives will be achieved and to secure the safety and amenity of residential communities whilst facilitating a sustainable entertainment and cultural industry. The Policy recognises both the needs of residents for a safe and healthy environment in which to live and work and the importance of safe and well run entertainment premises to the local economy. Balancing these interests will not always be straightforward and will be guided by the four licensing objectives.

Paragraph 1.5 This policy does not seek to undermine the right of any individual to apply under the Act for a variety of permissions and as stated above each application will be considered on its individual merits. Nor does the Policy seek to override the right of a person to make representations on an application or seek a review of a licence or certificate. However, the Council in adopting this policy is indicating that a wide range of considerations will be taken into account.

Paragraph 2.2 Each of the licensing objectives are of equal importance with these objectives.

Paragraph 2.3 Each of the licensing objectives is of equal importance for the purposes of this policy.

Paragraph 2.4 This policy statement is designed to deal with matters within the control of the licensee. It focuses on the premises in which each business is carried on and the effect that has on members of the public living, working or engaged in normal activity in the vicinity.

Paragraph 2.5 Licensing law is not envisaged by the Licensing Authority as a mechanism to control anti-social behaviour by individuals once they are beyond the direct control of the licensee of any premises concerned. Therefore any terms and conditions imposed will be focused on matters within the control of individual Licensees and others granted relevant permissions. These matters will centre on the premises and places used for licensable activities and in the vicinity of the places.

Paragraph 2.6 The Licensing Authority considers that every holder of a licence, certificate or permission and designated premises supervisor is responsible for minimising the impact of their activities and anti-social behaviour by their customers within the vicinity of their premises.

Paragraph 5.3 The policy will not fix the hours during which alcohol can be sold. The Licensing Authority considers that stricter controls regarding noise nuisance may be necessary in more densely populated areas. The grant of a licence will be dependent on the impact of an activity on the licensing objectives.

LICENSING HOURS

Paragraph 7.1 The policy recognises that longer (more flexible) licensing hours can contribute to easing crime and disorder problems by ensuring that concentrations of customers leaving premises simultaneously are avoided thus helping to reduce friction at taxi ranks, private hire offices, fast food outlets etc.

Paragraph 7.2 Individual applications will be considered on their merits and in general terms a flexible approach will be adopted. Fixed predetermined closing times for particular areas will not form part of the policy and restrictions on trading hours will be considered only where necessary to meet the licensing objectives.

Paragraph 7.3 The Licensing Authority, however, considers that the risk to disturbance to local residents is greater when licensable activities continue late at night and into the early hours of the morning as the ambient noise levels will be lower. The Licensing Authority may impose stricter conditions with regard to noise control in areas, which have denser residential accommodation, but each premises will be considered on its individual merits.

Paragraph 7.5 The Licensing Authority also recognises the principle of 24 hour opening of all licensed premises. However, it considers that longer opening hours may be more acceptable in commercial areas with high levels of public transport. The grant of a licence will in all cases be dependent on the impact of an activity in relation to the licensing objectives.

Paragraph 7.6 Where relevant representations are received, the Licensing Authority may have regard to the following where relevant (though this is a non exhaustive list);

- the nature of the area where the premises are located (e.g. commercial, residential)
- arrangements to ensure adequate availability of taxis and private hire vehicles, public transport.
- whether appropriate car parking is readily accessible to premises and whether the use/parking of vehicles would cause a demonstrable adverse impact on the amenity of residents.
- whether the licensable activities are likely to cause adverse impact especially on local residents and whether appropriate measures will be put in place to prevent any adverse impact
- in relation to the grant of a new premises licence whether the premises will give rise to a negative cumulative impact on one or more of the licensing objectives

In assessing the impact of the activity proposed the Licensing Authority may consider a number of factors inter alia,

- the type and scale of activity, the number and nature of clientele likely to attend
- the levels of noise from the premises, which may be acceptable later in the evening
- the proposed hours of operation
- the levels of public transport accessibility for customers and the likely means of public or private transport that will be used, access to private hire/taxis
- the means of access to the premises e.g whether on principal pedestrian routes
- the level of car parking demand on surrounding residential streets and its effect on local residents, and movement of traffic
- the cumulative impact of licensed premises in an area and scope for mitigation
- frequency of the activity.

Operating Schedules to set out the measures to be taken to ensure that the licensing objectives are addressed. Applicants are also referred to paragraph 6.6

PREVENTION OF PUBLIC NUISANCE

Paragraph 13.1 Licensed Premises have significant potential to adversely impact on communities through public nuisances arising from their operation.

Paragraph 13.2 The Licensing Authority is aware of the importance of the licensed trade to the local economy as well as in cultural and social terms. The Licensing Authority is also concerned to protect the amenity of residents and businesses in the vicinity of licensed premises. 'Vicinity' is not defined in the Act or Guidance issued by the Secretary of State. Whether or not incidents can be regarded, as 'in the vicinity' of licensed premises is a question of fact and will depend on the particular circumstances of the case.

Paragraph 13.3 The Licensing Authority will interpret 'public nuisance' in its widest sense and include such matters as noise emanating from the premises, light, litter, odour and anti social behaviour where these matters impact on those living or working in an area.

Paragraph 13.4 Activities that involve public entertainment, drinking or eating, have the potential to impact adversely on their surrounding areas due to noise, litter, and odours. There is also the potential for disturbance caused by those attending licensable activities. Late at night the impact of licensed activities is likely to be more objectionable to residents living close to a licensed activity, as the ambient noise levels are often lower so noise disturbance becomes more noticeable.

Paragraph 13.5 The policy allows for later opening hours except where there will be an adverse impact on the licensing objectives. In general the Licensing Authority will expect more comprehensive measures to be proposed at late night venues and/or where there has been a history of public nuisance.

Paragraph 13.6 On receipt of relevant representations, the Licensing Authority will assess the likelihood of it causing an adverse impact, by generally considering the following factors where relevant:

- the location of the premises (in particular proximity to residential and other noise sensitive premises, e.g. hospitals, nursing homes, hospices and places of worship)
- the type of activities, the number and nature of clientele likely to attend at the time of the application
- the proposed hours of operation
- levels of public transport accessibility for customers either arriving or leaving the premises (including taxis and private hire)

- means of access to premises (whether on principal pedestrian routes)
- the level of car parking demand on any surrounding residential streets and its effect on local residents
- the cumulative impact on licensed premises in an area
- the scope for mitigating an impact i.e. CCTV, door supervisors
- the frequency of an activity
- the design and layout of the premises
- measures taken or proposed to be taken to prevent noise or vibration escaping from the premises e.g. sound proofing, air conditioning and sound limitation devices
- measures taken to prevent unreasonable disturbance by customers/staff arriving and leaving the premises, goods deliveries etc
- measures taken to lessen the impact of parking in the vicinity
- control of operating hours for all or parts of the premises (e.g gardens, last admission times and 'wind down' periods)
- measures to be taken to prevent drunkenness on the premises
- measures to ensure collection and disposal of litter and waste outside their premises

Paragraph 13.7 The Licensing Authority when considering an application will take into account previous substantiated nuisance complaints particularly when a statutory notice has been served. Applicants may wish to have regard to the Good Practice Guide on the Control of Noise from Pubs & Clubs produced by the Institute of Acoustics and the British Beer and Pub Association.

Paragraph 13.8 On receipt of relevant representations, the Licensing Authority, where it considers it necessary and/or appropriate may attach conditions to a licence to prevent public nuisance including those drawn from the Model Pool of Conditions - see Appendix 3. In particular, it may attach a condition requiring the use of door supervisors licensed by the Security Industry Authority

Paragraph 13.9 The Licensing Authority requires Operating Schedules, where relevant to satisfactorily address the issue of public nuisance.

Paragraph 13.10 The Licensing Authority would also recommend applicants highlight local public transport links and taxi and private hire services within their premises, (including agreeing arrangements with nominated taxi and private hire firms for dropping off and collecting customers).

Paragraph 13.11 The Licensing Authority, will in accordance with the Guidance, focus on matters within the control of the individual Licence holder. The Licensing Authority accepts that the difficulty that a licence holder has in preventing anti-social behaviour by individuals once they are behind the direct control of the Licence Holder. However, the licensing objection of preventing public nuisance will not be achieved if customers from a premises regularly conduct themselves in an anti-social manner to the detriment of local residents or businesses. In addition, the Council has a duty to do all it can to prevent crime and disorder in the Borough under the Crime & Disorder Act 1998.

16. Human Rights Act Implications

The Human Rights Act 1998 makes it unlawful for a local authority to act in a way that is incompatible with the European Convention on Human Rights. The Council will have particular regard to the following convention Rights;

- Article 6 that in the determination of civil rights and obligations everyone is entitled to a fair public hearing within a reasonable time by an

- Article 8
- Article 1 of the First Protocol

independent and impartial tribunal established by law;
that everyone has the right to respect for his home and family life;
that every person is entitled to the peaceful enjoyment of his/her possessions including for example, possession of a licence.

ASSOCIATED PAPERS

17 Application form and relevant representation.

ROSEMARY LYON
DIRECTOR OF LEGAL SERVICES

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
H.Bee	5665	26 September 2005	LEGREP/90477AJS