

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

APPLICATION TO VARY PREMISES LICENCE IN RESPECT OF DUKE OF YORK 144 CHORLEY OLD ROAD 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 Licence)

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

Late night refreshment hours

Monday – Saturday	22.00 – 23.00
Sunday, Christmas Day and Good Friday	22.00 – 23.00

On New Years Eve, the permitted hours for the sale of alcohol and the provision of entertainment (if a PEL is in force) commence as set out above and extend to the start of

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the permitted hours on the following day as set out above, and the permitted hours for the provision of late night refreshment extend until 05:00 on the following day.

Current conditions are those embedded conditions under 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.

6. Provision of regulated entertainment

i) Live Music -Indoors

19.00 – 00.00 Monday – Thursday
19.00 – 01.00 Friday and Saturday
19.00 - 00.00 Sunday

Music and Singing (amplified and unamplified)

Non Standard timings

19.00 to 01.00 on all Bank or Public Holidays (including Christmas eve, Boxing Day, Easter Monday and New Years Day) and on any Sunday or Monday forming part of a bank or public holiday weekend.

ii) Provision of facilities for making music

19.00 – 00.00 Monday – Thursday
19.00 – 01.00 Friday and Saturday
19.00 - 00.00 Sunday

Provision of piano amplification equipment and karaoke

Non Standard timings

19.00 to 01.00 on all Bank or Public Holidays (including Christmas eve, Boxing Day, Easter Monday and New Years Day) and on any Sunday or Monday forming part of a bank or public holiday weekend.

iii) Provision of facilities for entertainment of a similar description to that falling within I or J - Indoors

9.00 – 00.00 Monday – Thursday
19.00 – 01.00 Friday and Saturday
19.00 - 00.00 Sunday

Non Standard timings

19.00 to 01.00 on all Bank or Public Holidays (including Christmas eve, Boxing Day, Easter Monday and New Years Day) and on any Sunday or Monday forming part of a bank or public holiday weekend.

7. Supply of Alcohol – On or Off the Premises

9.00 – 00.00 Monday – Thursday
19.00 – 01.00 Friday and Saturday
19.00 - 00.00 Sunday

Non Standard timings

19.00 to 01.00 on all Bank or Public Holidays (including Christmas eve, Boxing Day, Easter Monday and New Years Day) and on any Sunday or Monday forming part of a bank or public holiday weekend.

8. Hours premises are open to the Public

11.00 – 00.30 Monday – Thursday
11.00 - 01.30 Friday and Saturday
11.00 – 00.30 Sunday

Non Standard timings

19.00 to 01.00 on all Bank or Public Holidays (including Christmas eve, Boxing Day, Easter Monday and New Years Day) and on any Sunday or Monday forming part of a bank or public holiday weekend.

9. 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:

i) Prevention of crime and disorder

No irresponsible sales promotions of alcoholic beverages shall be offered to customers.

No customers carrying open or sealed bottles shall be admitted to the premises at any time that the premises are open to the public.

A sign will be displayed on the premises indicating the standard hours during which the sale of alcohol is permitted.

The DPS will be a member of the local Pubwatch

ii) Public Safety

All fire doors will be maintained effectively self-closing and shall not be held open other than by approved devices.

Notices detailing the actions to be taken in the event of fire or other emergencies, including how the brigade shall be summoned, are to be prominently displayed.

iii) The Prevention of public nuisance

No regulated entertainment of any type shall take place outside the premises in any areas which are within the licence holders control after 22.00 save for any special event seven days notice of which has been given to the licensing authority and Police.

When amplified musical entertainment is taking place inside the premises after 22.00 windows and doors, save for entrance and exit purposes, will be kept shut.

A Sign will be located at the exit(s) requesting that customers leaving the premises do so quietly and with consideration to neighbours

iv) The protection of children from harm

No one under the age of 18 will be allowed to enter or remain on the premises after 21.00 save on Christmas Eve and New Years Eve.

Anyone who appears to be under the age of 18 and who is attempting to buy alcohol must be required to produce proof of age before such a sale is made.

11. Conditions/ Restrictions to be removed on variation.

None

12. Relevant Representations – Responsible Authorities

There is a relevant representation from the Police. The objection is relevant to the following licensing objective - Prevention of public nuisance

A copy of the representation in full is attached to this report in Appendix 2., and is in full below -

Due to the nature of the immediate area surrounding the public house it is obvious that any time after midnight for amplified entertainment is excessive, other than New Years Eve.

13. Relevant Representations – Interested Parties.

There has been a relevant representation received to the application to vary from an interested party who resides close to the premises. The objection is relevant to the following licensing objectives - Prevention of Public Nuisance
- Prevention of Crime and Disorder

The representation is attached to the report in full, however to summarise –

Customers leaving the premises generating noise i.e. singing, foul and abusive language

Customers leaving the premises fighting, smashing glasses and discarding litter

14. 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 1.6 The Council will use its powers to promote best practice in relation to the operation of licensed premises. It is also committed to partnership working with police, fire, local businesses, licensed trade, residents and others to ensure that they have a clear understanding of the legislation.

Paragraph 1.7 The Council has had regard to the guidance issued by the Secretary of State under Section 182 of the Act when developing this statement of Licensing Policy. The Council may deviate from the guidance but would need good reasons, which it can justify, to do so.

Paragraph 1.8 The Act covers the licensing of individuals for the retail sale of alcohol (personal licences) the licensing of premises for the retail sale of alcohol, provision of regulated entertainment or late night refreshment (premises licence), the supply of alcohol or the provision of regulated entertainment to certain clubs (club premises certificates) and the holding of certain licensable activities on a temporary basis (temporary event notices).

Paragraph 1.9 The scope of this policy covers new applications, renewal of personal licences, transfers and variations of licences and certificates including temporary event licences. It also includes the review of licences and certificates which could lead to a range of sanctions including the revocation of a licence or a certificate.

Paragraph 2.1 The Act requires the Council to carry out its licensing function so as to promote the four licensing objectives:

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 5.1 Each application will be determined on its individual merits.

Paragraph 5.2 The policy will not seek to introduce 'zones' or staggered closing times within the Borough where specific activities are concentrated. In general terms, a flexible approach will be adopted and arbitrary restrictions avoided.

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.

CRIME AND DISORDER

Paragraph 6.1 Licensed premises, especially those offering late night entertainment, alcohol and refreshment can be a source of crime and disorder problems.

Paragraph 6.2 The Council is committed to reducing crime and disorder across the Borough through its statutory duty under the Crime and Disorder Act 1998 and the Community Safety Strategy. Statistics from the Community Safety Partnership regarding Crime and Disorder in the Licensing Authority area are given in Appendix 4.

Paragraph 6.3 The Community Safety Partnership will regularly monitor and review crime statistics within the Borough and their association with alcohol and provide reports to the Licensing Authority where appropriate. The Licensing Authority will give due consideration to any submissions made concerning the impact on crime and disorder of alcohol related problems. The Council may review this Policy where it considers it appropriate to do so.

Paragraph 6.4 The Council will have particular regard to the likely impact on licensing of related crime and disorder in the Borough particularly when considering the location, impact and the operation and management of all proposed licensed premises and applications for variations.

Paragraph 6.5 The promotion of the crime and disorder licensing objective, places a responsibility on licence holders to try and achieve this objective. Applicants will therefore be required to address, in their operating schedules, where appropriate, those measures that have been identified and will be implemented and/ or maintained to reduce or prevent crime and disorder in the vicinity of their premises. The Licensing Authority considers that best practice will be exemplified by the night safe initiative and would recommend that licence holders join this initiative.

Paragraph 6.6 Where relevant representations are received on the crime and disorder objective, the Licensing Authority may have regard to the following where relevant: (though this is not an exhaustive list) :

- crime prevention measures
- physical security features installed in the premises, (this may include CCTV both inside and outside the premises, where alcohol is stored in relation to off licences, the use of toughened drinking glasses).
- weapon detection and search facilities.
- procedures for risk assessing promotions and events such as 'happy hours', drinks promotions, for the potential to cause crime and disorder, and the plans to minimising such risks.
- adoption of best practice guidance in relation to safer clubbing guide
- measures to prevent the use or supply of illegal drugs including search and entry policies
- employment of licensed door supervisors
- participation in other appropriate schemes e.g. pub watch scheme
- measures to be taken for the prevention of violence or disorder.

Paragraph 6.7 The Licensing Authority where relevant representations are made, will consider attaching conditions to deter and prevent crime and disorder, if appropriate and necessary and these may include conditions from the model pool of conditions at Appendix 3. Certain premises may be required to install CCTV system to an evidential standard should the Council be satisfied it is necessary and /or appropriate to meet the licensing objectives.

Paragraph 6.8 The Council reserves its right to use its powers to designate areas where alcohol may not be consumed in a public place to meet the Public Safety and Crime and Disorder 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 independent and impartial tribunal established by law;
- Article 8 that everyone has the right to respect for his home and family life;
- Article 1 of the First Protocol 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	31 August 2005	LEGREP/90143AJS