

REPORT TO	DATE OF MEETING
LICENSING PANEL	25 JULY 2013

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SUBJECT	PORTFOLIO	AUTHOR	ITEM
APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 IN RELATION TO DUXBURY'S GARDEN CENTRE, CHAIN HOUSE LANE, WHITESTAKE, PR4 4LB	REGENERATION, LEISURE AND HEALTHY COMMUNITIES	KAY LOVELADY	4

SUMMARY AND LINK TO CORPORATE PRIORITIES

An application has been made by Mr Frank Duxbury on behalf of Duxburys Garden Centre Ltd for a premises licence under Section 17 of the Licensing Act 2003 in respect of Duxburys Garden Centre, Chain House Lane, Whitestake, PR4 4LB

The application could have an impact on several of the Council's Corporate Priorities. It should be borne in mind however, that the application must be determined in accordance with the Licensing Act 2003, Council's Licensing Policy Statement and the statutory guidance issued under Section 182 of the Licensing Act 2003.

RECOMMENDATIONS

The panel conduct the hearing in accordance with the hearing procedure and decide accordingly.

DETAILS AND REASONING

Mr Frank Duxbury on behalf of Duxburys Garden Centre Limited has submitted an application for the grant of an additional Premises Licence under Section 17 of the Licensing Act 2003 in relation to premises at Duxburys Garden Centre, Chain House Lane, Whitestake, Lancashire PR4 4LB

The application has requested permission for most licensable activities (full schedule attached) apart from boxing and wrestling. Both live and recorded entertainment has been requested for both indoors and outdoors up until 9a.m to 10p.m Monday to Saturday and 10.30a.m to 5p.m on a Sunday. The same timings are requested for the sale of alcohol on and off the premises and the hours the licence will operate generally.

A copy of the application can be found attached to this report. Members should consider the operating schedule and the provisions the applicant is to put in place to ensure the licensing objectives are not undermined these include provisions in relation to the prevention of nuisance, staff training and proof of age scheme to prevent underage sales.

Representations from Responsible Authorities

Environmental Health submitted a representation stating that they had no issue with the grant of the licence as long as the following condition was applied to the premises licence:

The Police and Fire Authority had no objections to the application

Representations from Interested parties

Representations have been received against the application from several residents who resides close to the premises. A copy of their letters are attached to this report.

The representations raises issues of public nuisance in particular in relation to the possibility of noise nuisance emanating from the premises especially when regulated entertainment is provided. Councillors are referred to the reference to the provisions of the Live Music Act 2012 and The Licensing Act 2003 (Descriptions of Entertainment)(Amendment) Order 2013 (below) when certain activities are exempt from the provisions of the Licensing Act 2003. Patrons leaving the premises are also a concern.

The relevant issue from a licensing perspective is how the application impacts on the four licensing objectives and whether the granting of the application would be proportionate to those objectives. The panel is obviously aware that they have the power to refuse the application or impose conditions to ensure proportionality.

Licensing Act 2003

The Council must carry out its licensing functions with the intention of promoting the licensing objectives.

The licensing objectives are:-

- a) the prevention of crime and disorder;
- b) public safety;
- c) the prevention of public nuisance; and
- d) the protection of children from harm.

Live Music Act 2012

This Act provides exemptions to the requirements of the Licensing Act 2003(LA03) in respect of Live Music on premises which have the benefit of a Licence granted under the LA03 to sell alcohol.

In short, as long as the premises is open for the purposes of selling alcohol for consumption on the premises and

1. either the live music is unamplified; or
2. the live music is amplified with an audience of no more than 200 persons; and
3. In both the cases of 1 & 2 above, the live music takes place between the hours of 8a.m and 11p.m

the Licensing Authority has no power to impose conditions unless the premises is brought in for a Review Hearing and relevant conditions are thereafter applied.

In relation to this application the panel have no power to impose conditions for Live Music for the hours applied for if all the requirements are met.

The Licensing Act 2003 (Descriptions of Entertainment)(Amendment) Order 2013

This piece of legislation only came into force on the **27th June 2013**. The basis of the Order is to de-regulate the provision of entertainment further and like the Live Music Act it removes certain activities at certain times from being under the control of the LA03 provisions.

In short between the hours of 8a.m and 11p.m the following activities will no longer be classed as regulated entertainment under LA03:

1. performance of a play in front of an audience of 500 persons or less;

2. performance of dance in front of an audience of 500 persons or less (excluding Adult Entertainment)
3. indoor sporting events in front of an audience of 1000 persons or less.
4. Mixed martial arts now becomes licensable a boxing or wrestling entertainment

Paragraph 15.2 to paragraph 15.37 of the June 2013 Edition of the S182 Guidance should also be read in relation to the above (Copies attached).

Any conditions felt appropriate for the protection of the four licensing objectives in relation to the aforementioned activities will have to be applied subject to the provisions of the Live Music Act 2012 and the Amendment Order 2013.

When determining an application the Council must also have regard to:

1. Its own Policy Statement;
2. Secretary of State guidance (Section 182 of the Licensing Act 2003).
3. Any other relevant legislation

Licensing Statement

The attention of the panel is drawn to the Council's 'Statement of Licensing Policy.' In particular:

1. Section 11 is of particular relevance. This section deals with the 'Prevention of Public Nuisance'.
2. Section 12 - this section looks at 'Mechanisms for dealing with Public Nuisance'.
3. Section 14 – Protection of Children from Harm

Secretary of State Guidance

Members' attention is drawn to the statutory guidance issued under Section 182 of the Licensing Act 2003 which is of relevance to such hearings.

Members should make themselves aware of all relevant parts of the statutory guidance prior to determining this application including the guidance on the four licensing objectives and Cumulative Impact but keeping in mind that no Policy currently exists in South Ribble.

Members should make themselves aware of all relevant parts of the statutory guidance prior to determining this application.

Section 2 deals with the requirements for all four licensing objectives. Issues of Public Nuisance are from paragraph 2.18.

Paragraph 2.20 of this guidance states:

"Conditions relating to noise nuisance will normally concern steps necessary 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 in the evening to more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any condition appropriate to promote the prevention of public nuisance should be tailored to the style and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.

Paragraph 2.22 further states:

“Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise in the immediate vicinity of the premises may also prove necessary to address and disturbance anticipated as customers enter and leave.”

Members should consider the contents of ‘Annex D – Pool of Conditions’ of the Guidance issued under Section 182 of the Licensing Act 2003. In particular ‘Part 4. Conditions relating to the Prevention of Public Nuisance’ may be of relevance

WIDER IMPLICATIONS

In the preparation of this report, consideration has been given to the impact of its proposals in all the areas listed below, and the table shows any implications in respect of each of these. The risk assessment which has been carried out forms part of the background papers to the report.

FINANCIAL	There are no financial implications for the authority.		
LEGAL	When determining this hearing the Council must comply with the rules of natural justice. Any party at the hearing has the right of appeal to the Magistrates Court		
RISK	The full risk assessment forms part of the background papers to this report. The main points for consideration are summarised here:-		
THE IMPACT ON EQUALITY	There is no impact on equality. No one is barred on equality reasons from either making an application or a representation either for or against an application		
OTHER (see below)			
<i>Asset Management</i>	<i>Corporate Plans and Policies</i>	<i>Crime and Disorder</i>	<i>Efficiency Savings/Value for Money</i>
<i>Equality, Diversity and Community Cohesion</i>	<i>Freedom of Information/ Data Protection</i>	<i>Health and Safety</i>	<i>Health Inequalities</i>
<i>Human Rights Act 1998</i>	<i>Implementing Electronic Government</i>	<i>Staffing, Training and Development</i>	<i>Sustainability</i>

BACKGROUND DOCUMENTS

Risk Assessment