

**LICENSING ACT 2003 - APPLICATION FOR A PREMISES LICENCE -
THE WALLED GARDEN, ROYAL AUTOMOBILE CLUB, WOODCOTE
PARK, WILMERHATCH LANE, EPSOM, SURREY KT18 7EW**

Head of Service:	Rod Brown, Head of Housing & Community
Wards affected:	Woodcote Ward;
Appendices (attached):	Appendix 1:- Application for a premises licence submitted 15 December 2020 ("the Application") by Pall Mall and Woodcote Park Clubhouses LTD Appendix 1a: Plan attached to Application Appendix 2:- Redacted copies of valid representations Appendix 3:- Correspondence between the Council and Pall Mall and Woodcote Park Clubhouses Appendix 4:- Copy of a letter dated 11 March 2021 from Pall Mall and Woodcote Park Clubhouses to neighbours and occupiers of local premises Appendix 5:- Location Map covering the Walled Garden and surrounding area Appendix 6:- Template Licence Mandatory Conditions

Summary

The Licensing (Hearing) Sub-Committee ("the Sub-Committee") is being asked to determine an application for a premises licence made under the Licensing Act 2003 sections 17 and 18.

Recommendation (s)

The Council being satisfied that the application is made in accordance with the Licensing Act 2003 the Sub Committee is now asked to:

- (1) hold a hearing to determine the application for a premises licence under the Licensing Act 2003, unless all relevant persons agree that a hearing is unnecessary.**
- (2) Grant the application and modify the conditions of the licence as is necessary or, alternatively, reject the whole or part of the application.**

1 Reason for Recommendation

- 1.1 To determine the application for a premises licence at a hearing pursuant to section 18(3) Licensing Act 2003. The Council, the applicant and all persons who made valid representations may agree to dispense with the hearing provided notice is given in accordance with The Licensing Act 2003 (Hearings) Regulations 2005 regulation 9.

2 Background

- 2.1 The supply of alcohol, provision of regulated entertainment, and sale of late night refreshment are licensable activities under the Licensing Act 2003. Authorisation from the Council, in its role as the licensing authority, is required in order to carry on any of these activities at premises within the borough.
- 2.2 Under the scheme of delegation adopted by the Council the Sub-Committee is responsible for the exercise of many of the functions of the Council as a licensing authority, including determination of applications where representations have been received.
- 2.3 On 15 December 2020 Pall Mall and Woodcote Park Clubhouses LTD ("The Applicant") applied for a premises' licence for the premises known as The Walled Garden, Royal Automobile Club, Woodcote Park, Wilmerhatch Lane, Epsom ("the Walled Garden").
- 2.4 The Applicant has amended the conditions stated in the original Application, as set out in more detail in Section 5 below.

3 General principles to be followed

- 3.1 The statutory framework for granting premises licences protects the community by allowing responsible authorities and neighbours and occupiers of local premises, including residents, businesses and community groups, to make representations about an application.
- 3.2 When determining applications, the Sub-Committee recognises the Council as the licensing authority is required to carry out its functions with a view promoting the licensing objectives, which are:
 - the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance; and
 - the protection of children from harm.
- 3.3 In considering the licensing objections the Council must have regard to its statement of licensing policy, and to the statutory guidance (Revised Guidance April 2018) issued under section the section 182 Licensing Act 2003.

- 3.4 The application process is considered at 8.1 ff. of that Guidance. The procedure and information on hearings can be found at 9.31 ff of that Guidance.

4 Options open to the Sub-Committee

- 4.1 The Sub-Committee in determining the application will consider the steps set out in section 18(4) Licensing Act 2003.
- 4.2 The Sub-Committee will decide whether to grant the licence (imposing all mandatory conditions) in the terms set out in the application (as amended) or take any of the following steps before granting the licence:
- 4.2.1 modify and grant the licence with such conditions it considers necessary for the promotion of the licensing objectives, which can include granting the licence subject to different conditions in respect of different parts of the premises or different licensable activities;
 - 4.2.2 grant the licence in different terms by excluding from the scope of the licence any of the licensable activities to which the application relates;
 - 4.2.3 refuse to specify the person nominated in the licence as the premises supervisor and require a different person be so nominated and accepted by the Sub-Committee before granting the licence;
- 4.3 Alternatively the Sub-Committee may reject the application entirely.

5 Details of Application

- 5.1 On 15 December 2020 the Applicant submitted an application to provide films, live and recorded music and for the sale of alcohol, all of which are licensable activities.
- 5.2 The relevant premises is the Walled Garden, an area in Woodcote Park (seen in the plans at Appendix 1a). The Walled Garden area comprises outside and indoor space included an area the Applicant describes as the "Amenity Garden".
- 5.3 The application (Appendix 1) details the proposed standard days and timings for the provision of films (Section 7 of 21), of live music (Section 10 of 21), recorded music (Section 11 of 21) and supply of alcohol (Section 15 of 21). The Applicant has subsequently revised the proposed standard days and timings (email correspondence at Appendix 3).
- 5.4 The Sub-Committee is now being asked to determine a licence for the above licensable activities for the following proposed standard days and timings:

7 days per week

The internal areas 09.00 hours until 21.00 hours

The external areas in winter (October to March) 09.00 hours until 17.00 hours

The external areas in summer (April to September) 09.00 hours until 20.00 hours.

- 5.5 Any applicable mandatory conditions will apply (see Appendix 6).
- 5.6 In seeking a grant of licence the Applicant invites the Sub-Committee to consider the following proposed conditions:

Children's sports camps may only take place on the Multi Use Games Area

Playing of films may only take place inside

The premises licence holder may hold 4 events per calendar year on the Amenity Lawn limited to a maximum capacity of 100 persons (excluding staff); with background recorded or live music and may only take place between 10:00 hours and 16:00 hours

The premises licence holder may hold 10 events per calendar year on the Amenity Lawn limited to a maximum capacity of 30 persons (excluding staff); with background music only and may only take place between 10:00 hours and 15:00 hours

6 Representations from Interested Parties

- 6.1 A total of nine valid representations were received. The Council did not reject any representations.
- 6.2 The Sub-Committee will note that on or before the 17 January 2021 the Applicant held a meeting that was attended by some or all of the Interested Parties. By letter dated 11 March 2021 the Applicant wrote to neighbours and occupiers of local premises regarding the application (Appendix 4).
- 6.1 Two representations have been withdrawn. The remaining seven representations can be found at appendix 2. They address relevant matters; namely the licensing objectives.

7 Representations from Responsible Authorities

- 7.1 By email dated 5 January 2021 Surrey Police advised that they did not oppose the application. Surrey Police were informed of the voluntary revision to the standard days and opening times (as described above). Surrey Police make no objection regarding those revised hours.

7.2 By email dated 21 December 2020 Surrey Fire and Rescue Service stated they did not oppose the application. In that email they reminded the applicant that the Regulatory Reform (Fire Safety) Order 2005 requires the responsible person to make a suitable and sufficient assessment of the risks from fire, to which relevant persons are exposed, and to remedy any findings of the assessment.

7.3 No other responses have been received.

8 Policy Considerations

8.1 A copy of the Councils' Statement of Licensing Policy (December 2018) has been sent to the Applicant and Interested Parties together with this report.

8.2 The Sub-Committee will note there are no policy presumptions against the grant of the application.

8.3 The Sub-Committee will need to have due regard to all valid representations that have not been withdrawn.

8.4 The Walled Garden is in the Green Zone in Epsom (see p.9 Statement of Licensing Policy). There is a policy presumption to grant the licence unless it can be shown that the application would undermine the licensing objectives.

9 Legal Implications

9.1 Decisions on licensing matters engage issues of human rights, in particular, Article 1 of the First Protocol, the peaceful enjoyment of possessions, Article 6, the right to a fair hearing, and Article 8, respect for private and family life. However, interference with Convention rights is permitted where lawful and necessary in the interests of public safety, the prevention of disorder or crime, the protection of health and morals or for the protection of the rights and freedoms of others.

9.2 Due regard must also be had to the public sector equality duty enshrined in Section 149 of the Equality Act 2010, which aims to eliminate unlawful discrimination, having regard to the nine protected characteristics.

9.3 The Sub-Committee may wish to note the following:

Planning

9.4 As noted there were no representations from the Local Planning Authority. The Sub-Committee may wish to note that there is no conflict between planning consents (under ref: 17/00542/FUL, dated 7 December 2017 as amended on 16 March 2020) and the standard days and hours proposed under the application.

Advertising and Notice Requirements

- 9.5 All applications for new or varied Premises Licences or Club Premises Certificates must be advertised by the display of a notice at the premises and by a public notice in a local newspaper.
- 9.6 There was a discrepancy between the deadline for representations as stated on the Council's website (12 January) and on the notices (15 January). The first available date for publication in a local newspaper was 31 December 2020; accordingly the Applicant had to amend the notice date to ensure the publication requirement of 10 working days coincided with the expiry date for the representations. As confirmed above, the Council did not reject any representations it received.
- 9.7 On 13 January 2021 the Council received a complaint from an interested party regarding notification/notice requirements. The Council raised this complaint with the Applicant. The Applicant's resident manager responded stating there are a total of 12 notices placed in key locations around the locality and photographs of these notices were provided to the Council. The Council reviewed this evidence and on 14 January advised that sufficient notice had been given for the purpose of the notice and advertising requirements.

Statutory time-frame for holding a hearing

- 9.8 The last date for representations was 15 January 2021. Pursuant to The Licensing Act 2003 (Hearings) Regulations 2005 a hearing for the purposes of section 18(3)(a) Licensing Act 2003 should have commenced 20 working days thereafter i.e. by 12 February 2021. This became impossible with significant constraints on the Council's resources due to the Covid-19 Pandemic
- 9.9 The Council's officers took advice on all options. The Council could not extend time on its own motion i.e. on public interest grounds. That the Applicant's club was closed in February was beside the point and the Council recognises there is a heavy public interest in ensuring that licence applications are determined sooner rather than later given the affect the pandemic has had on the hospitality sector. The Applicant was consulted and by email dated 14 January 2021 the Applicant's representative confirmed the Applicant agreed to a delay (Appendix 3).
- 9.10 While it is regrettable that the hearing did not take place within the statutory time-frame the Council properly consulted the Applicant. Interested Parties were kept apprised of changes to the proposed standard days and times of opening together with the Applicant's proposed changes to the standard opening times and the inclusion of conditions. The Council apologised to those persons for the delay. This delay has not prejudiced their ability to participate in the hearing now before the Sub-Committee.
- 9.11 **Monitoring Officer's Comments:** None arising from the contents of this report.

10 Policies, Plans & Partnerships

10.1 None relevant for the purposes of this report.

11 Background papers

11.1 The documents referred to in compiling this report are as follows:

Previous reports

- None

Other papers:

- Planning Consent 17/00542/FUL, dated 7 December 2017 as amended
- Code of Conduct and Practice in Licensing Procedures and Hearings
- Statement of Licensing Policy, dated 11 December 2018
- Guidance Issued under Section 182 of the Licensing Act 2003
<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>
- Licensing Act 2003
- The Licensing Act 2003 (Hearings) Regulations 2005

- END -