

DETERMINATION OF VARIATION TO PREMISES LICENCE OF EPSOM GRILL 3 WATERLOO ROAD EPSOM KT19 8AY

Head of Service: Rod Brown, Head of Housing & Community
Wards affected: Town Ward;

Appendices (attached): Appendix 1 Current premises licence
Appendix 2 Plan of current licensed area
Appendix 3 Application
Appendix 4 Plan of area to be licensed
Appendix 5 Representations by Surrey Police
Appendix 6 Representations by local residents
Appendix 7 Location Map

Summary

The Licensing (Hearing) Sub-Committee (“the Sub-Committee”) is being asked to determine an application to vary a premises licence made under the Licensing Act 2003.

Recommendation (s)

Have regard to the relevant representations made during the consultation period, and to take such steps (if any) as it considers appropriate for the promotion of the licensing objectives. The steps are:

- (1) To impose additional conditions on the licence which are appropriate for the promotion of the licensing objectives, proportionate and which deal with the concerns of those making representations; or**
- (2) To reject the application.**

1 Reasons for Recommendation

- 1.1 In carrying out its licensing functions, the Licensing Authority must have regard to its statement of licensing policy and any statutory guidance issued under s 182 of the Licensing Act 2003.
- 1.2 The Council may dispense with holding a hearing if the applicant and all persons who made valid representations agree that such a hearing is unnecessary and give notice to the authority to that effect.

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2 Background

- 2.1 The provision of late night refreshment is a licensable activity under the Licensing Act 2003. Authorisation from the Council, in its role as licensing authority, is required to carry on the activity at a 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.

3 Details of application

- 3.1 Epsom Grill, 3 Waterloo Road, Epsom KT19 8AY was first issued a premises licence in 2007 authorising the provision of late night refreshment. In July 2022 the licensed was transferred to the current licence holder Bilal Gilgil. A copy of the current premises licence is attached at Appendix 1, and a copy of the plan showing the current licensed area is attached at Appendix 2.
- 3.2 On 12 October 2022 Bilal Gilgil applied to vary the Epsom Grill premises licence. A copy of this application is attached to Appendix 3. The application is to:-
 - a) extend the terminal hour for late night refreshment hours from 02:00 to 04:00, and the hours the premises are open to the public from 02:30 to 04:30.
 - b) amend the floor plan (the revised plan is attached at Appendix 4).
 - c) Removal superfluous conditions relating to the sale of alcohol, as the authorisation for this licensable activity had been previously removed from the licence at the request of the licence holder.

4 Representations

- 4.1 A valid representation was received from Surrey Police on 8 November 2022. A copy of this representation is attached to Appendix 5.
- 4.2 Three relevant representations were received from local residents. A copy of these are attached to Appendix 6.
- 4.3 A map showing the location of the premises in relation to neighbouring business and residential properties is attached to Appendix 7.

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5 General Principles to be followed

- 5.1 When determining applications, the Sub-Committee is required to carry out its functions with a view to 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
- 5.2 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 182 Licensing Act 2003.

6 Policy Considerations

- 6.1 The Council has a Statement of Licensing Policy that was last reviewed in December 2018.
- 6.2 This policy refers to parts of Epsom Town Centre as having areas describes as either 'Licensing Red Zone' (including Waterloo Road) or 'Amber Zone'. The policy states that there is already a concentration of licensed premises within these zones, and as a result of the possible detrimental impact, all applications within these zones would be determined in accordance with a process set out in the policy. Epsom Grill is located within this 'Red Zone'.
- 6.3 The Red and Amber Zoning was introduced into the Epsom & Ewell statement of policy in 2011. However, The Policing and Crime Act 2017 ('2017 Act'), with effect from 6 April 2018, created a legal framework for applying 'cumulative impact policies' ('CIPs'). Cumulative impact is the potential impact on the promotion of the licensing objectives of several licensed premises concentrated in one area. Whilst the red and amber zoning policy included in the Epsom & Ewell Statement of Policy predates the 2017 Act, it is submitted that they are a type of CIP, and accordingly should be subject to the provisions of the 2017 Act, and the revised Section 182 guidance issued by the Secretary of State.
- 6.4 The Licensing Act 2003 as amended sets out the steps that must be taken by a licensing authority before it can publish a cumulative impact assessment. The licensing authority may then explain within their policy statement how the authority has had regard to cumulative impact assessment, including describing the types of applications for which it would likely be inconsistent with the licensing authority's duty to promote the licensing objectives to grant. Cumulative impact assessments must then be reviewed by the licensing authority every 3 years.

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- 6.5 As the red and amber zoning policy has not been reviewed within the last three years, it should be considered unreliable and open to legal challenge, and reference to it within the Statement of Policy should be disregarded when determining the current application.
- 6.6 Officers are in the process of instigating a new cumulative impact assessment with the intention of updating the Statement of Policy as soon as practically possible.
- 6.7 The absence of a CIP means there can be no policy presumptions against the grant of the licence, or restricting the licence to predetermined hours. The application must be considered on its individual merits in light of the representation. However, it remains open for Members to take into account issues relating to crime and disorder away from the proposed premises and beyond the direct control of the licensee (as ruled in *Luminar Leisure Ltd vs Wakefield Magistrates' Court & ORS*), where they are relevant to the application.
- 6.8 In the High Court case of *Luminar Leisure Ltd v Wakefield Magistrates' Court* [2008] EWHC 1002 (Admin) it was determined that it was open to a court (and thus a Sub-Committee) to take into account evidence of crime and disorder in areas beyond the operator's control and that it could be reasonable to conclude that a premises would give rise to such problems and thereby undermine the licensing objectives and that it could be a proportionate response to refuse the licence rather than impose conditions on it.
- 6.9 The Council'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.

7 Legal Implications

- 7.1 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.
- 7.2 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. The nine protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

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- 7.3 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 the local newspaper. Pursuant to the Council's constitution the Council's licensing department has determined that there is a valid application that complies with the requirements of the Licensing Act 2003.

8 Background papers

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

Previous reports:

- None

Other papers:

- [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](#)
- [The Licensing Act 2003](#)
- [The Licensing Act 2003 \(Hearings\) Regulations 2005](#)