

DETERMINATION OF APPLICATION TO VARY PREMISES LICENCE

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Wards affected:	Court Ward;
Appendices (attached):	Appendix 1 Current premises licence Appendix 2 Location plan Appendix 3 Application to vary licence Appendix 4 Interested party representation Appendix 5 Licensing Authority representation Appendix 6 Police representation

Summary

The Licensing (Hearing) Sub-Committee (“the Sub-Committee”) is being asked to determine a variation application made under the Licensing Act 2003

Recommendation (s)

The Sub-Committee is asked to:

(1) 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:

(a)to modify the conditions of the licence;

(b)to reject the whole or part of the application;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

1 Background

1.1 The supply of alcohol is a licensable activity under the Licensing Act 2003. Authorisation from the Council, in its role as the licensing authority, is required, in order to carry on the activity at a premises within the borough.

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- 1.2 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.
- 1.3 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.

2 Introduction

- 2.1 Real Butchers, 9 Pounds Lane, Epsom, Surrey KT19 8RY has been authorised to sell alcohol for consumption off the premises only, 9AM to 8pm every day, since July 2019. A copy of the current premises licence is attached as appendix 1.
- 2.2 The premises is located within a parade of shops. A location plan is attached at Appendix 2
- 2.3 On 4 July 2024 an application to vary the licence to also allow the consumption of alcohol on the premises, and also to update the plan of the premises. A copy of the application form and update plan are attached as Appendix 3

3 Representations from Interested Parties

- 3.1 One representation relevant to the licensing objectives was received from the owner of a local business. A copy of this representation is attached at Appendix 4

4 Representations from Responsible Authorities

- 4.1 A representation has been received from the Licensing Authority. A copy of this representation is attached as Appendix 5.
- 4.2 A representation from Surrey Police has been received. A copy of this representation is attached as Appendix 6.

5 Policy and S182 Guidance Considerations

- 5.1 Pound Lane falls within the (Alcohol) Public Spaces Protection Order ('PSPO'), which, as the result of concerns that the consumption of alcohol in public places covered by the order was having a detrimental effect on the quality of life of those in the locality, prohibits the public consumption of alcohol within the restricted area. The PSPO does not apply to drinking alcohol within licensed premises, and the area to which the Real Butchers licence application relates (the building and forecourt) is private land and not subject the provisions of the PSPO.

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- 5.2 The section 182 guidance at para 9.17 sets out the necessary separation of responsibilities when licensing authorities act as responsible authorities, e.g., the officer advising the licensing committee must be a different person from the officer who is acting for the responsible authority. Officers can confirm this guidance has been followed in full.

6 Legal Implications

- 6.1 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.
- 6.2 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.
- 6.3 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.
- 6.4 Where the Licensing Authority rejects (in whole or in part) an application, the applicant may appeal against the decision to the Magistrates' Court. Should the Sub-Committee grant (in whole or in part) an application, the applicant may appeal against any decision to modify the conditions of the licence. Where a person who made relevant representations in relation to the application contends that:
- a) any variation made ought not to have been made, or,
 - b) on varying the licence, the Licensing Authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way, they may appeal against the decision
- 6.5 **Legal Officer's comments:** When considering licence applications, the Sub-Committee shall carry out its functions with a view to promoting the licensing objectives. The licensing objectives are: Prevention of crime and disorder; Public Safety; Prevention of public nuisance; Protection of children from harm.

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The Sub-Committee must ensure that all licensing decisions have: taken into account all relevant representations; a direct relationship to the promotion of one or more of the four licensing objectives; regard to the Council's statement of licensing policy; regard to the Secretary of State guidance; there must not be a blanket policy to the extent that it is applied so rigidly that an exercise of discretion in each individual case is precluded. Applications must be considered with regard to the principles of fair process and the Human Rights Act 1998.

When considering an application for the variation of an existing licence, only the variation is subject to determination. No changes can be made to a licence or conditions attached unless they are subject to the variation application.

The applicant has the right of appeal against the decision made by the Sub-Committee to the Magistrates' Court within a period of 21 days beginning with the day that the applicant is notified, in writing, of the decision.

7 Background papers

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

Previous reports:

- None

Other papers:

- [\(Alcohol\) Public Spaces Protection Order No.1 of 2021](#)
- [Section 182 Guidance issued by the Secretary of State](#)