

## DETERMINATION OF APPLICATION FOR PREMISES LICENCE

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<b>Wards affected:</b>	Town Ward;
<b>Appendices (attached):</b>	Appendix 1 Application Appendix 2 Mandatory Conditions Appendix 3 Plan of premises Appendix 4 Representations Appendix 5 Location plan

### Summary

Members are requested to determine an application for a premises licence where the authority has received relevant representations.

### Recommendation (s)

#### The Sub-Committee is asked to:

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:

- To grant the licence as applied for; or
- 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
- To exclude any of the licensable activities from the scope of the licence; or
- To refuse to specify a person as the premises supervisor; or
- To reject the application.

## 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 Terms of Reference 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 Application

- 2.1 On 27 May 2025 Booze In Town Ltd ("The Applicant") applied for a premises licence for 31 High Street, Epsom KT19 8DD to supply alcohol for consumption off the premises from 08:00 to 22:00 Sunday to Thursday, and 0800 to 01:00 Friday to Saturday. A copy of the application is attached at Appendix 1.
- 2.2 If granted and unless modified by the Sub-Committee, the licence would be subject to conditions consistent with Operating Schedule, as set out in section M of the application.
- 2.3 A copy of the mandatory conditions the licence would be subject to if granted are attached at Appendix 2
- 2.4 A copy of the plan of the premises provided is attached at Appendix 3.
- 2.5 All applications for new Premises Licences must be advertised by the display of a notice at the premises and by a public notice in the local newspaper. The licensing department has determined that this application complies with the public notice requirements of the Licensing Act 2003.

## 3 Representations

- 3.1 The Council received seven relevant representations. Copies of these representation are attached at Appendix 4.
- 3.2 A relevant representation to the licensing authority must not be frivolous or vexatious. Two of the representations are from proprietors of established off-licences operating in the area. It is for the Sub-Committee to determine whether a representation is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. The Sub-Committee can consider the main effect of the representation, and whether any inconvenience or expense caused by it, could reasonably be considered to be proportionate.

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- 3.3 No representations from any responsible authority were received.
- 3.4 A location plan showing the local area is attached at Appendix 5.

### 4 General principles to be followed

- 4.1 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
- 4.2 In considering the licensing objectives the Council must have regard to its statement of licensing policy, and to the statutory guidance issued under section 182 Licensing Act 2003.
- 4.3 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.

### 5 Policy Considerations

- 5.1 **Cumulative Impact:** The Council's 2018 Statement of Policy states that certain premises falling within designated red and amber zones in Epsom will not be granted licences after certain hours unless the applicant can clearly demonstrate that the premises will not add to the cumulative impact for the area in addition to satisfying specified requirements.
- 5.2 This specific policy was first instigated in 2011. However, in April 2018 the Policing and Crime Act 2017 came into force, putting Cumulative Impact Policies ('CIP') on a statutory footing, and the zoning policy within our current Statement of Policy appears to fall within the definition of a CIP within the 2017 Act (by creating a presumption to refuse certain premises based on the perceived cumulative impact of these premises in the town centre). The 2017 Act requires a CIP to be evidenced base through a Cumulative Impact Assessment (CIA), and subject to 3 yearly review. Any CIA must be summarised in Statement of Licensing Policy.

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- 5.3 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 Council's Statement of Policy should be disregarded when determining the current application. Officers are in the process of updating the Council's Statement of Policy to address this issue.
- 5.4 The absence of 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.
- 5.5 In the *Luminar Leisure Ltd* case it was ruled 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. It may be proportionate to refuse a premises licence where evidence suggests that the application may have a negative effect on crime and disorder in areas beyond the licensee's control. However, any conclusions reached in relation to events away from the licensed premises should be evidence based and rational.
- 5.6 Considering the cumulative impact of premises on the licensing objectives is different from considering the 'Need' for a premises. 'Need' concerns the commercial demand for another premises, and is a matter for the planning authority and for the market. 'Need' is not a matter for a licensing authority in discharging its licensing functions, and any reference to the 'need' or otherwise for this licence must be disregarded.
- 5.7 **PSPO:** Epsom & Ewell Borough Council has adopted a Public Spaces Protection Order ('PSPO') in order to address current ongoing issues of anti-social behaviour affecting the local community. As a result of the PSPO the public consumption of alcohol is prohibited following a verbal warning by an authorised person (e.g. police constable) to stop.

## 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.

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- 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 Applicants may appeal to the magistrates' court if the licensing authority has rejected their application for a premises licence. If a licence is granted, the licence holder may appeal against the imposition of conditions on that licence, the exclusion of a licensable activity or refusal to specify an individual as supervisor. Those who made relevant representations during the course of an application may appeal against the decision to grant a licence.
- 6.5 Appeal to the magistrates' court who will hear the matter afresh and will only overturn a licensing authority's decision if it thinks it is wrong. This reinforces the importance of well drafted reasons for the decision as the magistrates court is more likely to uphold a well drafted set of reasons.
- 6.6 **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.

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.

Parties to the hearing have 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.

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### 7 Background papers

7.1 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](#)
- [Revised guidance issued under section 182 of Licensing Act 2003 - GOV.UK](#)
- [Public Space Protection Order 2025 No.1](#)