

Licensing (Hearing) Sub-Committee

07 January 2025

VARIATION OF LATE NIGHT REFRESHMENT LICENCE

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Wards affected:	Town Ward;
Appendices (attached):	Appendix 1 Current premises licence Appendix 2 Plan of premises Appendix 3 Location plan Appendix 4 Application to vary licence Appendix 5 Police representation Appendix 6 Further information from police

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):

Members of the Licensing Sub-Committee are asked to make a decision at the end of the hearing after all relevant parties have been given the opportunity to speak. Members must give full reasons for their decision.

Members of the Licensing Sub-Committee are 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:

- (1) To grant the variation of licence,**
- (2) 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**
- (3) To reject the application.**

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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.

2 Background

- 2.1 Late night refreshment for the purposes of the Licensing Act 2003 is the provision of hot food or hot drink to members of the public between the hours of 11.00 p.m. and 5.00 a.m.
- 2.2 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.
- 2.3 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.
- 2.4 Epsom Grill, 3 Waterloo Road, Epsom KT19 8AY was first issued a premises licence in 2007. The current licence authorises late night refreshment Monday to Sunday from 23.00 Hours until 02.00 Hours, with the premises closing to the public at 02.30 hours. A copy of the current premises licence, is attached at Appendix 1. A copy of the plan showing the current licensed area is attached at Appendix 2.
- 2.5 A map showing the location of the premises in relation to neighbouring business and residential properties is attached to Appendix 3.
- 2.6 On 30 October 2025 an application was received to vary the Epsom Grill premises licence. A copy of this application is attached to Appendix 4. The application is to extend the provision of late night refreshment to 04.00 Hours on Friday and Saturday nights, with the premises closing to the public at the same time. The application reduces the time the premises will be open to the public Sunday to Thursday from 02.30 hours to 02.00 hours.
- 2.7 The application refers to the operator's having previously served 'several Temporary Event Notices (TENs) over the past few years without any issues or complaints'. Our records show the following TENs served on the licensing authority by the current licence holder authorising Late Night Refreshment;
 - 23.00 31 May 2024 – 04.00 2 June 2024

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- 23.00 24 December 2024 – 04.00 26.12.2024
- 23.00 30 December 2024 – 04.00 1 January 2025
- 23.00 20 April 25 – 03.00 21 April 2025
- 23.00 4 May – 03.00 5 May 2025
- 23.00 6 June – 04.00 8 June 2025

Epsom & Ewell Licensing has record of receiving complaints with respect to the above events. It should be noted that we also have no record of whether the authorised activity took place as no licensing inspection took place during the period authorised under the TENs.

2.8 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 Representation has been received from Surrey Police, and a copy of their representation is attached as Appendix 5. No other representation has been received.

3.2 On 11 December 2026 Surrey Police provided an addendum to their representation, a copy of this e-mail is attached as Appendix 6.

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 objections the Council must have regard to its statement of licensing policy, and to the statutory guidance (Revised Guidance November 2025) issued under section 182 Licensing Act 2003.

5 Policy Considerations

Zoning Policy

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- 5.1 The Council has a Statement of Licensing Policy that was last reviewed in December 2018.
- 5.2 This policy refers to parts of Epsom Town Centre as having areas described 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'.
- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 The Council is currently consulting on an updated Statement of Policy which should be adopted in the new year.
- 5.7 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.

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5.8 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.

Planning Policy

5.9 The Statutory Guidance issued by the Secretary of State states that;

'...Planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa...'

5.10 Where planning hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law.

5.11 The current licence notes that planning permission restrictions at the premises and contains a condition that the operation of the premises shall comply with all existing planning permission restrictions. The guidance issued under section 182 of the Act and the Council's own Statement of Policy state that conditions on a licence should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation. Accordingly, it is proposed that when the premises licence is reissued reference to planning requirement be removed. If minded to grant the application in any form the Sub-Committee may wish to remind the applicant the granting of the variation is without prejudice to any requirement to obtain planning permission.

General

5.12 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.

6 Legal Implications

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- 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 **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 account of relevant representations, a direct relationship to one or more of the four licensing objectives; regard to the Council's statement of licensing policy, regard to the Secretary of State's guidance. Applications must be considered with regard to the principles of fair process and the Human Rights Act 1998.

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

The licence holder has the right of appeal against the decision made to the Magistrates' Court within a period of 21 days from the day that the licence holder is notified in writing of the decision.

7 **Background papers**

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

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Previous reports: None

Other papers:

- [Statement of Licensing Policy, dated 11 December 2018](#)
- [Guidance Issued under Section 182 of the Licensing Act 2003](#)