

FAREHAM

BOROUGH COUNCIL

Report to Licensing Panel

Date: **29 November 2016**

Report of: **Licensing Officer**

Subject: **LICENSING ACT 2003 – VARIATION OF PREMISES LICENCE:
FAREHAM CHARCOAL GRILL, 140 WEST STREET, FAREHAM
PO16 0EL**

SUMMARY

This report advises members of the Panel of the relevant representation received from the Police regarding a Premises Licence Variation in respect of Fareham Charcoal Grill, 140 West Street, Fareham, PO16 0EL.

RECOMMENDATION

That the Panel determines the application having regard to the provisions of the Licensing Act 2003 and associated regulations, the Council's Licensing Policy and the representation received.

BACKGROUND

1. The Licensing Act 2003 specifically restricts the grounds on which the Council, as Licensing Authority (LA), may refuse an application for a New Premises Licence, or impose conditions. Where relevant representations are made, the LA may refuse on the grounds that the licensing objectives are not met or the operating schedule is inadequate. Equally, conditions may be imposed where appropriate. The LA may also refuse an application in part and thereby only permit some of the licensable activities sought.
2. The decision making committee, in considering an application, must have regard to the adopted Statement of Licensing Policy and any relevant representations made.
3. An applicant applying for a new premises licence, whose application has been refused, or who is aggrieved by conditions imposed, may appeal against the decision to the Magistrates' Court.
4. In considering this application the Panel will sit in a quasi-judicial capacity and is thus obliged to consider applications in accordance with both the Licensing Act 2003 (Hearings) Regulations 2005, and amending secondary legislation and the rules of natural justice. The practical effect of this is that the Panel must make its decision based on evidence submitted in accordance with the legislation and give adequate reasons for reaching its decision. The Panel must also have regard to:-

Crime and Disorder Act 1998

Section 17 of the Crime and Disorder Act 1998 places a Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Human Rights Act 1998

The Act requires UK legislation in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon other persons' Human Rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.

PROCEDURE FOR THE HEARING OF THE APPLICATION

5. The standard procedure for the hearing of this licensing application can be seen as Appendix A.

THE APPLICATION

6. This application is in respect of:-

Fareham Charcoal Grill, 140 West Street, Fareham, PO16 0EL.

The type of application is: Premises Licence Variation.

The Premises Licence Holder is Mr Jihad Haji who has held this position since March 2016.

The licence is held for Late Night Refreshment, Sunday to Wednesday 23:00 to 00:00 and Thursday to Saturday 23:00 to 02:00.

7. The variation seeks to remove Condition 3 which states:

“When the premises are open for business past midnight, 2x registered security staff shall be on duty from midnight until close. They should be easily identifiable by wearing high visibility tops.”

RELEVANT REPRESENTATIONS

8. Responsible Authorities

9. In respect of this new premises application the following summarises from whom representations have been received:-

Responsible Authorities

Child Protection Services	No representation
Hampshire Fire and Rescue	No representation
FBC Health and Safety	No representation
FBC Pollution	No representation
FBC Planning	No representation
Police	Representation received
Trading Standards	No representation
Hampshire Public Health	No representation

No representations were received from “other persons”.

The Police wish to object to the removal of the Condition on the grounds of The Prevention of Crime and Disorder.

CONCLUSION

10. The Panel members are asked to review the information in this report and any additional evidence presented to them at the Hearing when determining the application.

Background papers: None.

Enquiries:

For further information on this report please contact Gemma Knipe (Ext 4428).

Licensing, Fareham Borough Council, Civic Offices, Civic Way, Fareham, PO16 7AZ
www.fareham.gov.uk

Hearings procedure as detailed at
Variation Premises Application
Premises Location Plan
Representation from the Police

APPENDIX A
APPENDIX B
APPENDIX C
APPENDIX D

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PROCEDURE FOR HEARINGS BY THE LICENSING PANEL

GENERAL

- 1 This procedure will be followed for hearings held by the Licensing Panel to determine :-
 - Applications for grant, variation or review of a premises licence under the provisions of the Licensing Act 2003 where representations have been made by any of the responsible authorities or interested parties (as defined by the Licensing Act 2003);
 - Applications for grant or renewal of a personal licence under the provisions of the Licensing Act 2003 where representations have been made by any of the responsible authorities or interested parties (as defined by the Licensing Act 2003);
 - Applications for grant or renewal of a public entertainments licence which is not otherwise determined by officers;
 - Such other licensing matter as may be referred by the Licensing Officer or the Licensing and Regulatory Affairs Committee from time to time.
- 2 Hearings shall be held in public unless the Panel considers that the greater public interest is served by excluding the public from the meeting in accordance with Schedule 12A of the Local Government Act 1972. Circumstances when it may be appropriate to do so include where there is a likelihood of disclosing exempt information relating to the applicant.
- 3 Parties to the hearing will be the applicant and any responsible authority or other interested party making representations. The parties to the hearing may be accompanied by a representative, who may present the case on their behalf.
- 4 The Licensing Officer will not be a party to the hearing but will facilitate proceedings by conducting such pre-decision discussions as may be required and by presenting at the hearing a summary report of the application and any representations, together with the Officer's comments as to how these relate to the relevant legislation and the appropriate licensing policy.
- 5 Where any party intends to produce documents in support of his/her case they shall have been asked to do so in advance of the date of hearing. In the event that a document is submitted for consideration for the first time at the hearing, the Chairman may adjourn the hearing to a later time or date. It is expected that such adjournments will only be used in exceptional circumstances. The Chairman may in any event adjourn the hearing at any time before the Panel reaches its decision for any other reason he/she considers appropriate.
- 6 Each party when asked will present details of any witnesses to be called.

AT A HEARING in accordance with THE LICENSING ACT 2003

- 1 **The Chairman of the Licensing Panel** will outline the procedure to be observed and may invite interested parties¹ to appoint a spokesperson².
- 2 **The Chairman** will ask the applicant whether any modification is to be made to the application or operating schedule submitted.
- 3 **The Licensing Officer** will present a summary of the application and of any representations received and will comment upon their relevance to the Licensing Act 2003 and the Council's licensing policy.
- 4 **The Applicant** may comment on the application and on representations made addressing the four licensing objectives³.
- 5 **The Panel** may seek clarification of points.
- 6 **The responsible authorities** in turn shall make their representations relating to one or more of the licensing objectives³ and may be questioned by members of the Licensing Panel and/or applicant.
- 7 **Interested parties**¹ in turn shall make their representations relating to one or more of the licensing objectives³ and may be questioned by members of the Licensing Panel and/or applicant.
- 8 **The responsible authorities** in turn may make a closing statement.
- 9 **The interested parties** in turn may make a closing statement.
- 10 **The Applicant** may make a closing statement.
- 11 **The Licensing Panel** will then withdraw from the hearing to deliberate in private. In the event of uncertainty on any of the evidence, all parties will be recalled to the hearing whilst the point in question is clarified. In the event that the Licensing Panel has sought advice on points of law, the legal adviser shall explain to all parties what advice was given.
- 12 **All parties** shall be invited to return to the hearing when the Licensing Panel has completed its deliberations.
- 13 **The Chairman** shall announce the Panel's decision.

¹ : ie those living or running a business in the area who have submitted representations;

² : this is most likely where there are a number of persons making representations upon the same point. The fact that the Panel does not hear from all interested parties will not mean that their representations are not taken into account, but rather that the strength of feeling is understood and the case will not gain weight through repetition;

3. the four licensing objectives are:- (i) The prevention of crime and disorder; (ii) Public Safety; (iii) The prevention of public nuisance; (iv) The protection of children from harm.