

# Crawley Borough Council

	Report No: ES/198	
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## Report to the Licensing Sub Committee

Thursday 21<sup>st</sup> February 2008, 7pm

### Premise Licence Variation – Frogshole Farm

Angela Tanner – Head of Environmental Services

- | <b>1. Details of Application</b>  | <b>Reference Documents and Guidance</b>   |
|---|---|
| 1.1 On the 2 <sup>nd</sup> January 2008, an application was submitted in the name of the 'Frogshole Farm' to the Council for the variation of their existing premises licence in accordance with the provisions of the Licensing Act 2003, 'the Act'.   | <i>Appendix A<br/>Application Form</i>  |
| 1.2 The Frogshole Farm currently has a premises licence with conditions.  | <i>Appendix B<br/>Copy of current premises licence</i>                            |
| 1.3. The premises are licensed for the retail supply of alcohol, regulated entertainment and late night refreshment subject to the provisions of the Act and attached conditions.   | <i>Appendix B<br/>Copy of current premises licence</i>                            |
| 1.4. The proposed variation is to convert the existing kitchen into a new trade area, existing cellar into a new trade kitchen, remove two existing raised floors and adapt another.<br><br>In addition the applicant shall be shortening the bar servery, creating a new door opening to the existing lobby area and adding new fixed seating.<br><br>Permitted hours and licensing activities remain unchanged. | <i>Appendix A<br/>Copy of Application Form</i>                                    |
| 1.5 The applicant is intending to promote the four 'licensing objectives' by conditions currently attached to the existing premises licence.  | <i>Appendix A<br/>Copy of Application Form<br/>(no further details disclosed)</i> |
| 1.6. The application is for the variation of the existing premises licence as already stated, however the permitted hours and licensing activities remain unchanged.  | <i>Appendix B<br/>Copy of the current premises licence</i>                        |

## 2 Consultation

2.1 The application was advertised in accordance with legislation.

2.2 Representations made to the Council either for or against the application;

### Responsible Authorities

Environmental Health; (Noise Team) have verbally stated that there has been no substantiated noise complaints regarding these premises.

Planning	- no comment
Trading Standards	- no comment
Fire & Rescue	- no comment
Child Protection	- no comment
Police	- no comment

### Interested Parties

As defined in Licensing Policy -

### Against the proposal;

Mr A  
Mr B  
Mr C

*Appendix C  
Copy of letters of  
representation against the  
proposal*

### For the proposal;

Mr D

*Appendix D  
Copy of letter of  
representation in support of  
the application*

2.3 One letter of representation was received outside of the permitted period and failed to meet the required criteria as is defined in the legislation as a 'relevant representation'.

2.4 The representations against the variation are associated with the following licensing objectives;  
(i) The prevention of 'crime and disorder'  
(ii) The prevention of 'public nuisance'.

## 3 Background

3.1 In 2005, with the introduction of the Licensing Act 2003, a premises licence with conditions was granted as part of the above premises for the trading hours currently applicable.

3.2 Current conditions applicable to the licence are in the form of 'mandatory conditions', conditions consistent with the 'Operating Schedule' and conditions as a result of a Sub – Committee hearing.

*Appendix B  
Copy of the current premises  
Licence;  
Conditions;*

*Annex 1,2,3.*

- 3.3 The above mentioned conditions are to ensure the promotion of the licensing objectives.

#### **4 Staffing, Financial and Legal Implications**

- 4.1 There are no extra staffing or financial implications to the Council, save for those laid out in Part 10 of the Information Pack in respect of possible appeals *Information Pack: Part 10 (General)*

- 4.2 The Council is required to consider the impact any decision may have on an individual's Human Rights. *Information Pack: Part 10 (General)*

- 4.3 The Council is required to consider the impact any decision may have on crime and disorder in the area (Section 17, Crime and Disorder Act, 1998). *Information Pack: Part 10 (General)*

#### **5 Community Strategy and Corporate Plan;**

- 5.1 See part 10 (General); Information pack *Information Pack: Part 10*

#### **6 Considerations to be Addressed in Accordance with Licensing Guidance issued under section 182 of the Licensing Act 2003**

- 6.1 Members must give due consideration to the merits of each individual case. Attention is drawn to the following sections of the 'Members' Information Pack';

Council's Licensing Policy,  
LACORS Guidance,  
CBC Hearing Procedures,  
Premises Guidance,  
Licensing Act (premises),  
Regulations (premises),  
Conditions (premises)

*Part 1  
Part 2  
Part 2  
Part 3  
Part 3  
Part 3  
Part 8 & 9*

- 6.2 Examples of conditions which may assist in the promotion of this licensing objective can be found in the information pack. *Information Pack: Part 1, Policy Part 9, conditions*

#### **6.3 Please note:**

Applicants are expected to conduct a thorough risk assessment with regard to the licensing objectives when preparing their applications Any risk assessment to identify necessary measures should consider the individual circumstances of the premises (including local knowledge) and take into account a range of factors including:

- the nature and style of the venue;
- the activities being conducted there;

- the location; and
- the anticipated clientele

- 6.4 In preparing 'Operating Schedules', the Licensing Authority expects that applicants should have regard to statements of licensing policy published by this authority for the Crawley area *CBC Alcohol Licensing Policy*
- 6.5 It is also expected that applicants will seek the views of key responsible authorities before formally submitting applications and having completed drafts of their own operating schedules (after considering the effect on the four licensing objectives). For example, on matters relating to crime and disorder, the police and local authority safety officers and local community groups might be consulted. *CBC Alcohol Licensing Policy*
- 6.6 Where representations are received the Licensing Authority must hold a hearing to consider them (unless all parties agree that this is unnecessary) and, having regard to such representations, take such steps (if any) as it considers necessary for the promotion of the licensing objectives.
- 6.7 Members may take the following steps;
- Grant the application
  - Modify the conditions on the licence
  - Reject the whole or part of the application.
- 6.8 Council Policy states that conditions will be used if they can control issues that directly impact on the behaviour of those under the licensee's direction, when on his premises or in the immediate vicinity of the premises as they seek entry or leave. The Conditions laid down in Annex D of the Statutory Guidance will be used as a pool of conditions in respect of General Management Controls on Crime and Disorder / Public Nuisance. *CBC Alcohol Licensing Policy 2.14*
- 6.9 The Licensing Authority will look to the Police as the main source of advice on matters of crime and disorder and Environmental Services Officers with regards to Public Nuisance, this advice will be given considerable weight. *CBC Alcohol Licensing Policy 2.14*
- 6.10 Section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent
- 6.11 However, the guidance cannot anticipate every possible scenario or set of circumstances that may arise and as long as licensing authorities have properly understood the Guidance they may depart from it if they have reason to do so as long as they are able to provide full reasons.

- 6.12 Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.
- 6.13 Each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed, may be unlawful where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case. *Section 182 Statutory Guidance*  
1.15
- 6.14 In addition, when considering a premises licence that have identified problems with a particular premises, licensing authorities may consider imposing conditions as appropriate such as door supervisors, CCTV etc *Section 182 Statutory Guidance*  
1.27
- 6.15 All local authorities must fulfil their obligations under section 17 of the Crime and Disorder Act 1998 when carrying out their functions as licensing authorities under the 2003 Act. *Section 182 Statutory Guidance*  
1.28
- 6.16 Section 17 is aimed at giving the vital work of crime and disorder reduction a focus across the wide range of local services and putting it at the heart of local decision-making. It places a duty on certain key authorities, including local authorities and police and fire and rescue authorities to do all they reasonably can to prevent crime and disorder in their area *Section 182 Statutory Guidance*  
1.29
- 6.17 The essential purpose of the licence or certificate in this context is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives *Statutory Guidance*  
S182  
2.4
- 6.18 Conditions are best targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television cameras both inside and immediately outside the premises can actively deter disorder, nuisance and anti-social behaviour and crime generally. *Section 182 Statutory Guidance*  
2.6
- 6.19 Similarly, the provision of requirements for door supervision may be necessary to ensure that people who are drunk or drug dealers or carrying firearms do not enter the premises, reducing the potential for crime and disorder, and that the police are kept informed. *Section 182 Statutory Guidance*  
2.7
- 6.20 In preparing an operating schedule, the Secretary of State expects applicants to have had regard to the statement of licensing policy for their area. They should also be aware of the expectations of the licensing authority and the responsible authorities about the steps that are necessary for the promotion of the licensing objectives. *Section 182 Statutory Guidance*  
8.28

- 6.21 The steps to be taken should be both realistic and within the control of the applicant and management of the premises. If a licence is granted with conditions attached requiring the implementation of such steps, the conditions will be enforceable in law and it will be a criminal offence to fail to comply with them (under section 136 of the 2003 Act). As such, it would be wholly inappropriate to impose conditions outside the control of those responsible for the running of the premises
- Section 182 Statutory Guidance*  
8.31
- 6.22 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are necessary to promote the licensing objectives;
  - the representations (including supporting information) presented by all the parties;
  - this Guidance;
  - its own statement of licensing policy.
- Section 182 Statutory Guidance*  
9.25
- 6.23 The conditions that are necessary for the promotion of the licensing objectives should emerge initially from a prospective licensee's or certificate holder's risk assessment which applicants should carry out before submitting their application.
- Section 182 Statutory Guidance*  
10.7
- 6.24 Conditions which relate to the four licensing objectives could be used where necessary and appropriate to the particular circumstances of an individual licensed premises. It is important that they should not be applied universally and treated as standard conditions irrespective of circumstances
- Section 182 Statutory Guidance*  
10.5
- 6.25 The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. This rules out standardised conditions which ignore these individual aspects. It is important that conditions are proportionate and properly recognise significant differences between venues
- Section 182 Statutory Guidance*  
10.13
- 6.26 Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose.
- Section 182 Statutory Guidance*  
10.14

## **7 Recommendations**

- 7.1 Grant the application, or,
- Appendix A*  
*Section 35(2)*
- 7.2 Grant the application subject to conditions (and any relevant mandatory conditions) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, or,
- Appendix A*  
*Application Form*
- Information Pack*  
*Part 1, Policy*  
*Part 9, (conditions)*

7.3 Reject the application in whole or in part, giving reasons for doing so.

*Section 35(4)(a)*  
*Section 35(4)(b)*

Background Papers

All associated paper work regarding this application.

The information pack

Statutory Guidance

Statement of Policy

Contact Officer: Mike Lyons

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**APPENDICES A-D  
ARE NOT  
AVAILABLE  
ELECTRONICALLY**