

Licensing Panel

Licensing Act 2003

Application for Variation of a Premises Licence

The Old Library Garden Café & Bar, Unit 6, 45 High Street, Uppermill, Oldham OL3 6HS (also known as the Hidden Garden).

Report of Executive Member for: Housing & Licensing

Officer contact: Nicola Lord

18th July 2023

Reason for Hearing:

The purpose of this report is to inform Members of an application for the variation of a premises licence in respect of The Old Library Café & Bar, Unit 6, 45 High Street, Uppermill, Oldham OL3 6HS (also known as the Hidden Garden) which, due to representations being received, has been referred to this Panel for determination.

Recommendations

Members are recommended to consider the application, taking into account the representations received.

Licensing Panel – 18th July 2023

Licensing Act 2003 – Application to Vary a Premises Licence

The Old Library Café & Bar, Unit 6, 45 High Street, Uppermill, Oldham OL3 6HS

1 Background

2 The purpose of this report is to inform Members of an application for the variation of a premises licence in respect of The Old Library Café & Bar, Unit 6, 45 High Street, Uppermill, Oldham OL3 6HS (also known as the Hidden Garden) which, due to representations being received, has been referred to this Panel for determination.

3 Recommendations

3.1 Members are recommended to consider the application, taking into account the representation received.

4 The Application

4.1 On the 12th May 2023 Rachel Bithell applied for the variation of a premises licence in respect of the premises named above. The last day for representations in respect of the application was the 9th June 2023.

4.2 Details of the proposed variation are as follows:-

Extend the hours for their premises licence to provide existing licensable activities and add additional licensable activity as outlined in the table below.

Activity	Current Hours	Proposed Hours
Recorded music: Outdoors	Monday to Sunday 10:00 to 18:30	Monday to Sunday 09:00 to 21:00
Live music: Outdoors	Not currently licenced	Friday to Monday 12:00 to 20:00
Supply of alcohol On and Off Premises	Monday to Sunday 10:00 to 18:30	Monday to Sunday 10:00 to 21:00
Opening Hours	Monday to Sunday 10:00 to 19:00	Monday to Sunday 09:00 to 21:00

4.3 A copy of the application is attached at **Appendix 15.1**.

4.4 A location map is attached at **Appendix 15.2**.

5 Representations

- 5.1 Following submission and advertisement of the application a representation was received. This can be found at **Appendix 15.3** to this report.

6 Licensing Policy

- 6.1 Members considering the application should take note of the Authority's Licensing Policy Statement when determining an application. Attention should be drawn to Section 8 of the Council's Statement of Licensing Policy relating to Public Nuisance.

- 6.2 In relation to Public Nuisance paragraph 8.2 provides:-

When addressing public nuisance the applicant should initially identify any particular issues (having regard to their particular type of premises and/or activities), which are likely to adversely affect the promotion of the public nuisance objective. Such steps as are required to deal with these identified issues should be included within the applicants operating schedule.

- 6.3 A full copy of the Councils Licensing Policy statement will be available at the hearing.

7 Secretary of State Guidance

- 7.1 Members also need to consider statutory guidance issued, by the Secretary of State, under Section 182 of the Licensing Act 2003 (April 2018).

- 7.2 In relation to 'Public Nuisance', the following paragraphs provide:-

2.15 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensable objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11pm and 8am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.

2.20 Measures to control light pollution will also require careful thought. Bright light outside premises which is considered appropriate to prevent crime and disorder may

itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.

2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises and to respect the rights of people living nearby to a peaceful night.

A full copy of the guidance will be available at the hearing.

8 Options/Alternatives

8.1 When determining the application Members, having had regard to the representations, may take such steps as they consider appropriate for the promotion of the licensing objectives. The steps are -

- a) Grant the application as applied for
- b) Grant the application but modify the operating schedule in relation to hours, days, conditions or activities;
- c) To reject the application;

8.2 Any steps appropriate to promote the licensing objectives should be specified. If no steps are appropriate the application should be granted.

8.3 Findings on any issues of fact should be on the balance of probability.

8.4 In arriving at a decision Members must have regard to the relevant provisions of national guidance and the licensing policy statement and reasons must be given for any departure.

8.5 The decision should be based on the individual merits of the application.

9 Consultation

9.1 Consultation in accordance with the Act has taken place with all Responsible Bodies and notice has been given to allow for any representations from other persons.

10 Legal Services Comments

10.1 In determining the application Members should have regard to the Authority's licensing policy statement and the Secretary of State's Guidance. The applicant or any other person who made relevant representations in relation to the application have a right of appeal to the Magistrates' court. (A Evans)

11 Environmental and Health & Safety Implications

11.1 Contained within the body of the report.

12 Equality, community cohesion and crime implications

12.1 The Council's 'Statement of Licensing Policy' takes into account these matters. All decision made by the Licensing Panel, must have regard to this policy and National Guidance.

13 Equality Impact Assessment Completed?

13.1 No

14 Background Papers

14.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act :

File Ref: Records held in Directorate
Officer Name: Nicola Lord

15 Appendices

Appendix 15.1 - Premises Licence Application

Appendix 15.2 - Location Map

Appendix 15.3 – Representation