

# **Report of the Assistant Director Waste, Fleet & Transport Services to the meeting of Bradford District Licensing Panel to be held on 25 April 2017.**

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## **Subject:**

**Application for a Review of a Premises Licence for Potting Shed, 94 Main Street, Bingley, BD16 2JH**

## **Summary statement:**

**Application for review of a Premises Licence authorising the sale of alcohol, the provision of regulated entertainment and the provision of late night refreshment.**

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## **Portfolio:**

**Neighbourhoods & Community Safety**

## **Overview & Scrutiny Area:**

**Corporate**

## **1. SUMMARY**

The application is for the review of a Premises Licence authorising the sale of alcohol, the provision of regulated entertainment and the provision of late night refreshment.

## **2. BACKGROUND**

### **2.1 The Premises**

Potting Shed, 94 Main Street, Bingley, BD16 2JH.

Members of the Licensing Panel previously considered a review application on 23 November 2015. Members attached conditions to the Licence which had been suggested by the premises licence holders legal representative.

### **2.2 Premises Licence holder**

Potting Shed Trading Limited.

### **2.3 Designated Premises Supervisor**

Mr Jordan Alexander Buchan.

A copy of the Licence is attached at Appendix 1.

### **2.4 Application Received asking for a Review of the Licence**

#### **Environmental Health**

Since the premises opened as the Potting Shed in March 2015, the Environmental Health Department has received regular noise nuisance complaints from local residents. The main source of the noise nuisance is amplified music and customers talking, shouting, laughing, cheering and using foul and abusive language in the rear beer garden area. Noise monitoring was undertaken on several occasions in 2015 and the designated premises supervisor at the time was made aware of the complaints as were the Manager and Managing Director of the premises.

An application for review was submitted by the Licensing Enforcement Officer and considered by Members of the Licensing Panel in November 2015. A number of conditions were attached to the Licence.

Unfortunately, the complaints have continued and a local resident contacted the department on 9 June 2016, to report loud noise from customers in the beer garden until the early hours of the morning, as well as noise from a television which had



been erected there. A petition signed by 20 local residents who live in the vicinity of the premises was also received.

Noise monitoring was undertaken during the summer of 2016 from within the homes of local residents and a statutory nuisance was witnessed. An Abatement Notice was served on the Designated Premises Supervisor (DPS) who was subsequently removed and replaced with the current DPS, Mr Buchan.

Noise nuisance complaints were still being received by the Department in December 2016 and letters were sent to the DPS and the Premises Licence Holder on 21 December 2016.

In order to address the prevention of public nuisance objective and ensure that local residents are not being disturbed by unacceptable levels of noise in their own homes, the officer has requested Members to consider the imposition of the following conditions;

1. The beer garden including the grass/astroturf and gravel/pergola areas to be cleared of customers by 21.00 hours.
2. The ground and first floor terrace to be cleared of customers by 22.00 hours.

The application for review is attached at Appendix 2.

## **2.5 Representations**

### **Responsible Authorities**

#### **West Yorkshire Police –**

A representation has been received from the West Yorkshire Police Licensing Officer, who has continued to receive complaints about excessive noise emanating from customers in the rear beer garden and also the large outdoor screen which had been placed in the rear beer garden. Complaints have also been received about excessive noise when the windows and doors are left open.

The police are aware that a number of noise complaints have been made to both the Bradford Council's Licensing Team and the Environmental Health Department and are of the opinion that the cause of the complaints and the excessive noise is down to the use of the rear beer garden and terraces and as such the use should be restricted. The police are in full agreement with the suggested conditions which have been requested by the Environmental Health Officer

The representation from West Yorkshire Police is attached at Appendix 3.



**Local Authority Licensing Enforcement Officer –**

A representation has been received from the Licensing Enforcement Officer, who has continued to receive noise complaints despite conditions being attached to the licence after a previous review application was considered by Members of the Licensing Panel on 23 November 2015.

The officer has attended the homes of local residents and witnessed noise nuisance from customers in the beer garden and also from the television commentary. The officer noted that conditions of the licence were being breached. A video of the noise nuisance has been submitted with this representation.

The officer recommends that serious consideration is given to restricting the use of the beer garden.

The representation from the Licensing Enforcement Officer is attached at Appendix 4.

**Individual, Body or Business**

Eight letters of representation have been received from local residents and a Ward Councillor, on the grounds of excessive noise and disturbance caused by patrons who are using the beer garden and are chanting, singing, whistling and shouting foul language and also noise and disturbance from loud music as doors, windows and a retractable roof are left wide open.

Concerns are also raised regarding anti-social behaviour and the lack of action by management of the premises regarding the issues which have been brought to their attention and that conditions of the licence are being breached. Residents have also mentioned that on occasions after the premises is closed, staff carry on partying therefore extending the disturbance.

One representation draws attention to the detrimental effect that the noise nuisance has on a resident's health.

The letters of representation are attached at Appendix 5.

**3. OTHER CONSIDERATIONS**

**Legal Appraisal**

**3.1** The Licensing Act 2003 requires the Council to carry out its various licensing functions so as to promote the following four licensing objectives:

- a) the prevention of crime and disorder
- b) public safety
- c) the prevention of public nuisance
- d) the protection of children from harm



- 3.2** The Council must also have regard to the Guidance issued by the Home Office under Section 182 of the Licensing Act 2003. Paragraphs 11.1 to 11.30 of the Guidance specifically details how applications for review of licences should be determined. Regard must also be taken of the Council's statement of Licensing Policy for the District.

An extract of the Home Office Guidance is attached to this report at Appendix 6.

- 3.3** Where it is decided it is necessary to depart from the statutory guidance or the Licensing Policy on the merits of a particular case; then special reasons justifying this must be given that can be sustained.
- 3.4** Only "relevant representations" can be taken into account. In order to be "relevant" a representation must fairly relate to achieving a licensing objective. If it does not, it must be discounted.
- 3.5** Any licensing conditions that Members may propose attaching must also relate to achieving one of the licensing objectives; be tailored to the actual premises and style of licensable activity; must be reasonably achievable by the applicant and in his/her control.

#### **Statement of Policy Issues**

- 3.6** The following parts of the Licensing Policy are of particular importance; Part 4 (Prevention of Crime and Disorder) and Part 6 (Prevention of Public Nuisance).
- 3.7** The Annexes to the Policy sets out various types of model condition that could be considered.

#### **4. FINANCIAL & RESOURCE APPRAISAL**

There are no apparent finance or resource implications.

#### **5. RISK MANAGEMENT AND GOVERNANCE ISSUES**

There are no apparent risk management implications.

#### **6. LEGAL APPRAISAL**

Referred to in part 3 of this report.

#### **7. OTHER IMPLICATIONS**

##### **7.1 EQUALITY & DIVERSITY**

The Council has to comply with the public sector equality duty in S.149 Equality Act 2010.



## **7.2 SUSTAINABILITY IMPLICATIONS**

There are no apparent sustainability implications.

## **7.3 GREENHOUSE GAS EMISSIONS IMPACTS**

There are no apparent implications.

## **7.4 COMMUNITY SAFETY IMPLICATIONS**

When determining the application the Licensing Authority is required to pay due regard to the licensing objectives referred to in 3.1 of this report.

## **7.5 HUMAN RIGHTS ACT**

The following rights are applicable:

Article 1 First Protocol to the Convention – Right to peaceful enjoyment of possessions subject to the state's right to control the use of property in accordance with the general interest. The Council's powers set out in the recommendations fall within the states right. A fair balance must be struck between public safety and the applicant's rights.

Article 6 – A procedural right to a fair hearing. As refusal of the application is an option, adherence to the Panels' usual procedure of affording a hearing to the applicant is very important. The applicant should also be able to examine the requirements of the fire authority. If the decision is to refuse then reasons should be given.

## **7.6 TRADE UNION**

Not applicable.

## **7.7 WARD IMPLICATIONS**

Ward Councillors have been notified of receipt of the application.

## **8. NOT FOR PUBLICATION DOCUMENTS**

None.



## **9. OPTIONS**

### **9.1** Members may:

- (a) Refuse the application for review of the licence; or
- (b) Decide not to impose any further restrictions on the licence; or
- (c) Decide to impose additional restrictions or remove any licensable activities on the licence, where necessary in order to address the licensing objectives;  
or
- (d) Suspend the licence for a period not exceeding 3 months; or
- (e) Revoke the premises licence; or
- (f) Remove the named Designated Premises Supervisor from the Licence.

### **9.2** Should the applicant or any other party to the hearing feel aggrieved at any decision with regard to the licence or to any conditions or restrictions attached by Members they may appeal to the Magistrates Court.

## **10. RECOMMENDATIONS**

Members are invited to consider the information and documents referred to in this report and, after hearing interested parties, determine the related application(s).

## **11. APPENDICES**

1. Premises Licence
2. Application for review received 1 February 2017.
3. Representation from West Yorkshire Police
4. Representation from the Local Authority Licensing Enforcement Officer
5. Letters of representation.
6. Extract from the Government Guidance.

## **12. BACKGROUND DOCUMENTS**

Application form, plan etc.

