

# Cheltenham Borough Council

## Licensing Sub Committee – 7 November 2019

### Licensing Act 2003: Determination of Application for a Premises Licence

#### The Alchemist, Unit 8, The Brewery Quarter, Henrietta Street, Cheltenham

#### Report of the Licensing Team Leader

#### 1. Introduction

1.1 The Licensing Act 2003 (the Act) allows applicants to apply for a premises licence at any time. In this case, an application was received on 13 September 2019 from The Alchemist Bar & Restaurant Limited in respect of The Alchemist, Unit 8, The Brewery Quarter, Henrietta Street, Cheltenham. A copy of the application is included at **Appendix A**.

1.2 The applicant has requested for a premises licence to permit:

Sale by Retail of Alcohol - Sunday	09:00 - 01:00 Both
Sale by Retail of Alcohol - Monday to Wednesday & Sunday	09:00 - 01:00 Both
Sale by Retail of Alcohol - Thursday to Saturday	09:00 - 02:00 Both
Exhibition of a Film - Sunday	09:00 - 01:00 Indoors
Exhibition of a Film - Monday to Wednesday	09:00 - 01:00 Indoors
Exhibition of a Film - Thursday to Saturday	09:00 - 02:00 Indoors
Performance of Recorded Music - Sunday	09:00 - 01:00 Indoors
Performance of Recorded Music - Monday to Wednesday	09:00 - 01:00 Indoors
Performance of Recorded Music - Thursday to Saturday	09:00 - 02:00 Indoors
Late Night Refreshment - Sunday	23:00 - 01:30 Indoors
Late Night Refreshment - Monday to Wednesday	23:00 - 01:30 Indoors
Late Night Refreshment - Thursday to Saturday	23:00 - 02:30 Indoors

1.3 If this application is approved a premises licence would be issued.

#### 1.4 Implications

1.4.1 Legal A sub committee is required to discharge its duty and determine an application with a view to promoting the licensing objectives. These objectives, which are set out in section 4(2) of the Licensing Act 2003, are: (a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm.

**One Legal**

**E-mail: [legalservices@teWKesbury.gov.uk](mailto:legalservices@teWKesbury.gov.uk)**

**Tel no: 01684 272693**

## 2. Application (Ref. 19/02736/PRMA)

- 2.1 Applicant: The Alchemist Bar & Restaurant Limited
- 2.2 Agent: Kuit Steinart Levy LLP
- 2.3 Premises: The Alchemist Unit 8 The Brewery Quarter Henrietta Street Cheltenham
- 2.4 Steps to promote the four licensing objectives that are identified in the application form attached at **Appendix A**.

## 3. Responsible Authorities

- 3.1 No Representations Received

## 4. Interested Parties

- 4.1 One representation has been received from an interested party attached at **Appendix B**.

## 5. Local Policy Considerations

- 5.1 The 2003 Act introduces a unified system of regulation which through two new types of licenses: the premises licence and the personal licence (club premises certificates for qualifying clubs). The Borough Council, as the licensing authority, is responsible for licensing all outlets in the borough that sell or supply alcohol or carry out any other 'licensable activities'; public entertainment, theatre, cinema, or late night refreshment.
- 5.2 The new system is underpinned by four objectives: i) the prevention of crime and disorder; ii) public safety; iii) the prevention of public nuisance; and, iv) the protection of children from harm. The licensing authority must promote these objectives in carrying out its functions.
- 5.3 The Councils adopted licensing policy statement (Council 10/12/07) includes the following:
  - i) **Each objective is of equal importance** and the licensing authority has developed policies relating to each objective. The objectives are the only matters to be taken account in determining applications and applying conditions. **(Paragraph 1.2)**
  - ii) The licensing authority will only apply terms and conditions to licences which promote one or more of the licensing objectives and are relevant to the individual circumstances of the application. Conditions may be drawn from those set out in Appendix B and / or tailored to particular circumstances and they will be focused on matters within the control of the individual licensees and others granted relevant permissions. **(Paragraph 2.4)**
  - iii) The licensing authority will expect all individual applicants to address the licensing objectives in their operating schedule having regard to the premises, the licensable activities to be provided, the operational procedures, the nature of the location and the interests of the local community. The licensing authority expects that any conditions that are necessary will, in the first instance, be identifiable from prospective licensees or certificate holders' risk assessments.
  - iv) Applicants will have to translate their assessments into measures which promote one or more of the licensing objectives and record them in their operating schedule. **(Paragraph 2.5)**

v) The licensing authority will not impose any conditions unless, following the receipt of relevant representations, it has used its discretion at a hearing and been satisfied of the validity of those concerns. **(Paragraph 2.5)**

vi) The licensing authority will consider every application on its individual merits with regard to this policy statement and to the Licensing Committee's Probity Code (available at [www.cheltenham.gov.uk](http://www.cheltenham.gov.uk) under 'L' in the A-Z of services). The licensing authority will seek to balance the needs of the wider community, local community and commercial premises and activities, against those who may be concerned about adverse impacts from licensed premises. The views of vocal individuals or groups will not necessarily prevail over the general interests of the community. In every case the licensing authority will focus on disproportionate or unreasonable impacts of the licensable activities on people living, working and sleeping in the vicinity. **(Paragraph 2.7)**

vii) Cheltenham Borough Council, in its role as a licensing authority, wishes to do all in its power to protect the amenity of residents and businesses in the vicinity of licensed premises, and for these purposes 'vicinity' is taken to mean the immediate area around licensed premises. As the council is fully aware of the importance of the licensed trade in terms of the local economy and its culture and leisure aspiration, it will seek to work in partnership with all interested parties to ensure a mutual and productive co-existence. **(Paragraph 7.2)**

viii) When considering licence applications, the licensing authority will take into account the location of the premises and the type and construction of the building as well as the adequacy of measures proposed to deal with the potential for nuisance and / or antisocial behaviour having regard to all the circumstances of the application. **(Paragraph 7.4)**

ix) The licensing authority will consistently seek to ensure that its judgements about what constitutes public nuisance are balanced, as are decisions about any conditions that are considered necessary to prevent it. **(Paragraph 7.5)**

x) In reaching a judgement on the individual merits of applications, the licensing authority will have regard to the implications for nuisance generation and the impacts on residents that are posed by operating hours and types of regulated entertainment. The licensing authority will take into account requests for terminal hours in the light of the:-

- environmental quality,
- residential amenity,
- character or function of a particular area,
- nature of the proposed activities to be provided at the premises.

Consideration may, however, be given to imposing stricter controls on noise and disturbance from particular licensed premises, such as those in mainly residential areas. **(Paragraph 10.6)**

xi) Consideration may, however, be given to impose stricter controls on noise and disturbance from the particular premises, such as those in mainly residential area. **(Paragraph 10.6)**

#### **5.4 Measures to limit nuisance (para 3.20 to 3.22 in the policy)**

- a) The council will expect applicants to set out in their operating schedules the steps taken, or proposed to be taken, to deal with the potential for public nuisance arising from the operation of the premises.

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- b) Applicants should identify and describe through a risk assessment how these risks will be managed. Public nuisance could include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community.
- c) Applicants will be expected to have included measures in their operating schedules that make adequate provision to:
  - i. restrict the generation of noise within the premises and from activities associated with the premises in the vicinity, or from an open air site;
  - ii. limit the escape of noise from the premises or open air site;
  - iii. restrict noise emissions to below levels that could affect people in the vicinity going about their business, at work and when at home both while relaxing and while sleeping;
  - iv. minimise and control noise from customers arriving at the premises, or open air site outside it and departing from it;
  - v. minimise and control noise from staff, contractors and suppliers and their activities;
  - vi. minimise and control noise from vehicles associated with and providing services to the premises or open air site and their customers;
  - vii. determine whether people standing or sitting outside premises are likely to cause obstruction or other nuisance;
  - viii. whether the premises are under or near to residential accommodation;
  - ix. the hours of the sale of alcohol in open containers or food for consumption outside the premises;
  - x. measures to make sure that customers move away from outside premises when such sales cease;
  - xi. measures to collect drinking vessels and crockery, cutlery and litter;
  - xii. the extent and location of areas proposed to be set aside for the consumption of food and alcoholic drink and for smoking;
  - xiii. whether there is a need for door supervisors to prevent or to control customers congregating in outdoor areas to smoke, consume food or drink (whether supplied from the premises or not).
  - xiv. adequate measures to prevent the following arising from the proposed licensable activity that may cause disturbance to people in the vicinity:
    - a. litter, smells, fumes, dust, smoke, or other emissions;
    - b. street fouling;
    - c. light pollution.

**5.5 Core Hours for Licensable Activities (para 6.39 to 6.43 in the policy)**

- a) The council will avoid arbitrary restrictions on licensing hours that undermine the principles of flexibility and consideration of each application is on its own merit.

- b) The council believes that licensable activities carried on within the core hours set out below will generally not have a harmful impact on the licensing objectives, address the concerns raised by local residents and businesses and are less likely to attract representations.
- c) Furthermore, earlier closing will result in less alcohol consumption and drunkenness and would also be consistent with the ability to get crowds dispersed from the town centre.

Type of premises	Commencement Hour	Terminal hour
	No earlier than	No later than
Off licence	09:00	23:00
Restaurants	10:00	01:00
Theatres, cinemas and other performance venues	10:00	00:00
Pubs/Bars/Nightclubs	<u>Town centre</u> <sup>1</sup>	
	10:00	03:00
Pubs/Bars/Nightclubs	<u>Local Neighbourhood Areas</u>	
	10:00	00:00
Takeaways	n/a	04:00

## 6. National Guidance

6.1 Guidance has been issued under Section 182 of The Licensing Act 2003.

6.2 Para 2.32 of the Guidance states “The 2003 Act requires licensing authorities (following receipt of relevant representations) and responsible authorities, through representations, to make judgements about what constitutes public nuisance and what is necessary 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 licensing objective, licensing authorities and responsible authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable, The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.”

<sup>1</sup> As defined in Appendix D.

- 6.3 Para 2.33 of the Guidance states “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 is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.”
- 6.4 Para 2.35 of the Guidance states “As with all conditions, it will be clear that conditions relating to noise nuisance may not be necessary in certain circumstances where the provisions of the Environmental Protection Act 1990, the Noise Act 1996, or the Clean Neighbourhoods and Environment Act 2005 adequately protect those living in the vicinity of the premises. But as stated earlier in this Guidance, the approach of Licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be necessary.”
- 6.5 Para 2.36 of the Guidance states “Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping in certain circumstances, conditions maybe necessary.”
- 6.6 Para 2.37 of the Guidance states “Measures to control light pollution will also require careful thought. Bright lighting outside premises considered necessary 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.”
- 6.7 Para 2.38 of the Guidance states “In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives.”
- 6.8 Para 9.8 of the Guidance states “A representation will only be relevant if it is likely to effect the grant of the licence on the promotion of at least one of the licensing objectives.”
- 6.9 Para 10.9 of the Guidance states “The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required by the Act itself.”
- 6.10 Para 10.11 of the Guidance states “The licensing authority may not impose conditions unless its discretion has been engaged following relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It may only then impose conditions that are necessary to promote one or more of the licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute.”

- 6.11 Para 10.13 of the Guidance on proportionality states “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.”
- 6.12 Para 10.15 of the Guidance states with regard to duplication with other statutory provisions that “Licensing Authorities should only impose conditions which are necessary and proportionate for the promotion for the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties.”
- 6.13 Paragraph 10.20 of the Guidance states there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount considerations at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/or different hours from those requested.

## 7. Licensing Comments

- 7.1 A plan of the location of the premises is attached **Appendix C**.
- 7.2 The plan of the proposed premises is submitted with the application is attached at **Appendix D**.
- 7.3 With regards to the objection received, Members are to note that any decision made in relation to this application will no set a precedent, as suggested by the objector, as the authority is obligated to determine each application on its merits.

To this extent therefore, the concern that this application will “change the whole character of the Brewery Quarter and open up the possibility of alcohol-fuelled late night/early morning nuisance, disorder, antisocial behaviour and crime” cannot be taken as relevant.

- 7.4 Members are also to note the authority’s policy on “Core Hours for Licensable Activities” as outlined at paragraph 5.5 of this report. This application complies with a terminal hour of no later than 03:00 for bars in the town centre.
- 7.5 The Committee must have regard to all of the representations made and the evidence it hears. The Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives which can include:
- Granting the application as requested;
  - Modifying the conditions attached to the licence; or
  - Rejecting all or part of the application.

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### Background Papers

Service Records

### Report Author

**Contact officer:** Mr Louis Krog  
**E-mail:** [licensing@cheltenham.gov.uk](mailto:licensing@cheltenham.gov.uk)  
**Tel no:** 01242 262626

