



LICENSING SUB-COMMITTEE

Friday 5 August 2022

APPLICATION DETAILS

| | |
|---|--|
| Type: | Review – Premises Licence |
| Name of Applicant: | East Suffolk Council, Environmental Protection Team |
| Address of Applicant: | East Suffolk House, Station Road, Melton, Woodbridge, IP12 1RT |
| Type of applicant (Premises Only): | Responsible Authority |
| Name of Premises: | Barley Mow |
| Address of premises: | Mow Hill, Witnesham, Ipswich, IP6 9EH |
| Description of Premises: | Public House |

EXECUTIVE SUMMARY:

- This is an application for the review of a premises licence.
- The current premises licence holder is Hawthorn Leisure (Mantle) Limited; the Designated Premises Supervisor is Niall Austin.
- The Environmental Protection Team, in its capacity as a Responsible Authority, is calling for a review of the premises licence under the licensing objectives of 'prevention of public nuisance'.

| | |
|-------------------------------|------|
| Is the report Open or Exempt? | Open |
|-------------------------------|------|

| | |
|------------------------|--------------------------|
| Wards Affected: | Carlford and Fynn Valley |
|------------------------|--------------------------|

| | |
|----------------------------|---|
| Cabinet Member: | Councillor Mary Rudd, Cabinet Member with responsibility for Community Health |
| Supporting Officer: | Leonie Houlton Licensing Officer 01502 523624 Leonie.Houlton@eastssuffolk.gov.uk |

1. EXISTING LICENCE

- 1.1 Hawthorn Leisure (Mantle) Limited was the licence holder and Niall Austin was the Designated Premises Supervisor of Barley Mow at the time of the review application. A copy of the current premises licence is attached at **Appendix D** and the plan that accompanies the premises licence is attached as **Appendix D1**.

2. REASON FOR HEARING

- 2.1 In accordance with the Licensing Act 2003, a responsible authority has made an application for a review of the premises licence relating to Barley Mow, Witnesham; seeking the complete review of the premises licence and opening hours; to remove the current Designated Premises Supervisor; and to consider reducing the permitted times that music can be played or removing it as a licensable activity from the premises licence.
- 2.2 The review application supplied by the East Suffolk Council Environmental Protection Team has not been published. The licence holder and all the Responsible Authorities who are named consultees to a licensing review have been provided with a copy of the application. The application will also be made available to the Licensing Sub-Committee panel, this is attached at **Appendix A**. Information that accompanied the review application will also be made available to the Sub-Committee and is attached as **Appendices A1 – A11**.

2.3 Summary of grounds for review:

This review has been called under the grounds of the licensing objectives of prevention of public nuisance. Since the 31 July 2021 there have been numerous complaints regarding noise from this premises. A noise abatement notice was served on the 24 November 2021 however, further complaints of noise have been received and verified.

3. POINTS FOR CONSIDERATION

- 3.1 The Environmental Protection Team had requested several options to resolve the issue.
- That the Designated Premises Supervisor (Mr Austin) is removed.
 - A reduced permitted time that music can be played until, say 21:00.
 - No music allowed at all.
 - A complete review of the licence and opening hours less (favourable as the DPS has already reduced his hours but continues to cause a nuisance when he has a function).
- 3.2 A representation was received in support of the review application from Suffolk Constabulary. This is attached at **Appendix B**.
- 3.3 Eight representations against the review application have been received from other persons and these are attached at **Appendix C**.
- 3.4 In exercising its licensing functions, the Licensing Authority has stated in its licensing policy that it will primarily focus on the direct impact of the licensable activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the vicinity of the premises.

3.5 The attention of the Sub-Committee is drawn to the following:

- a) The Licensing Act 2003 Section 4 requires the Sub-Committee to have regard to:
 - Guidance Issued under Section 182 of the Licensing Act 2003.
 - The Council's Statement of Licensing Policy

If the Sub-Committee has reason to depart from the above it is asked to give full reasons for so doing.

- b) Human Rights Act 1998

The Human Rights Act 1998 came into force on the 2 October 2000. The Sub-Committee is urged to have careful regard of its provisions.

It is unlawful for a public authority (this expression includes local authorities) to act in a way which is incompatible with a human right.

As far as the applicant's right to a fair hearing is concerned (Article 6), the applicant has a right to be heard by the Licensing Sub-Committee. If this application is refused or granted subject to modification, the applicant has a right of appeal to the Magistrates' Court.

In assessing the impact of human rights, the Sub-Committee must seek to strike a balance between the right of the proprietors in the business to conduct it as they wish and local residents who may find its activities intrusive. In this context a business is a "possession" and the human right is expressed to be for the "peaceful enjoyment" of it. A rider to this human right empowers the Council to control the enjoyment of that business by its proprietors in the general interest. At the same time, local residents are entitled to the peaceful enjoyment of their homes.

- 3.6 The relevant notices about this hearing have been served on the applicant and the premises licence holder and they have until 29 July 2022 to confirm that they intend to attend (or not) as the case may be and give notice that they wish to call witnesses.

4. CONCLUSION

- 4.1 The Sub-Committee will be asked to determine this application by:

- **Modifying the conditions of the licence**
This could include either imposing further conditions on the licence or changing (for example, further restricting) the hours of certain licensable activities, where this is proportionate and relevant to the licensing objectives.

For this purpose, the conditions of the licence are modified if any of them are altered or omitted, or any new condition is added.
- **Excluding a licensable activity from the scope of the licence**
The sub-committee may decide that it is proportionate and relevant to the licensing objectives to remove one or more of the licensable activities.
- **Remove the Designated Premises Supervisor (DPS)**

- **Suspend the licence for a period not exceeding three months.**
- **Revoke the licence.**

- 4.2 If the decision reached by the Sub-Committee results in differences between the conditions attached to the licence and the planning permission currently in force for these premises, the applicant should be advised that the planning permission must be adhered to unless and until it is amended to reflect the conditions attached to the licence.
- 4.3 Depending on the decision of the Sub-Committee, the applicant and / or responsible authority and interested parties that have made representations have rights of appeal to the Magistrates Court.
- 4.4 When announcing its decision, the Sub-Committee is asked to state its reasons.

| APPENDICES | |
|-------------------------|--|
| Appendix A | Review application submitted by East Suffolk Council, Environmental Protection Team (private document for the Sub-Committee only). |
| Appendix A1– A11 | Additional documentation submitted by the Environmental Protection Team, supporting the review application (private documents for the Sub-Committee only). |
| Appendix B | Suffolk Constabulary representation in support of the review (private document for the Sub-Committee only). |
| Appendix C | Representations against the review application (private document for the Sub-Committee only). |
| Appendix D | Copy of current premises licence. |
| Appendix D1 | Copy of plan that accompanies the premises licence. |

| BACKGROUND PAPERS | |
|--------------------------|--|
| None | |