

<b>REPORT TO:</b>	<b>LICENSING SUB COMMITTEE</b> <b>8 April 2024</b>
<b>SUBJECT:</b>	<b>LICENSING ACT 2003 – APPLICATION FOR REVIEW OF A PREMISES LICENCE</b>
<b>LEAD OFFICER:</b>	<b>Corporate Director, Sustainable Communities, Regeneration &amp; Economic Recovery</b>
<b>CABINET MEMBER:</b>	<b>Cllr. Scott Roche Streets &amp; Environment</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> This report is specific to this application and has no implications on the Council’s Corporate Policies.	
<b>FINANCIAL SUMMARY:</b> This application is being processed as part of normal duties carried out by the Department with no additional costs involved.	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.:</b> N/A	

For general release

## 1. RECOMMENDATIONS

1.1 The sub-committee is asked to consider the application for a review of the premises licence at The Foxley Hatch, 8-9 Russell Hill Road, Purley, CR8 2LA and whether to take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- To modify the conditions of the licence
- To exclude a licensable activity from the scope of the licence
- To remove the designated premises supervisor
- To suspend the licence for a period not exceeding 3 months
- To revoke the licence

For this purpose, the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

## 2. EXECUTIVE SUMMARY

2.1 The purpose of this report is to advise the Sub-Committee that an application has been received for a review of a premises licence under the Licensing Act

2003 (“the Act”). This application is made by a local resident, as an ‘other person’ under the Act and the Councils licensing sub-committee is required to hear the application.

### **3. DETAIL**

- 3.1 A Protocol for Licensing Hearings and a Procedure for Licensing Sub-Committee Hearings has previously been agreed by the Licensing Committee (minute A/24/05 refers). The protocol has been subsequently amended by the licensing committee (minutes A/32/06, A/40/07 and A/07/12 refer and the Protocol was last amended by the licensing committee on 30 September 2020, minute 15/20 refers).
- 3.2 The premises licence holder and the applicant have been notified of the hearing in accordance with the Licensing Act 2003 (Hearings) Regulations 2005 and Licensing Act 2003 (Hearings) (Amendment) Regulations 2005 “the Regulations”. Information to accompany the notice of hearing was provided to the licence holder and the applicant in accordance with “the Regulations”.
- 3.3 Appendix A to this report provides details of this application.

### **4. FINANCIAL CONSIDERATIONS**

#### **1 Revenue and Capital consequences of report recommendations**

There are no direct financial implications associated with this report, subject to the risks at 4.2 & 4.3. This application is being processed as part of normal duties and therefore the work associated with it is contained within the departmental budget.

#### **2 The effect of the decision**

The decision of the Sub-Committee may be subject to appeal and/or Judicial Review

#### **3 Risks**

An appeal against a decision of the Sub-Committee or a Judicial Review of the application process may present financial risks to the Council with regard to any award of costs against it.

#### **4 Options**

The options available are: to grant the application, to vary the application, with or without further conditions, or to refuse the application.

#### **5 Savings/ future efficiencies**

None identified.

6 (Approved by: Flora Osiyemi, Head of Finance Place, Residents & Gateway)

## 5. COMMENTS OF THE SOLICITOR TO THE COUNCIL

5.1 The Head of Litigation and Corporate Law comments on behalf of the Director of Law and Governance that the sub-committee must determine the application, taking into account relevant representations, the Licensing Act 2003, the regulations made thereunder, statutory guidance and the Council's own licensing policy.

(Approved by Sandra Herbert, Head of Litigation and Corporate law on behalf of the Director of Law and Governance and Deputy Monitoring Officer).

## 6. HUMAN RESOURCES IMPACT

6.1 The Human Resources impact of supporting the Licensing Hearings will be contained within the budgeted establishments of the Democratic and Legal Services and Licensing Teams.

6.2 (Approved for and on behalf of HR by Jennifer Sankar, Head of HR Sustainable Communities).

## 7. EQUALITIES IMPACT

7.1 The arrangements for the Licensing Hearings seek to ensure that all applicants and other interested parties receive a fair hearing and that the process is accessible to all groups within the community. In exercising licensing functions, the Council is required to comply with Section 149 of the Equality Act 2010 which requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- Foster good relations between people who share a protected characteristic and people who do not share it.

7.2 For these purposes the protected characteristics are

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

7.3 The Act explains that having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

## 8. ENVIRONMENTAL AND DESIGN IMPACT

8.1 The effective implementation of the Licensing Act 2003 will contribute to an improved environment for local residents and other stakeholders.

## 9. LICENSING OBJECTIVES IMPACT

9.1 The licensing objectives contained in the Act are:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance and
- the protection of children from harm.

9.2 Officers comments and relevant representations on the impact of the application on these objectives appear in Appendix A to the application.

## 10. HUMAN RIGHTS IMPACT

10.1 The Human Rights 1998 (HRA) requires public bodies to ensure everything they do is compatible with Convention Rights and makes it unlawful for a public authority to act incompatibly with those Rights. **Article 6 (A6)** of the European Convention on Human Rights (ECHR) is the right to a fair trial. The key elements of this include:

- The right to a *fair* hearing;
- The right to a *public* hearing;
- The right to a hearing before an *independent and impartial tribunal*;
- The right to a hearing *within a reasonable time*.

10.2 When hearing an application, the proceedings of a non-judicial body such as the Licensing Sub Committee, as opposed to an actual Court, need not meet the full requirements of A6 where there is a right of appeal from the Licensing Sub Committee to a Court that does meet the full A6 standards and can consider all aspects of the case (even if that does not include a full re-hearing of the facts).

10.3 So, while it is good practice to make a hearing before the Licensing Sub Committee as A6 compliant as possible, it will not be a breach of the HRA if it is not. Further, the hearing of all applications is subject to the principles of Natural Justice and the requirement for decisions to be 'Wednesbury reasonable'.

## **11. FREEDOM OF INFORMATION/DATA PROTECTION CONSIDERATIONS**

- 11.1 Protocols agreed in relation to Licensing Hearings are within the Council's Constitution and will be accessible as part of the Council's Publication Scheme maintained under the Freedom of Information Act.

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**BACKGROUND DOCUMENTS:** Application Forms  
Licensing Hearings and Protocol and Procedure