



Licensing Sub-Committee

10 February 2021

Subject: Application for the Grant of a Premises Licence

Report by:

Ian Knowles
Chief Executive

Contact Officer:

Tracy Gavins
Licensing Enforcement Officer
01427 676598
tracy.gavins@west-lindsey.gov.uk

Purpose / Summary:

This report is being put before the Members of the Licensing Sub-Committee for them to determine the outcome, due to a representation being received about the application.

RECOMMENDATION(S): That Members take into account all the information put before them, both within this report and presented to them at the hearing, by all parties in attendance.

Members will then need to decide which of the options presented to them in section 8 of this report are appropriate in determining this application, taking into account: Licensing Act 2003, s.182 Statutory Guidance and West Lindsey District Council's (WLDC) Statement of Licensing Policy.

IMPLICATIONS

Legal: The Licensing Act 2003, Schedule 5, Part 1 makes provision for the applicant for the premises licence and any person who has submitted a relevant representation to appeal the outcome of the determination of the hearing.

Any appeal must be made to the Magistrates Court for the local justice area, in which the premises concerned is situated.

Any appeal must be commenced within 21 days beginning with the day on which the appellant was notified by the authority of the decision appealed against.

Financial: N/A

Staffing: N/A

Equality and Diversity including Human Rights:

- Article 6 – right to a fair hearing in public before an independent and impartial tribunal

Data Protection Implications: Personal Data within the report appendices has been redacted where relevant.

Climate Related Risks and Opportunities: N/A

Section 17 Crime and Disorder Considerations:

- (s.17 Crime and Disorder Act 1998) - (1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Health Implications: N/A

Title and Location of any Background Papers used in the preparation of this report:

Licensing Act 2003 (<https://www.legislation.gov.uk/ukpga/2003/17/contents/enacted>)

WLDC Statement of Licensing Policy (*link provided at paragraph 7.5.1 in the report*)

s.182 Statutory Guidance (*link provided at paragraph 7.6.1 in the report*)

Risk Assessment: See the Legal section above in relation to Appeals.



Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

LICENSING ACT 2003

Application type: Application for the Grant of a Premises Licence

Premises: “Indian Curry Pot” Sanderlings, Willingham Road, Market Rasen,
Lincolnshire LN8 3RE

Applicants: Dr Sreenath Krishnan Nair & Dr Arya Madhavan

A hearing shall take the form of a discussion led by the authority and cross-examination shall not be permitted unless the authority considers that cross-examination is required for it to consider the Representations, Application or Notice as the case may require.

1 The Application

- 1.1 The application is for the grant of a new premises licence for the above named premises, made under Section 17 of the Licensing Act 2003. The statutory consultation period relative to this application ended on 18 January 2021.
- 1.2 The applicants have placed a notice in the local press and attached a blue notice external to the premises, in order to advertise the application. WLDC also published a notice on its website.
- 1.3 The application submitted is requesting authorisation for the playing of recorded music (indoors and outdoors), the provision of late night refreshment (indoors and outdoors) and the supply of alcohol (for consumption on and off the premises). A copy of the full application is provided at Appendix 1.

2 Background

- 2.1 The premises has been licensed on a few occasions in November and December 2020 via Temporary Event Notices, to allow sale of alcohol alongside their takeaway business.
- 2.2 Lincolnshire Police Licensing Officers visited the premises prior to the premises licence application being submitted and gave advice to the applicants, which they duly took on board and included in their operating schedule.

3 Promotion of the Licensing Objectives

3.1 In submitting the application the applicants are required to describe any steps intended to be taken in order to promote the following 4 licensing objectives, which are:

- The Prevention of Crime and Disorder
- Public Safety
- The Prevention of Public Nuisance
- The Protection of Children from Harm

3.2 The steps the applicants intend to take are detailed in section M of the application form (Appendix 1).

4 Representations – Responsible Authorities

4.1 None.

5 Representations – Other Persons

5.1 Eight representations have been received from individuals which are attached at Appendix 2, 3, 4, 5, 6, 7, 8 and 9 for Members' perusal. Between all received, it has been indicated that the representations are in relation to all four licensing objectives.

5.2 Officers have included a location plan at Appendix 10 to show the wider area to give context to the representations.

6 Correspondence in Support

6.1 Ten e-mails have been sent to the licensing department in support of the application, these are attached at Appendix 11.

7 Considerations

7.1 Each application must be considered on its own merits, **standardised conditions cannot be applied across the board** to all licences of a similar type.

7.2 Each representation must be considered and in each case the Members of the Sub-Committee must satisfy themselves whether or not the licensing objectives are being promoted by the applicant with respect to each matter.

7.3 The authority may only interfere with the operating schedule if it considers it appropriate in order to promote the licensing objectives. If it does interfere, then it must do so proportionately.

7.3.1 Therefore, before any conditions can be imposed on a licence, they have to be *appropriate for the promotion of the licensing objectives and where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions are appropriate to promote the licensing objectives*. Conditions must be *proportionate, reasonable, and capable of being directly complied with by the licensee(s)*. Furthermore, conditions should be clear and

understandable, not be imposed to achieve an ulterior motive outside the scope of the legislation, not over generalised and cannot override primary legislation. If the Sub-Committee are minded that a condition is not appropriate for the promotion of the licensing objectives, then it should not be imposed.

7.3.2 The Sub-Committee should always be mindful of the burdens/costs of additional conditions and if a lesser step can be taken, it should be.

7.3.3 Clearly, the Sub-Committee have to *consider extremely carefully* whether or not additional conditions need to be attached for the promotion of the licensing objectives.

7.4 In making its decision the Sub-Committee must consider the application in line with the following:

- Licensing Act 2003
- WLDC's Statement of Licensing Policy
- The Section 182 Guidance made under the Act

7.5 Policy Considerations

7.5.1 When considering the application and representation received, attention is drawn to the Licensing Authority's Statement of Licensing Policy which can be found at the link below, under the download section:

<http://www.west-lindsey.gov.uk/businesses/licensing/licensing-and-gambling-policies/licensing-policy/104810.article>

7.6 Statutory Guidance

7.6.1 Attention is also drawn to the contents of the section 182 statutory guidance which can be found at the link below:

<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003> (please select the April 2018 document)

8 Options

8.1 Exert from the Licensing Act 2003:

18(2) Subject to subsection (3) below, the authority must grant the licence in accordance with the application subject only to –

- (a) such conditions as are consistent with the operating schedule accompanying the application, and
- (b) any conditions which must under section 19, 20 or 21 be included in the licence.

18(3) Where relevant representations are made, the licensing authority must –

- (a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and

(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

(4) The steps are –

(a) to grant the licence subject to-

(i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers appropriate for the promotion of the licensing objectives, and

(ii) any condition which must under section 19, 20 or 21 be included in the licence;

(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application;

(5) For the purposes of subsection (4)(a)(i) the conditions mentioned in subsection (2)(a) are modified if any of them is altered or omitted or any new condition is added.

Conditions cannot be attached with respect to any part of the application on which no representation(s) have been received.

This is a matter for the committee to determine in light of the above matters and any others it considers relevant.

N.B. Whatever decision the Members of the Licensing Sub-Committee arrive at, they are reminded about the comments made in a court case, known as Hope and Glory, in relation to reasons for their decision making. The comments noted from this case stated: “*The fuller and clearer the reasons, the more force they are likely to carry*”. Therefore, taking these comments into account, Members are strongly advised to give good, clear, justifiable reasons in relation to their decision which will have more chance of being upheld should the decision be appealed against.

9 List of Appendices

Appendix 1	Application
Appendix 2	Representation from Stewart Bibby
Appendix 3	Representation from Mrs M. Clark
Appendix 4	Representation from Di Roe & Andrew Davidson
Appendix 5	Representation from Simon Porter
Appendix 6	Representation from Richard & Patricia Hall
Appendix 7	Representation from Dean Samuels
Appendix 8	Representation from Matthew Edwards
Appendix 9	Representation from Mr R Martin & Mrs L Upward
Appendix 10	Location plan
Appendix 11	Emails received in support of the application

LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005

Schedule of information to accompany notice of a hearing

1. Rights of a party

- a) A party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified.
(Regulations 15 – subject to Regulations 14(2) and 25)
- b) At a hearing a party shall be entitled;
 - (i) in response to a point upon which the Licensing Authority has given notice to a party that it will want clarification, give further information in support of their application, representation or notice (as applicable)
 - (ii) if given permission by the Licensing Authority, question any other party; and
 - (iii) address the authority*(Regulation 16)*

2. Consequences if a party does not attend or is not represented at a hearing

All parties have been given notice to attend the hearing.

- a) If a party has informed the Licensing Authority that he/she does not intend to attend or be represented at the hearing, the hearing will proceed.
- b) If a party who has not so indicated, fails to attend or be represented at the hearing, the hearing will proceed unless the Licensing Authority considers it necessary in the public interest to adjourn the hearing to a specified date.
(Regulation 20)

3. Procedure to be followed at the hearing

- a) The Licensing Authority has determined the procedure of the hearing, a copy of which is attached. This procedure is subject to the provisions of Regulations 22 and 25.
(Regulation 21)

4. Points on which the Licensing Authority considers it will want clarification

- a) Any points on which the Licensing Authority considers it will want clarification are attached if applicable.
(Regulation 7(1)(d))

5. Action following receipt of notice of a hearing.

- a) If you have not already done so you must, no later than 5 days before the day or the first day on which the hearing is to be held, give notice to the Licensing Authority, in writing:
 - (i) whether you intend to attend or be represented at the hearing
 - (ii) whether you consider a hearing to be unnecessary and if so give a full explanation as to why this is the case

A notice is enclosed for this purpose.

(Regulation 8)