

**Bolsover District Council**

**Meeting of the Licensing & Gambling Acts Sub Committee 03 March 2022**

**To hear representations made under the Licensing Act 2003**

**Report of the Environmental Health Team Manager (Licensing)**

<b>Classification</b>	This report is Public
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**PURPOSE/SUMMARY OF REPORT**

To hear representations made under the Licensing Act 2003 and determine whether to grant an application for a variation to the premises licence at **The Elm Tree Inn And Norfolk Restaurant, Main Road, Elmton, Chesterfield, S80 4LS.**

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**REPORT DETAILS**

**1. Background**

1.1 Bolsover District Council is responsible for the licensing and regulation of Premises Licences under the Licensing Act 2003. As part of those responsibilities the Licensing and Gambling Acts Sub-Committee is required to consider any application for a premises licence where valid representations have been received and not withdrawn.

1.2 The Licensing Act 2003 is clear that four statutory objectives, each of equal importance, must be addressed by the Council when discharging its functions under the legislation.

Those licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

1.2 In addition to the legislation, the Council must have regard to the Revised [Guidance issued under section 182](#) of the Licensing Act 2003 and to the [Council's own licensing policy](#).

- 1.3 The legislation and statutory guidance are clear that each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions.
- 1.4 A premises may only undertake licensable activities where it holds both planning permission and a premises licence to enable it to do so. Planning and Licensing are separate systems of regulatory control; planning deals with the use of the land, and licensing with the detailed operation of a premises where licensable activities take place. Similar considerations are likely to arise in both and there is overlap between the two, but each regime involves consideration of different, albeit related matters and each operate independently. The guidance provides that licensing committees are not bound by decisions made by a planning committee and vice versa.
- 1.5 In 2018 the Council adopted a revised Licensing Act 2003 Policy. The Council must have regard to this policy when making a determination. A number of paragraphs within the policy have been identified as particularly relevant in this case. These paragraphs are set out below:

7.3 *Levels of noise from licensed premises, which may be acceptable at certain times of day, may not be acceptable later in the evening or at night when ambient noise levels are much lower. The main impact of customers arriving, queuing and leaving should be confined to principal pedestrian routes as far as possible. The impact of noise arising from patrons that are temporarily outside the premises (e.g. smoking), must be recognised and mitigated against.*

7.5 *Applicants should consider the benefits of stopping serving alcohol before other licensable activities stop and a suitable time before the premises close and customers must leave. In noise sensitive areas operators should consider ceasing the playing of dance music and switching to quieter, slower tempo music with a less pronounced beat for a period prior to the closure of the premises.*

7.13 *Examples of recommended management practice for preventing nuisance:*

- *Keeping doors and windows of licensed premises closed to minimise noise break out.*
- *Sound limiting devices, or insulation to contain sound and vibration so as to address noise break out not only from music but also, for example, from air handling equipment, generators or patrons.*
- *With popular premises that attract queues ensuring that the direction of any queue is away from residential accommodation.*
- *Proper and adequate door supervision.*
- *Erecting prominent notices at the exits to premises asking customers to leave quietly and not to slam car doors and repeating such requests verbally.*

- *Reducing the volume of music towards the end of the evening and where appropriate playing quieter, more soothing music as the evening winds down.*
- *Arrangements with licensed taxis or private hire vehicles to take patrons from the premises.*
- *In appropriate cases door supervisors or a manager patrolling nearby streets to assess for themselves whether there is a problem and how best to deal with it.*
- *Banning people who regularly leave in a noisy fashion and liaising with other premises on such bans.*
- *Where the premises have a membership scheme, including provisions in the conditions of membership concerning conduct and noise when leaving the premises.*
- *Adequate provisions for dealing with litter/refuse arising from the operation of premises.*
- *Appropriate times for and methods of dealing with bottle delivery, disposal and collection.*
- *The licensee providing a help line or contact number for concerned residents.*

Further information can be found in the Council's Licensing Act 2003 Policy.

## **2. Details of Proposal or Information**

- 2.1 On 20<sup>th</sup> January 2022 Bolsover District Council's Licensing Section received an application to vary the premises licence at **The Elm Tree Inn And Norfolk Restaurant at Main Road, Elmtown, Chesterfield, S80 4LS** ('the Premises') from **TLT LLP** acting on behalf of **Punch Taverns Limited** whose head office is located at Jubilee House, Second Avenue, Burton Upon Trent, Staffordshire, DE14 2WF.
- 2.2 A copy of the application and the proposed plan can be found attached as **Appendix 1** and **Appendix 2**.
- 2.3 The Premises has been licenced with Bolsover District Council since 24 November 2005 and a copy of the current premises licence can be found attached as **Appendix 3**.
- 2.4 The application seeks to modify the following:
- The layout of the premises to add the external areas shown in **Appendix 2**.
  - The conditions attached to the premises licence
- 2.5 The application has been processed in line with the legislation and the consultation deadline for the application was 17 February 2022.
- 2.6 On 21 January 2022 a relevant representation was received from the Councils Environmental Health team which relates to the prevention of public nuisance. A copy of the representation can be found attached as **Appendix 4**.
- 2.7 This party has a legal right to make a representation.

2.8 The applicants' agent and the Environmental Health team have entered into mediation but have been unable to reach an agreement.

**3. Reasons for Recommendation**

3.1 None.

**4 Alternative Options and Reasons for Rejection**

4.1 None.

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**RECOMMENDATION(S)**

The Licensing Sub-Committee may;

1. Grant the variation application as applied for;
2. To vary the application, with or without further conditions; or
3. Refuse the application.

Approved by the Portfolio Holder – N/A

**IMPLICATIONS:**

**Finance and Risk:**      Yes       No

**Details:** An appeal against this decision would incur costs in preparing a defence case and to attend Court. Costs may be recovered at the discretion of the Magistrates in the event that the application is dismissed. Costs could be awarded against the Authority in the event that the appeal is successful.

On behalf of the Section 151 Officer

**Legal (including Data Protection):**      Yes       No

**Details:**  
All parties have the right to make an appeal to the Magistrates' Court if they are not satisfied with the outcome/conduct of the hearing.

On behalf of the Solicitor to the Council

**Staffing:**      Yes       No

**Details:**

On behalf of the Head of Paid Service

## DECISION INFORMATION

<p><b>Is the decision a Key Decision?</b>  A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:</p> <p><b>Revenue - £75,000</b> <input type="checkbox"/> <b>Capital - £150,000</b> <input type="checkbox"/>  <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p><b>Is the decision subject to Call-In?</b>  <i>(Only Key Decisions are subject to Call-In)</i></p>	No

<p><b>District Wards Significantly Affected</b></p>	Elmton with Creswell
<p><b>Consultation:</b>  <b>Leader / Deputy Leader</b> <input type="checkbox"/> <b>Executive</b> <input type="checkbox"/>  <b>SLT</b> <input type="checkbox"/> <b>Relevant Service Manager</b> <input type="checkbox"/>  <b>Members</b> <input type="checkbox"/> <b>Public</b> <input checked="" type="checkbox"/> <b>Other</b> <input checked="" type="checkbox"/></p>	<p>Details:  Statutory Consultation with Responsible Authorities and the Public</p>

<p><b>Links to Council Ambition: Customers, Economy and Environment.</b></p>
<p>Supporting our Communities to be Healthier, Safer, Cleaner and Greener.</p>

DOCUMENT INFORMATION	
Appendix No	Title
1	Application Form
2	Proposed Plan
3	Current Premises Licence
4	Representation from Environmental Health

<p><b>Background Papers</b></p>
<p><i>(These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Executive you must provide copies of the background papers).</i></p>
None