

Bolsover District Council

Meeting of the Licensing and Gambling Acts Sub-Committee

30th August 2024

To hear representations made under the Licensing Act 2003

Report of the Environmental Health Team Manager (Licensing)

Classification	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 Premises Licence at **Bennies Kitchen, The Old School, Mill Street, Clowne, Chesterfield, S43 4JN.**

REPORT DETAILS

1. Background

1.1 Bolsover District Council is responsible for the Licensing and Regulation of Premise 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is required to consider any application for a Premises Licence where valid representations have been received and not withdrawn.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.

1.3 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.

- 1.4 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 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.
- 1.5 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.
- 1.6 In May 2024 the Council adopted a revised Licensing Act 2003 Policy. A number of paragraphs within the policy are relevant in this case. These paragraphs are set out below:

2.2 In carrying out its licensing functions, the Licensing Authority must also have regard to the licensing objectives, its Policy Statement and any statutory guidance under the Act and is bound by The Human Rights Act 1998. The Council must also fulfil its obligations under section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in Bolsover.

2.4 Guidance on the Licensing Objectives is available on the Government's website at: <https://www.gov.uk/guidance/alcohol-licensing>

2.5 Licensing law is not the primary mechanism for the general control of antisocial behaviour by individuals once they are beyond the direct control of the individual club, or business holding the licence, certificate or permission concerned. Licensing is about the management of licensed premises and activities within the terms of the Act and conditions attached to various authorisations will be focused on matters which are within the control of the individual licence holder and others.

4.2 The granting of a licence, certificate or provisional statement will not override any requirement of the planning system or vice-versa. The

licensing system will provide for the detailed control of operational matters, which are unlikely to be addressed through planning processes. However there will be overlapping issues of interest e.g. disturbance, which will remain material considerations for planning purposes as well as being relevant in terms of the licensing objectives. Applicants should also ensure that they have due regard to any planning restrictions on the use of premises when applying for licence/certification to avoid any possible enforcement action. Equally any planning approval for a premises does not imply that approval will be giving under the Licensing regime.

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

2. Details of Proposal or Information

2.1 On 5th July 2024, an application for a Premises Licence for **Bennies Kitchen, The Old School, Mill Street, Clowne, S43 4JN** was received by Bolsover District Council from **Mr Peter Hopkinson**. A copy of the application is attached as **Appendix 1** and proposed plan as **Appendix 2**.

2.2 The application seeks to licence the premises for the below:

Licensable Activity	Hours requested	on Premises Licence
Live Music (Indoors & Outdoors)	Monday to Sunday	12:00 – 00:00
Recorded Music (Indoors & Outdoors)	Monday to Sunday	09:00 – 01:00
Anything of a similar description to that falling within Live Music, Recorded Music & Performance of Dance (Indoors)	Monday to Sunday	23:00 – 01:00
Late Night Refreshment (Indoors & Outdoors)	Monday to Sunday	12:00 – 00:00
Supply of Alcohol (For consumption ON the Premises)	Monday to Sunday	09:00 – 01:00
Opening hours	Monday to Sunday	09:00 – 01:00

2.3 The application has been processed in line with the legislation and all Responsible Authorities were notified of this application.

- 2.4 On 18th July 2024, Derbyshire Constabulary contacted the applicant to suggest additional conditions be imposed upon the licence.
- 2.5 On 21st July 2024, the applicant agreed to all conditions suggested by Derbyshire Constabulary. A copy of the agreed conditions are attached as **Appendix 3**.
- 2.6 The Licensing Team has not received any formal representations from any other Responsible Authorities.

3.0 Member of the Public Representation 1

- 3.1 On 5th August 2024, a representation was received from Ms Frances Heavey-Cook in relation to public nuisance and crime and disorder. A copy of Ms Heavey-Cook's representation is attached as **Appendix 4**.
- 3.2 During the consultation period the applicant entered into mediation with Ms Frances Heavey-Cook to try and resolve the concerns listed in the representation letter. As part of this process, a letter was sent to Ms Frances Heavey-Cook and a copy of this letter is attached as **Appendix 5**. At the time of writing this report, Ms Ms Frances Heavey-Cook's representation is unresolved.

4.0 Member of the Public Representation 2

- 4.1 On 7th August 2024, a representation was received from Mr Simon Holmes and Mrs Anita Holmes in relation to Public Nuisance. A copy of Mr and Mrs Holmes representation is attached as **Appendix 6**.
- 4.2 During the consultation period, the applicant informed the Licensing Team that he had entered into verbal mediation with Mr and Mrs Holmes. At the time of writing this report, Mr and Mrs Holmes representation is unresolved.
- 4.3 At the time of the report, both representations from Ms Frances Heavey-Cook and Mr Simon Holmes and Mrs Anita Holmes remain valid and unresolved. Both of these parties have a legal right to make a representation.

5.0 Reasons for Recommendation

- 5.1 None

6.0 Alternative Options and Reasons for Rejection

- 6.1 None

RECOMMENDATION(S)

1. That the Licensing and Gambling Acts Sub-Committee considers the grant of a premises licence for Bennies Kitchen.
2. That the Licensing and Gambling Acts Sub-Committee:

1. Grant the application as applied for;
2. Grant the application, modified to such an extent as the Authority considers appropriate for the promotion of the licensing objectives and any mandatory 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. In the event that a licence is granted other than in accordance with the Council's Licensing Policy, the reasons for departing from Policy could be subject to scrutiny and the Council's reputation harmed if the decision is not reasonable.

On behalf of the Section 151 Officer

Legal (including Data Protection): Yes No

Details:

The parties have the right to make an appeal to the Magistrates' Court if they are not satisfied with the outcome 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>Is the decision a Key Decision? 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>BDC: Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/></p> <p>NEDDC: Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/></p> <p><input checked="" type="checkbox"/> Please indicate which threshold applies</p>	<p>No</p>
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	<p>No</p>

District Wards Significantly Affected	None
Consultation: Leader / Deputy Leader <input type="checkbox"/> Cabinet / Executive <input type="checkbox"/> SAMT <input type="checkbox"/> Relevant Service Manager <input type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/>	No Details:

Links to Council Ambition (BDC)/Council Plan (NED) priorities or Policy Framework including Climate Change, Equalities, and Economics and Health implications.
All

DOCUMENT INFORMATION	
Appendix No	Title
1	Application for a Premises Licence
2	Application Proposed Plan
3	Copy of Agreed Conditions
4	Ms Heavey-Cook's Representation
5	Applicant's Mediation Letter to Ms Heavey-Cook
6	Mr Simon Holmes and Mrs Anita Holmes' Representation

Background Papers
<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 Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)</i>
Application Form and Supporting documentation