

Meeting:	Licensing Panel
Date:	4 August 2005
Subject:	Application for variation of hours at New Moon, Kenton Park Parade, Kenton during Transitional period
Responsible Officer:	Chief Environmental Health Officer
Contact Officer:	P Sivashankar, Service Manager, ext 5605
Portfolio Holder:	Councillor Philip O'Dell
Key Decision:	No
Status:	Public

Section 1: Summary

Decision Required

Members are asked to determine the application in accordance with the guidance in Section 2.5.

Reason for report

The application for a conversion and simultaneous variation is made by Messer's Berwin Leighton Paisner on behalf of the applicant JD Weatherspoon Plc, for the New Moon, Kenton Park Parade, Kenton. This application has received representations. As per the Council's Licensing Policy and Delegation of Licensing Functions, all applications with unresolved representations are to be determined by the Licensing Panel.

Benefits

The hearing provides the applicant, persons making the representations and the Licensing Authority an opportunity to engage in constructive dialogue to determine the application in an open public forum.

Cost of Proposals

None

Risks

If any party is aggrieved with the decision or is believes that a fair hearing is not provided, they can apply to the magistrates Court for a re-hearing.

Implications if recommendations rejected

As above

Section 2: Report

2.1 Brief History

2.1.1 The application for a conversion and simultaneous variation is made by Messer's Berwin Leighton Paisner on behalf of the applicant JD Weatherspoon Plc, for a Premises Licence for New Moon, Kenton Park Parade, Kenton. A copy of the application and the existing licences are attached to this report. (This Authority has not adopted the Private Places of Entertainments (Licensing) Act 1967)

2.1.2 The application seeks the following changes to the existing Justices Licence hours, which, if granted, will take effect from 24th November 2005:

Sale of alcohol, provision of late night refreshment and the hours that the premises are open to the public to extend from 11pm to the hours listed in the table below:-

SALE BY RETAIL OF ALCOHOL ON & OFF			PROVISION OF LATE NIGHT REFRESHMENT – INDOORS & OUTDOORS			HOURS PREMISES ARE OPEN TO THE PUBLIC		
DAY	START	FINISH	DAY	START	FINISH	DAY	START	FINISH
MON	0900	0030	MON	2300	0030	MON	0700	0130
TUE	0900	0030	TUE	2300	0030	TUE	0700	0130
WED	0900	0030	WED	2300	0030	WED	0700	0130
THU	0900	0030	THU	2300	0030	THU	0700	0130
FRI	0900	0100	FRI	2300	0100	FRI	0700	0200
SAT	0900	0100	SAT	2300	0100	SAT	0700	0200
SUN	0900	0030	SUN	2300	0030	SUN	0700	0130

The premises are open to the public for an additional hour on the morning of the day the clocks go forward. And

Notwithstanding these usual opening times, the premises, in accordance with the converted right, may choose to open to the public at any time for non-licensable activities/purposes.

LICENSABLE ACTIVITIES TO EXTEND:

On the following notable days/dates listed below an additional 1 hour are to be permitted for the licensable activity (not including drinking up time)-

Burns Night, 25th January
Australia Day, 26th January
St David's Day, 1st March
St Patrick's Day, 17th March
St George's Day, 23rd April
St Andrew's Day, 30th November

An additional 30 minutes to the standard finish hour on the following days;
Thursday immediate preceding Good Friday
Sunday immediately preceding a Bank Holiday Monday

And

On Christmas Eve until 0200
On Boxing Day until 0200

And Finally,

From 0600 until the beginning of the standard hours or until 0300 the following morning as follows:

On no more than 12 occasions per calendar year, these extensions for the supply of alcohol can only take place if at least 7 days notice is provided to the Police and the Licensing Authority and only if the Police give their consent.

Note: The Secretary of State through the statutory guidance has made this statement;

It should normally be possible for applicants for premises licences and club premises certificates to anticipate special occasions, which occur regularly each year – such as bank holidays –, and to incorporate appropriate opening hours for these occasions in their operating schedules. Similarly, temporary event notices – in respect of which a personal licence holder may give fifty each year – should be sufficient to cover events like Golden Wedding Anniversaries or 21st Birthday parties which take place at premises which do not have a premises licence or club premises certificate. However, with the passage of time exceptional events of local, national or international significance will arise which could not or have not been anticipated. Such events can give rise to the need to vary the conditions of large numbers of premises licences and club premises certificates. In such circumstances, it will be open to the Secretary of State to make a licensing hours order to provide for premises with a premises licence or club premises certificate to open for specified, generally extended, hours on these special occasions. Examples might include a one-off local festival, a Royal Jubilee, a World Cup or an Olympic Games.

*Such events should be genuinely exceptional and the Secretary of State will not consider making such an order lightly. Licensing authorities (or any other persons) approaching the Secretary of State about the making of such an order are advised that they should give **at least** six months notice before the celebration in question. Before making such an order, the Secretary of State is required to consult such persons as she considers appropriate, and this would generally enable a wide-range of bodies to make representations to her for consideration. In addition, such an order will require the approval of both Houses of Parliament. Six months would be the minimum period in which such a process could be satisfactorily completed.*

The current permitted hours are 1100 to 2300 Monday to Saturday and Midday to 2230 on Sundays with 20 minutes drinking up time under the Licensing Act 1964.

2.1.3 The Premises:

The premises are situated in the main commercial part where a number of restaurants and shops are located. The premises are of solid construction. A location map is attached to this report.

2.1.4 Policy Implications

According to the Statutory Guidance issued by the Secretary of State under S182 of the Licensing Act 2003, recommends that variation of this nature should be based on 5 main policy aims. These are that;

1. the main purpose of the licensing regime is to promote the licensing objectives;
2. applicants for premises licences or for major variations of such licences are expected to conduct a thorough risk assessment with regard to the licensing objectives when preparing their applications. This risk assessment will inform any necessary steps to be set out in an operating schedule to promote the four licensing objectives;
3. operating schedules, which form part of an application, should be considered by professional experts in the areas concerned, such as the police and environmental health officers, when applications for premises licences and club premises certificates are copied to them by applicants;
4. local residents and businesses are free to raise relevant representations, which relate to the promotion of the licensing objectives, about the proposals contained in an application; and
5. the role of a licensing authority is primarily to regulate the carrying on of the licensable activity when there are differing specific interests in those activities to ensure that the licensing objectives are promoted in the wider interests of the community.

When considering applications, it is expected that licensing authorities will seek to uphold these policy aims.

The Council's Licensing Policy in section 2.2 stipulates that a thorough risk assessment with regards to the Licensing Objectives must be carried out to reflect the individual nature of the venue.

2.2 Representations

- 2.2.1 The application has received representations from 2 Responsible Authorities (Environmental Protection and Met. Police) sighting the 4 Licensing Objectives and the inadequate risk assessments to cover the additional opening hours applied for. Copies of these representations are attached to this Report.

2.3 Consultation

The application was advertised in accordance with the Regulations under the Licensing Act 2003. This Authority has received 2 representations in total.

2.4 Financial Implications

N/A

2.5 Legal Implications

- 2.5.1 Having considered the representations from all parties, the Panel has to determine the application for the variation of the converted premises licence. The legislation does not list the grounds on which the Panel can refuse and/or grant an application for a licence. The legislation does allow for the imposition of conditions, restrictions, etc. but again offers no guidance as to the type of condition that may be imposed. It is clear that any additional conditions would have to be practical, enforceable and meet the rules of natural justice and the promotion of the four Licensing Objectives.

2.5.2 Options available to the Panel:

- a. To grant the application as it stands. Any licence granted would be subject to conditions relating to the Operating Schedule attached to the Application.
- b. To grant the Licence in light of any evidence presented at the hearing, from both the interested party and the applicant, subject to:
 - i) The conditions mentioned in the operating schedule being modified to such extent as the authority considers necessary for the promotion of the licensing objectives and/or to limit the period of validity of the grant, and
 - ii) Any condition which, must under section 19, 20 or 21 (Mandatory Conditions) of the Licensing Act 2003 be included in the licence, and
 - iii) To exclude from the scope of the licence any of the licensable activities to which the application relates,
- c. To reject the application.

2.5.3 It should be noted with all options that;

- i). Clear reasons would have to be given to the applicant and to the persons/Responsible Authorities who made representations if the application were granted, refused or, if additional conditions were imposed; and
- ii). The applicant and/or the interested party/Responsible Authorities would have the right of appeal to a Magistrates Court.

2.5.3. In addition to determining the application in accordance with the legislation, Members must also have regard to the provisions of the Human Rights Act 1998.

2.6 Equalities Impact

N/a

Section 3: Supporting Information/ Background Documents

Application

Representations

Mandatory Conditions that would be attached to the licence if granted.

Conditions drawn from the Operating Schedule provided by the Applicant-Annex 2

Annex 2 – Conditions consistent with the operating Schedule

General

There will be at least a pool of 5 Managers responsible for the Management of staff.

All staff will be trained to a widely recognised level and quality in controlling the behaviour of customers on licensed premises.

The prevention of crime and disorder

None offered.

Public Safety

None offered

The prevention of public nuisance

Appropriate signage is placed to request patrons to leave quietly

Information about local transport will be provided to patrons.

The protection of children from harm

None offered

MANDATORY CONDITIONS

19 Mandatory conditions where licence authorises supply of alcohol

(1) Where a premises licence authorises the supply of alcohol, the licence must include the following conditions.

(2) The first condition is that no supply of alcohol may be made under the premises licence-

(a) at a time when there is no designated premises supervisor in respect of the premises licence, or

(b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

(3) The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

20 Mandatory condition: exhibition of films

(1) Where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.

(2) Where the film classification body is specified in the licence, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation made by that body.

(3) Where-

(a) the film classification body is not specified in the licence, or

(b) the relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question,

admission of children must be restricted in accordance with any recommendation made by that licensing authority.

(4) In this section-

"children" means persons aged under 18; and

"film classification body" means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c.39) (authority to determine suitability of video works for classification).

21 Mandatory condition: door supervision

(1) Where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must be licensed by the Security Industry Authority.

(2) But nothing in subsection (1) requires such a condition to be imposed-

(a) in respect of premises within paragraph 8(3)(a) of Schedule 2 to the Private Security Industry Act 2001 (c.12) (premises with premises licences authorising plays or films), or

(b) in respect of premises in relation to-

(i) any occasion mentioned in paragraph 8(3)(b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence), or

(ii) any occasion within paragraph 8(3)(d) of that Schedule (occasions prescribed by regulations under that Act).

(3) For the purposes of this section-

(a) "security activity" means an activity to which paragraph 2(1)(a) of that Schedule applies, and

(b) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.