

Slough Borough Council

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| Report To: | Licensing Sub-Committee |
| Date: | 19 December 2023 |
| Subject: | Application to vary a Premises Licence for Deco Bars, 277 High Street Slough, SL1 1BN |
| Chief Officer: | Ketan Ghandi, Associate Director - Community & Public Protection |
| Contact Officer: | Rachael Rumney - Principal Licensing Officer |
| Ward(s): | Slough Central |
| Exempt: | NO |
| Appendices | Appendix A – Premises licence variation application Appendix B – Thames Valley Police representation Appendix C – Current Premise licence for Deco Bar (PL0001) |

1. Summary and Recommendations

- 1.1 This is an application for a variation to the premises licence for for Deco Bars, 277 High Street Slough, SL1 1BN (the “Premises”) made by Dharmesh Patel (the premises licence holder) pursuant to section 34 of the Licensing Act 2003 (the “**Act**”). The variation sought is to remove a condition from the premises licence (PL0001) that prevents a specified individual from entering or working at the premises.
- 1.2 Thames Valley Police have objected to this variation to the Premises Licence as they consider it may undermine the Crime and Disorder and Public Safety licensing objectives.
- 1.3 Under Section 35 of the Act, where relevant representations are made, the 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 appropriate for the promotion of the licensing objectives.*

Consultation:

- 1.4 As per section 34 (5) of the Act, the variation application was subject to the following advertising:
 - published on Slough Borough Council's website.
 - public notice published in the local newspaper.
 - a public notice placed at the window of the premises in question.
 - responsible authorities notified of the application.
- 1.5 The closing date for representations to the variation application was 01 December 2023. Only the representation from Thames Valley Police was received.
- 1.6 Under the Council's Statement of Licensing Policy 2019-2024 (the "**Council's Policy**"), Appendix A (Delegation of Functions) states that consideration of an application to vary a premises licence where representations are made is dealt with by the Sub Committee. Under Appendix C (Glossary) of the Council's Policy, the Licensing Sub-Committee is *defined as 'the Full Licensing Committee delegate a number their functions to one or more 'Licensing Sub-Committees'. These are made up of three members of the Full Licensing Committee.'*

Recommendations:

- 1.7 The Sub-Committee is recommended to:

Having had regard to the application and representations made by all parties, the Sub-Committee must consider and determine the application bearing in mind the need for promotion of the licensing objectives.
- 1.8 Where the Sub-Committee considers action is appropriate the statutory options available are:
 - (a) Grant the variation application and modify the premises licence to remove condition 40 (annex 2) from the same.
 - (b) Reject the variation application in whole or part.

(the conditions of the licence are modified if any of them is altered or omitted or a new condition added)

Reason: The Licensing Team cannot disregard or overturn a decision made by the Licensing Sub Committee.

2. Report

Introductory paragraph

- 2.1 As a quasi-judicial body the Sub-Committee is required to consider this matter on its merits and must act reasonably and rationally. The Sub-Committee can only consider relevant factors and must ignore irrelevant factors. The decision must be based on evidence, which logically shows the existence or non-existence of the relevant facts, or the likelihood or the unlikelihood of some future event, the occurrence of which would be relevant and the decision must focus on the licensing objectives. The Sub-Committee must give fair consideration to the contentions of all persons entitled to make representation to them.

- 2.2 The Sub-Committee can only consider matters within the report, or documentary or other information produced by a party in support of their application / representation either before the hearing or, with the consent of all the other parties, at the hearing.
- 2.3 Members should note that the Sub-Committee is meeting on this occasion solely to perform the role of Licensing Authority. As such Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the licensing law, guidance and the Council's related policies and guidance.
- 2.4 Members will be aware of the Council's Code of Conduct which requires them to declare interests. The Code applies to Members when considering licensing issues. In addition, as a quasi-judicial body, Members are required to avoid both actual bias and the appearance of bias.

Options considered

- 2.5 Consideration has been given to how the decision sought will help the Council meets its vision and corporate priorities, however the nature of the review application is outside the scope of these priorities.

Background

- 2.6 On 3 November 2023, Deco Bar, 277 High Street, Slough, SL1 1BN, (Premises Licence Number: PL0001) submitted a premises licence variation application.
 - 2.6.1 The full variation application is attached at Appendix A and the application can be summarised as follows.
 - 2.6.2 Premises licence condition 40 (annex 2) to be removed from the premises licence.
 - 2.6.3 Condition 40 – *Mr XX shall not be permitted to enter or work at the premises due the crime and disorder, and public safety licensing objectives being undermined.*
 - 2.6.4 On 10 November 2023, Thames Valley Police submitted a representation to the variation application, objecting to the removal of condition 40 on the grounds that it would undermine the crime and disorder and public safety licensing objectives. The representation is detailed in full at Appendix B.

3. Implications of the Recommendation

3.1 Financial implications

- 3.1.1 There are no financial implications to the Council.

3.2 Legal implications

- 3.2.1 The Licensing Authority is required to hold a hearing to consider the representation to a variation application. The hearing must be held in accordance with the Licensing Act 2003 and the Licensing Act 2003 (Hearings) Regulations 2005.
- 3.2.2 The Licensing Sub-Committee is required to give appropriate weight to the variation application, representations (including supporting information) presented by all the parties, the Guidance issued pursuant to section 182 of the Licensing Act 2003, the

Council's Statement of Licensing Policy 2019-2024 and the steps (if any) that are appropriate to promote the four licensing objectives. The licensing objectives are:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

3.2.3 Members should note that each objective is of equal importance.

3.2.4 Having considered those relevant matters, the Licensing Sub-Committee can take such of the following steps (if any) as it considers appropriate for the promotion of the licensing objectives:

3.2.5 It should be noted that:

- (a) clear reasons must be given for the decision; and
- (b) any additional or modified conditions should be clear, practicable and enforceable.

3.2.6 In addition to determining the application in accordance with the legislation, Members must have regard to the:

- (a) common law rules of natural justice (i.e. ensuring a fair and unbiased hearing etc.);
- (b) provisions of the Human Rights Act 1998;
- (c) considerations in section 17 of the Crime and Disorder Act 1998.

3.2.7 The Sub-Committee must also act appropriately with regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms implemented under the Human Rights Act 1998, particularly articles 6 (relating to the right to a fair trial); article 8 (protection of private and family life); and article 1 of the First Protocol (protection of property).

3.2.8 The Sub-Committee must also consider section 17 of the Crime and Disorder Act 1998 which states:

'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.'

3.2.9 The Sub-Committee must have regard to the amended Secretary of States guidance issued in August 2023 under Section 182 of the Licensing Act 2003 and in particular, Chapters 9 (Determining applications) and 10 (Conditions attached to Premises Licences). Particular regard should be had to paragraphs 9.31 – 9.41 (Hearings) and 9.42 – 9.44 (Determining actions that are appropriate for the promotion of the licensing objectives).

3.2.10 With regards to Relevant, Frivolous or Vexatious Representations the relevant sections of the Section 182 Guidance state the following:

9.4 *A representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the*

other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

9.5 It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

9.8 Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This may be difficult for councillors who receive complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub-committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.

9.9 It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.

9.10 Licensing authorities should consider providing advice on their websites about how any person can make representations to them.

3.2.11 The Sub-Committee must also have regard to the Council's Statement of Licensing Policy 2019-2024 ("the Council's Policy").

3.2.12 Part 3.4 of the Council's Constitution (Responsibility for Council Functions) states that the Licensing Committee is to determine all functions not reserved to Full Council in connection with the Licensing Act 2003, with a Licensing Hearing Sub-Committee to be appointed to hear licencing applications referred to Committee.

3.3 Risk management implications

3.3.1 Consideration has given to risk management implications however the nature of the decision is outside the scope of these priorities.

3.4 Environmental implications

3.4.1 Consideration has given to environmental implications however the nature of the decision is outside the scope of these priorities.

3.5 Equality implications

3.5.1 The Sub-Committee should be aware of and consider any implications that may arise from the Human Rights Act 1998 and section 149 Equality Act 2010. The legislation makes it unlawful for a public authority to act in a manner which is incompatible with the European Convention of Human Rights.

3.5.2 When determining the case and considering imposition of conditions the Sub-Committee must be satisfied that any decision which interferes with the rights of the applicant or of others, only does so insofar as it is necessary to protect the rights of others and that no alternative decision would be appropriate.

3.5.3 The Sub-Committee is specifically referred to the following Convention rights:

- (i) Article 6 (the right to a fair trial),
- (ii) Article 8 (the right to respect for private and family life)
- (iii) Article 1 of the First Protocol (the protection of property)

4. Background Papers

- [The Licensing Act 2003](#)
- [Revised guidance issued under Section 182 of the Licensing Act 2003 \(2023\)](#)
- Regulations (cited as the Licensing Act 2003 ([Various]) Orders 2005
- [Slough Borough Council Statement of Licensing Policy – January 2019-2024](#)