

**BABERGH DISTRICT COUNCIL**

<b>TO:</b> Licensing Sub-Committee	<b>REPORT NUMBER:</b> <b>B/LA/Sub/20/1</b>
<b>FROM:</b> Food, Safety and Licensing Assistant Manager	<b>DATE OF MEETING:</b> 12 November 2020
<b>OFFICER:</b> David Price – Licensing Officer Katherine Green – Licensing Officer	<b>KEY DECISION REF NO.</b> N/A

**LICENSING ACT 2003: REVIEW OF PREMISES LICENCE BPL0463 – CAFFEINE LOUNGE, 14 BOREHAMGATE SHOPPING CENTRE, SUDBURY, SUFFOLK CO10 2EG**

**1. Purpose of Report**

- 1.1 To report information to the Licensing Sub-Committee to enable the determination of a REVIEW application made under section 51 of the Licensing Act 2003 ('the Act'), by the following other person:

**Borehamgate Gt Eastern Road Residents Association (Trevor Cresswell – Leader)**

In respect of the following premises:

**Caffeine Lounge, 14 Borehamgate Shopping Centre, Sudbury, Suffolk CO10 2EG**

The existing premises licence is number BPL0463 on issue since 14 June 2019

- 1.2 The complete application, containing the grounds for review, is attached as Appendix A.

**2. Recommendations**

- 2.1 The Licensing Authority **MUST** reject an application for a review unless it is relevant to at least one of the following licensing objectives:

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

- 2.2 The Sub-Committee must, having regard to the application and any relevant representations, take such of the steps below (if any) as it considers appropriate for the promotion of the licensing objectives. The steps are –

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added. Where the authority takes a step mentioned in 2.2(a) or 2.2(b) above, it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

- 2.3 The Sub-Committee may determine to take no action, or to issue an informal warning to the licence holder and/or recommend improvement within a particular period of time.

That the Sub-Committee determines this application at the hearing.

### **3. Financial/Legal Implications**

- 3.1 There is a statutory right of appeal to the magistrates' court for any party aggrieved by the decision taken by the Licensing Authority.

### **4. Risk Management**

- 4.1 None, other than those that inherently apply to the Licensing Authority when carrying out its licensing functions. The four licensing objectives are prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm.

### **5. Consultations**

- 5.1 The application made has been subject to the standard (section 51) review procedure. The application has been advertised, as required by regulation, on the premises, on the Council website and at the main council offices (including at the Council's customer access point within the district) on the notice board for not less than the relevant statutory period (28 days in this instance). The application for review has been served on the responsible authorities and licence holder.
- 5.2 Responsible authorities and 'other persons' as defined by the Act may join a review once instigated and submit their own comments in relation to promotion of the licensing objectives.

### **6. Equality Analysis**

- 6.1 There are no equality impacts arising directly from the matters contained within this report.

### **7. Key Information**

- 7.1 The review application has been submitted to the Licensing Authority by other persons, on 10 August 2020. This is a 'standard' section 51 review application and does not follow any previous closure order or 'summary/expedited' (section 53A) review interim steps process. There has been no previous review of this premises licence.

- 7.2 A premises licence has been held by Caffeine Lounge Ltd (limited company number 11745088) for the Caffeine Lounge since 14 June 2019. The Designated Premises Supervisor (DPS) is currently Mr William Ward (a personal licence holder with Babergh District Council) and he has held that position since 14 June 2019. The last Companies House check (September 2020) identified three directors of the company – being Mr William Ward, Mr Andrew Ward and Mrs Fiona Ward.
- 7.3 In summary, the grounds for the review are cited by the residents association as being that the premises is associated with public nuisance in respect of late night noise between the hours of 23:00 hrs and 04:00 hrs, and Crime and disorder involving anti-social behaviour (public urination, fighting, drunkenness, damage to property, verbal abuse and continuous Police and Ambulance call outs). A full copy of the application for review is attached as Appendix A to this report.
- 7.4 In respect of reviews, the Sub-Committee is particularly referred to section 11 of the Secretary of State's Guidance issued under section 182 of the Licensing Act 2003. Section 22 of the Council's Statement of Licensing Policy refers to review applications.
- 7.5 In respect of decision-making paragraph 11.20 of the Secretary of State's Guidance issued under section 182 of the Licensing Act 2003 states that "in deciding which of these powers to invoke [see 2.2 of this report], it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review."
- 7.6 The Sub-Committee will further be aware that:
- (a) The Licensing Act 2003 is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and therefore beyond the direct control of the individual, club or business holding the licence, certification or authorisation concerned. Nonetheless, the Licensing Act 2003 contributes towards a holistic approach to management of the evening and night-time economy
  - (b) Licensing objectives and aims are specified within the statutory guidance at paragraphs 1.2 to 1.5.
  - (c) Each case must be considered on its own merits. 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.
  - (d) Any action taken by a Licensing Authority via the review process would not take effect until the time for bringing an appeal has expired, and if an appeal is lodged until the determination or withdrawal of that appeal.
  - (e) Where revisions are made to the legislation or guidance issued by the Secretary of State, there may be a period of time when the local Statement of Licensing Policy is inconsistent with these revisions. In these circumstances,

the Licensing Authority will have regard, and give appropriate weight, to the relevant changes, guidance and its own Statement of Licensing Policy.

- (f) Public nuisance is given a statutory meaning in many pieces of legislation, however under the Licensing Act 2003 it is not narrowly defined and retains its broad common law meaning.
- (g) Planning and licensing are different regimes, and neither is bound by the others decisions. There are circumstances when as a condition of planning permission; a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law.

7.7 The Sub-Committee will be alert to the considerations of the Human Rights Act 1998 - specifically Article 6(1) and Articles 8 and 1 of Protocol 1 when dealing with applications for the review of an existing licence. Without prejudice to any other obligation imposed on it, the Local Authority will also be aware of its duty under section 17 of the Crime and Disorder Act 1998 when exercising its various functions.

## 8. Representations

8.1 Responsible Authorities:

- (a) There have been **3** (three) representations from Responsible Authorities under the Act. These are attached as **Appendix B** to this report.

8.2 Other persons (which includes local residents, businesses and resident associations):

- (a) The review has been submitted by Borehamgate Gt Eastern Road Residents Association.
- (b) There have been **4** representations, received made by 'other persons'. Representations may be supportive of the review application or of the licensed business. These are attached as **Appendix C** to this report.

## 9. Appendices

Title	Location
(a) Application for REVIEW of Premises Licence	Attached
(b) Representations received from Responsible Authorities	Attached
(c) Representations received from 'Other Persons'	Attached
(d) Summary of existing premises licence and site plan for BPL0463 issued 14 June 2019	Attached

## **10. Background Documents**

10.1 The Licensing Act 2003

10.2 Guidance issued under Section 182 of the Licensing Act 2003

10.3 Babergh District Council's Statement of Licensing Policy