
MARK RIZK
HEAD OF SERVICE

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Dear Sir/Madam,

LICENSING ACT SUB-COMMITTEE

You are requested to attend a Meeting of the Licensing Act Sub-Committee at the **Coltman VC Room, Town Hall, Burton upon Trent** on **Thursday 17th October 2019** at **10.00am**

Yours faithfully,

Mark Rizk
Head of Service

To: **The Chairman and Members of the Licensing Act Sub-Committee:**

Councillors: S Gaskin
D F Fletcher
Mrs B Toon

PUBLIC ACCESS TO INFORMATION

Members of the Public may attend this Meeting and are also entitled to see the background papers to any report which is not likely to be considered in private. Copies of the public Agenda, background papers, and reports will also be supplied on payment of a copying charge.

Please contact: Monica Henchcliffe (01283) 508608
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AGENDA

BUSINESS OPEN TO THE PRESS AND PUBLIC

1. APOLOGIES FOR ABSENCE
2. DECLARATIONS OF INTEREST
3. APPOINTMENT OF CHAIRMAN
4. URGENT BUSINESS
5. APPLICATION FOR PREMISES LICENCE – FLAVA’S GRILL,
88 HORNINGLOW ROAD, HORNINGLOW, BURTON UPON TRENT, DE14 2PT

The Report of the Head of Service regarding an Application for a Premises Licence to be granted under the Licensing Act 2003.

Reason for consideration by the Committee

An Application has received relevant Representations from ‘Other Persons’

Application

An Application was received from Mr Mehboob Ahmed. A copy of the Application attached at **Appendix 05a**.

Applicant’s Name:	Mr Mehboob Ahmed
Premises Address:	Flava’s Grill 88 Horninglow Road Horninglow Burton upon Trent DE14 2PT

A Site Plan is attached to the report as **Appendix 05b**.

6.1 **Proposed Licensable Activities**

Late Night Refreshment – Indoors and Deliveries

6.2 **Proposed Hours**

Late Night Refreshment:

Monday to Thursday	2300 to 0200hrs
Friday and Saturday	2300 to 0300hrs
Sunday	2300 to 0100hrs

6.3 **Hours premises are open to the public**

Monday to Thursday	1600 to 0200hrs
Friday and Saturday	1600 to 0300hrs
Sunday	1600 to 0100hrs

7. **Operating Schedule**

The Operating Schedule provided by the Applicant can be seen as Section M of the Application **Appendix 05a**.

8. **Relevant Representations**

Representations have been received from 'Other Persons'.

9.1 **Responsible Authorities**

No representations have been received from the following responsible Authorities:
Staffordshire County Council Trading Standards
Staffordshire Safeguarding Children Board
Pollution Team – Environmental Health
Enforcement Team
Director of Public Health (NHS)
Immigration

Should the Application be granted, Staffordshire Police and have agreed conditions with the Applicant, which are shown at **Appendix 05c**.

Planning Department reply, which is attached at **Appendix 05d**, along with email to Applicant advising him of Planning response.

Staffordshire Fire and Rescue Service reply, which is attached at **Appendix 05e**.

9.2 **Other Persons**

Representations have been received from 'Other Persons'. The Representations are attached to the report as **Appendix 05f**.

10. **Law**
Section 18 (2) Licensing Act 2003 – provides that, subject to subsection (3), the Authority must grant the Licence in accordance with the Application subject only to –
- (a) Such Conditions as are consistent with the Operating Schedule accompanying the Application, and
 - (b) Any Conditions which must under Section 19, 20 or 21 be included in the Licence.
 - (3) 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.
 - (4) The steps are –
 - (a) to grant the Licence subject to –
 - (i) the Conditions mentioned in subsection (2)(a) modified to such extent as the Authority considers appropriate for the promotion of the Licensing objectives, and
 - (ii) any Condition which must under Section 19, 20 or 21 be included in the Licence;
 - (b) to exclude from the scope of the Licence any of the Licensable Activities to which the Application relates;
 - (c) to refuse to specify a person in the Licence as the Premises Supervisor;
 - (d) to reject the Application.
 - (5) For the purposes of subsection (4)(a)(i) the Conditions mentioned in subsection (2)(a) are modified if any of them is altered or omitted or any new condition is added.
 - (6) For the purposes of this Section, “relevant representations” means representations which –
 - (a) are about the likely effect of the grant of the Premises Licence on the promotion of the Licensing Objectives,
 - (b) meet the requirements of subsection (7).
 - (c) if they relate to the identity of the person named in the Application as the proposed Premises Supervisor, meet the requirements of subsection (9), and
 - (d) are not excluded representations by virtue of Section 32 (restriction on making representations following issue of provisional statement).

- (7) The requirements of this Subsection are –
- (a) that the Representations were made by a responsible Authority or other person within the period prescribed under Section 17 (5) (c)
 - (b) that they have not been withdrawn; and
 - (c) in the case of Representations made by a person who is not a responsible Authority, that they are not, in the opinion of the relevant Licensing Authority, frivolous or vexatious.
- (8) Where the Authority determines for the purposes of Subsection (7)(c) that any Representations are frivolous or vexatious, it must notify the person who made them of the reasons for its Determination.
- (9) The requirements of this subsection are that the Representations –
- (a) were made by a Chief Officer of Police for a Police area in which the Premises are situated, and
 - (b) include a statement that, due to the exceptional circumstances of the case, he is satisfied that the designation of the person concerned as the Premises Supervisor under the Premises Licence would undermine the Crime Prevention objective.
- (10) In discharging its duty under Subsection (2) or (3)(b), a Licensing Authority may grant a Licence under this section subject to different conditions in respect of –
- (a) different parts of the premises concerned;
 - (b) different licensable activities.

Section 4(2) Licensing Act 2003 – the **Licensing objectives** are:

- (a) the Prevention of Crime and Disorder;
- (b) Public Safety;
- (c) the Prevention of Public Nuisance;
- (e) the Protection of Children from harm.

11. **National Guidance – Revised Guidance issued under section 182 of the Licensing Act 2003**

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/702067/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf (April 2018)

12. **Local Policy Considerations**
East Staffordshire Borough Council – Statement of Licensing Policy

12.1 In carrying out its duties under the Act, the Licensing Authority will actively promote the licensing objectives, namely: -

- the Prevention of Crime and Disorder
- Public Safety
- the Prevention of Public Nuisance, and

- the Protection of Children from Harm

12.2 The Licensing Authority will view each objective with equal importance and pay due regard to any guidance issued by the Secretary of State under Section 182 of the Act. However it should be stressed that irrespective of the content of this Policy, it is

the right of any individual or Company to make an Application under the Act and have the facts of the case considered on its individual merits.

12.3 The Licensing Authority has the ability to deviate from both the Guidance issued by the Secretary of State and/or this statement of Licensing Policy where the facts of a case merit it. If such an occasion does arise then full reasons for such deviation will be given as part of the published decision.

12.4 Nothing in this Statement of Policy should be seen as restricting or overriding the right of a person to make representations on an application or to seek a Review of a Licence or Certificate, in circumstances where the Act allows it.

12.5 The Act deals with the following types of permissions:

- Premises Licences - the licensing of Premises for the retail sale of alcohol, the provision of regulated entertainment or late night refreshment
- Club Premises Certificates - the supply of alcohol or the provision of regulated entertainment to certain Clubs
- Temporary Event Notices - the permitting of certain Licensable activities on a temporary basis
- Personal Licences - the Licensing of individuals for the retail of alcohol

12.6 Descriptions of entertainment are:

- a performance of a play
- an exhibition of a film,
- an indoor sporting event,
- a boxing or wrestling entertainment,
- a performance of live music,
- any playing of recorded music,
- a performance of dance; and
- entertainment of a similar description to a performance of live music, any playing of recorded music or a performance of dance.

12.7 There are certain exemptions from this definition which are set out in the Act. These are detailed at Section 15 of the revised Guidance.

12.8 The provision of "late night refreshment" is defined under the Act as the supply of hot food or drink to the public or a section of the public on or from the Premises whether for consumption on or off the Premises (mobile units included) between 11pm and 5am.

12.9 The scope of the Policy covers new Applications, where appropriate Renewals, Transfers and Variations of Licences and Certificates including where applicable temporary Premises Licences. The Policy also includes the Review of Licences and Certificates, the outcome of which could lead to the Revocation of the Licence or Certificate.

12.10 The Licensing Regime is concerned with regulating the carrying on of Licensable activities on Licensed Premises, by qualifying Clubs and at Temporary Events and

any conditions imposed will be focused on matters which are within the control of individual Licensees and others in possession of relevant authorisations. Therefore any Conditions will centre on the Licensed Premises or event and the vicinity of those Premises or event. The Licensing Authority will primarily focus on the direct impact of the activities taking place at the Licensed Premises on members of the public living, working or engaged in normal activity in the area concerned.

- 12.11 Each Application will be considered on its own merits and any conditions attached to a Licence or Certificate must be tailored to the individual style and characteristics of the premises/event. Standardised conditions will be avoided especially if they cannot be shown to be promoting the licensing objectives. A continued rigorous approach will be taken in determining each Application for late night opening.
- 12.12 Any responsible Authority and/or other person may make representations; "other person" is defined as any of the following:-
- 12.13 Any individual, body or business are entitled to make representations to Licensing Authorities in relation to Applications for the Grant, Variation, Minor Variation or Review of Premises Licences and Club Premises Certificates or the Grant of a Provisional Statement, regardless of their geographic proximity to the Premises, and to make Applications for the review of such authorisations.
- 12.14 Where an objection is received in relation to the Grant or Renewal of a Licence for any purpose regulated by the Act, the matter will be determined in accordance with the terms of this Licensing Policy. It is for the Licensing Authority to decide in the first instance whether or not representations are relevant. It is the impact of issues relating to the four Licensing objectives that is the key consideration
- 12.15 Where the complaint or objection has been judged to be irrelevant, frivolous or vexatious, the matter will not proceed any further and the complainant will be advised in writing of this fact. In such circumstances the Act does not provide a means of appeal, however any such decision is capable of being challenged by way of judicial review.
- 12.16 Relevant representations must address the likely effect of the proposed Premises on one or more of the four Licensing objectives. Where "relevant representations" are received, the Licensing Authority will normally hold a Hearing to consider them (except in the case of a Minor Variation). Applicants will be advised of all representations and all parties involved will be informed of the time and place of the hearing. Representations can be made in opposition or in support of an Application.
- 12.17 Where no representations are received, representations are withdrawn, or agreements are made that a Hearing on an Application is unnecessary; the Licensing Authority will approve the Application. In such circumstances, the Licensing Authority will only impose conditions that are consistent with the operating schedules accompanying it and/or are statutorily required of it under Sections 19, 20, 21, 25, 41, 73 and/or 74 of the Act.
- 12.18 In relation to a refusal to grant a Licence or Club Premises Certificate, the notification will detail the grounds for the refusal and specify the process for the applicant to appeal against the Licensing Authority decision.

- 12.19 As regards the imposition of licensing hours, where representations are received, the Licensing Authority will judge each application on merit. The Licensing Authority will have regard to the overall impact of the licensed premises on the local amenity and any proposals the Applicant might submit to mitigate such impact. The Licensing Authority recognises that longer licensing hours can be a means of preventing large concentrations of people accumulating in areas which then become overly congested.
- 12.20 The opening hours granted on a Premises Licence should be seen as the maximum rather than mandatory opening hours for the Premises.
- 12.21 Uniform or standardised hours of operation for Premises or areas will not be set thus avoiding a 'zoning effect' and enabling the orderly departure of customers. However, there may be circumstances in which the Licensing Authority may deem it appropriate to attach stricter conditions with regard to noise control, an example being customer departure in a particularly noise sensitive area. Applicants and Licensees should recognise that the Council will continue to encourage the use, re-use and enhancement of residential accommodation within the Town Centres. Operating schedules will take account of this where appropriate. The four Licensing Objectives should be paramount considerations at all times and Licensing Authorities should always consider the individual merits of a case.
- 12.22 In relation to Premises purely selling alcohol for consumption off the Premises, there will be a presumption that the activity will be Licensed to operate at all the times that the Premises are open for their normal business. However, the Licensing Authority will consider the imposition of more restrictive hours for the sale of alcohol at those premises where, for example, that activity creates a focus for disorder and disturbance by people congregating in isolated areas.
- 12.23 One of the key concepts underscoring the Act is for conditions only to be attached to Licences/Certificates that are tailored to the individual Premises or event. Unlike previous regimes, standard conditions will not be applied to all Premises irrespective of their operating practice and circumstances. Ideally, Applicants will identify the conditions that are appropriate to their Premises and address the four Licensing objectives, and include them within their operating schedule. These will then be translated into conditions which will be attached to the Licence.
- 12.24 The Licensing Authority will only attach conditions that are reasonable, proportionate and strictly necessary for the promotion of the Licensing objectives. We are aware of the need to avoid measures, as far as possible, that deter live music, dancing and theatre by imposing indirect costs of a disproportionate nature
- 12.25 The Licensing Authority recognises that some conditions may address more than one of the licensing objectives.
- 12.26 In deciding if any of the attached or additional conditions would be appropriate, the applicant should consider amongst other things:
- the type, layout, construction and size of premises
 - its location
 - its clientele
 - the number of people attending
 - the age profile of the customers
 - its proposed hours of operation
 - the nature of any drinks promotions

- the type(s) of entertainment to be provided
- the times when the entertainment will be provided
- the previous history of problems at or related to the premises (including drug misuse and abuse of alcohol)
- the ability of the designated premises supervisor to control and supervise customer behaviour

Prevention of Crime and Disorder

- 12.27 The essential purpose of the Licence or Certificate is to regulate behaviour on Premises and access to them where this relates to Licensable activities and the Licensing objectives. Conditions attached to Licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the Licence Holder and his staff or agents. They can however directly impact on the behaviour of those under the Licensee's direction when on their Premises or in the immediate vicinity of the Premises as they seek entry or leave.
- 12.28 There are a number of offences both within the Licensing Act 2003 and other legislation that relate to Crime and Disorder and that Licensees should be familiar with. These offences stand in their own right and will not be duplicated as conditions on any Licence/Certificate.
- 12.29 A 'Pubwatch' scheme operates within part of the East Staffordshire area and aims to counter individuals who threaten damage, disorder and violence or use or deal in drugs in their premises by excluding them from licensed premises. The Licensing Authority is particularly supportive of such schemes and considers premises should join where it is appropriate to do so. Licensed premises sited within Burton Town Centre are particularly encouraged to join the Pubwatch scheme and if they are not members will be expected to demonstrate alternative controls, of at least the same effect, to counteract crime and disorder in relation to their premises.
- 12.30 The Security Industry Authority also plays an important role in preventing crime and disorder by ensuring door supervisors are properly licensed. The Authority will co-operate work with the security industry.

Public Safety

- 12.31 The Public Safety objective is concerned with the physical safety, including Fire safety, of the people using the relevant Premises and not with Public Health, which is dealt with in other Legislation. Public Safety includes the safety of performers appearing at any Premises. Appendices 4 and 5 contain the suggested Conditions from the Secretary of State's Guidance relating to Public Safety.
- 12.32 The Authority has noted that from 1st October 2006 the Regulatory Reform (Fire Safety) Order 2005 replaced previous Fire Safety Legislation. Responsibility for complying with the order rests with the 'responsible person' who has control of Premises.
- 12.33 The Licensing Authority is familiar with the "Safer Clubbing Guide" and it's Application to nightclubs and dance events. The Guide contains a number of suggestions and safeguards, which appropriate Premises should consider and include within their operating schedules as necessary.

- 12.34 There are a number of other key publications that relate to public safety at entertainment events, which the Licensing Authority would recommend to Applicants. The details of these publications are reproduced in Appendix 4 of this Policy.

Prevention of Public Nuisance

- 12.35 The Public Nuisance Objective is designed to deal with the impacts of Licensable activities at specific Premises on persons living and working (including doing business) in the vicinity that is disproportionate and unreasonable. The main issues for concern will be noise nuisance, light pollution, noxious smells and litter.
- 12.36 The provision of welfare facilities such as toilets within Licensed Premises is relevant to the Prevention of Public Nuisance. Adequate welfare provisions may prevent nuisance activities taking place within the street, such as urination. Licensees should therefore ensure that adequate facilities are provided within the Premises and include these details within their operating schedule.
- 12.37 Public nuisance is not defined within the Act but is given a broad Common Law definition. The prevention of Public Nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbances affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined) in the vicinity of the licensed Premises.
- 12.38 The Licensing Authority will have regard to the powers available within the Anti Social Behaviour Act 2003. This provides that if a noise from licensed Premises is causing a public nuisance the Local Authority has powers to issue a Closure Order for up to 24 hours. This compliments the Police powers under Part 8 of the 2003 Act.
- 12.39 Appendix 6 of the Policy contains the suggested conditions from the Secretary of State's guidance relating to public nuisance.

Protection of Children from Harm

- 12.40 The Act has tightened up on the controls relating to the sale and supply of alcohol to children with new and further principle offences contained within the Act itself. However the intention of the Act is to make Licensed Premises accessible to families and only limit access to children where it is necessary in order to prevent physical, moral or psychological harm to them. When deciding whether restrictions should be imposed, the Licensing Authority will examine the individual merits of each Application and only impose conditions where the circumstances justify them.
- 12.41 Appendix 7 of the Policy contains the suggested Conditions from the Secretary of State's Guidance relating to the Protection of Children from Harm.
- 12.42 The Protection of Children from Harm includes the Protection of Children from moral, psychological and physical harm, and this would include the Protection of Children from too early an exposure to strong language, sexual expletives, violence or frightening images, for example, in the context of film exhibitions, or where adult entertainment is provided.

- 12.43 Aspects of an Application that would be likely to raise concerns in relation to access by children would include:
- Where entertainment or services of an adult or sexual nature are commonly provided;
 - Where there have been convictions of members of the current staff at the premises for serving alcohol to minors or with a reputation for underage drinking;
 - With a known association with drug taking or dealing;
 - Where there is a strong element of gambling on the premises (but not, for example, the simple presence of a small number of cash prize gaming machines); and
 - Where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.
- 12.44 It is not possible to provide an exhaustive list of the entertainment or services that are of an adult or sexual nature, therefore a common sense approach will be taken to interpretation. However such entertainment or services would also include entertainment involving strong and offensive language.
- 12.45 Where conditions are required for the Prevention of harm to Children, a range of alternatives will be considered as methods for limiting access. These will include:
- Limitations on hours when children may be present;
 - Limitations on the exclusion of the presence of children under certain ages when particular specified activities are taking place;
 - Limitations on the parts of the premises to which children might be given access;
 - Age limitations (below 18);
 - Requirements for accompanying adults (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and
 - Full exclusion of those people under 18 from the premises when any Licensable activities are taking place.
- 12.46 The Licensing Authority, Staffordshire County Council Trading Standards and the Police take a very serious view of the persistent and illegal sale of alcohol and other age-restricted goods. Together with Trading Standards, the Licensing Authority will continue to seek to ensure that illegal sales of alcohol and other age-restricted goods is reduced and ultimately eradicated.
- 12.47 The sale of alcohol to minors (under 18 years of age) is a Criminal offence and Trading Standards has, over time, worked to advise the off-licence trade on how to set up systems to avoid sales taking place. Trading Standards will continue to regularly conduct covert test purchasing exercises with volunteers in response to complaints and local intelligence.
- 12.48 The Licensing Authority will maintain close contact with the Police, Young Offender's Team and Trading Standards officers regarding unlawful activities and share actions and intelligence where appropriate.

13 **Details of negotiations that have been carried out**

Copies of the Representations have been forwarded to the Applicant for their consideration.

14. **Decision Options**

New Premise licence

- a. Grant the Application with or without additional Conditions necessary to promote the Licensing objectives
- b. Grant the Application excluding any of the Licensable activities from the scope of the Licence
- c. Refuse to specify a person in the Licence as the Premises Supervisor
- d. Refuse the Application

15. **Appeals (New)**

- Application refused – Applicant may appeal
- Application granted – person having made “relevant representation” may Appeal
- Application granted and Applicant objects to the conditions attached – Applicant may appeal
- Application granted and challenge to modification/non-modification of conditions considered necessary – person having made “relevant representations” may appeal

16. **Details of who has been invited to attend**

The Applicant – Mr Mehboob Ahmed

Other Persons

17. **Date and Time of Hearing**

Thursday 17th October 2019 at 10.00am

18. **List of Appendices**

- 05a** Application
- 05b** Site Plan
- 05c** Conditions agreed with Staffordshire Police
- 05d** Planning Department reply
- 05e** Staffordshire Fire and Rescue Service reply
- 05f** Representations from ‘Other Persons’