

**BABERGH DISTRICT COUNCIL**

**FROM: Head of Natural and Built Environment**

**REPORT NUMBER: J13**

**TO: LICENSING SUB-COMMITTEE**

**DATE OF MEETING: 14 May 2009**

**LICENSING ACT 2003 - HEARING REPORT**

**1. SUMMARY**

1.1 To determine an application under the Licensing Act 2003 made by:

**Mr Alper Tekin**

in respect of:

**Favorite Chicken, 10-11 King Street, SUDBURY CO10 2EB**

The hearing is to determine an application to VARY an existing premises licence (Ref: BPL0176) made under section 34 of the Licensing Act 2003. For ease of reference a copy of the existing premises licence summary and conditions are attached as **Appendix 1**.

1.2 Generally, the variation seeks to increase hours for late night refreshment and add recorded music activity. The application form and accompanying plans are attached as **Appendix 2**.

**2. RECOMMENDATIONS**

2.1 The Sub-Committee must, having regard to the representations made, take such of the steps below (if any) as it considers necessary for the promotion of the licensing objectives:

- to modify the conditions of the licence;
- to reject the whole or part of the application;

and for this purpose the conditions of the licence are modified if any of them are altered or omitted or any new condition is added.

The Sub-Committee is able to determine the variation application.

**3. THIS APPLICATION**

3.1 The premises licence holder remains Mr Alper Tekin, and Mr Tekin has been the premises licence holder since December 2008.

3.2 The variation application seeks to carry on the following licensable activities:

- (a) Late night refreshment (indoors) – primarily for takeaway
- (b) Recorded music (indoors)

Hours applied for late night refreshment (LNR) are:

- 23:00hrs until 01:00hrs (Sunday to Wednesday) and until 04:00hrs (Thursday to Saturday) plus bank holidays, day before bank holidays and Christmas Eve. It is requested that LNR activity continue until 05:00hrs on New Years' Eve.

Hours applied for recorded music are:

- 11:00hrs until 23:00hrs (Monday to Sunday)

The variation is not seeking to add, amend or alter conditions already attached to the existing licence BPL0176 (these would therefore carry forward on to any new licence granted) - see Appendix 1.

- 3.3 The statutory advertisements required under the Act have been published and displayed as certified by the applicant. The newspaper advertisement of the application appeared in the Suffolk Free Press on 09 April 2009. The following consultees, as Responsible Authorities under the 2003 Act, have been served with a copy of the application and plan:

<b>RESPONSIBLE AUTHORITY:</b>	<b>RESPONSE:</b>
1. Chief Officer of Police	<b>Representation made and NOT withdrawn as no mediation agreements have been reached.</b>
2. Local Fire Authority	No representation or comments
3. Health and Safety Executive/Local Authority for Health and Safety at Work Act	<b>Representation made and NOT withdrawn as no mediation agreements have been reached.</b>
4. Environmental Health	<b>Representation made and NOT withdrawn as no mediation agreements have been reached.</b>
5. Local Planning Authority	Confirmed no objection
6. Area Child Protection Committee	<b>As per Chief Officer of Police. Representation made and NOT withdrawn as no mediation agreements have been reached.</b>
7. Any other Licensing Authority	Not applicable
8. Trading Standards	No representation or comments
9. Environmental Agency/British Waterways Boards/Maritime and Coastguard Agency	Not applicable.

- 3.4 A representation has also been received during the statutory period from a local resident as an 'interested party' as defined by the 2003 Act:

- Mr S.Hales, Chelsea Place, Newton Road, SUDBURY CO10 2RL

- 3.5 Copies of representations received are attached as **Appendix 3**. Any advisory only comments or representations now withdrawn by Responsible Authority consultees are also attached as Appendix 3 by way of information/clarification.

#### **4. GUIDANCE AND POLICY CONSIDERATIONS**

- 4.1 The Sub-Committee is referred generally to section 2 – ‘The Licensing Objectives’, section 8 - ‘Applications for Premises Licences’, section 9 - ‘Determining Applications’ and section 10 - ‘Conditions Attached to Premises Licences and Club Premises Certificates’ of the Central Government Guidance (as revised June 2007) in respect of this application.
- 4.2 The Government Guidance issued under section 182 of the Licensing Act 2003 advises that duplication with other statutory provisions is to be avoided (sections 1.16 and 10.15-10.18 refer) and that any conditions deemed necessary to attach to a licence must be proportionate and focus on relevant measures that are within the direct control of the licence holder.
- 4.3 Licensing law is not the primary mechanism for the general control of individuals once they are away from the licensed premises and beyond the direct control of individual licensees (section 1.26 refers).
- 4.4 The Sub-Committee should have due regard to all relevant sections of the Council’s Statement of Licensing Policy in respect of the determination of this application.
- 4.5 The Sub-Committee will also be aware of Human Rights Act 1998 considerations - specifically Article 6 and Articles 8 and 1 of Protocol 1 when determining applications for the variation of an existing licence.

#### **5. THE ISSUE(S)**

- 5.1 The Licensing Act 2003 came into full effect on 24.11.2005. The four underlying objectives of the legislation are:
- Prevention of crime and disorder
  - Public safety
  - Prevention of public nuisance
  - Protection of children from harm

These are the **only** grounds upon which an application may be refused, or if deemed necessary, conditions may be attached to a licence.

- 5.2 Members will note that the issues in respect of this application involve balancing the interests of owners, employees, customers and neighbours of licensable premises.

#### **6. PROCEDURE TO BE FOLLOWED AT HEARING**

- 6.1 A copy of the ‘Procedure for Hearing of Application under the Licensing Act 2003 where a Representation/Objection is received’ is attached to the Agenda.

**7. APPENDICES REFERRED TO**

- (a) Appendix 1: Summary of existing premises licence Favorite Chicken BPL0176
- (b) Appendix 2: Application together with premises plans
- (c) Appendix 3: Representations received

MALCOLM FIRTH  
Head of Natural and Built Environment

**CONTACT:** Lee Carvell (Licensing Officer) **EMAIL:** lee.carvell@babergh.gov.uk

**SUMMARY OF (EXISTING) PREMISES LICENCE BPL0176**

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**Favorite Chicken and Ribs/Chicago Grill**10-11 King Street, SUDBURY, Suffolk, CO10 2EB

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**Licence Holder(s):**Full name Mr Alper TEKIN

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**Permitted Activities:**- provision of late night refreshment

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**Premises Open Hours granted**

	<b>Time From</b>	<b>Time To</b>
Monday to Wednesday	11:00am	Midnight
Thursday	11:00am	3:00am
Friday and Saturday	11:00am	3:00am
Sunday	11:00am	Midnight

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**Additional Conditions****ANNEX 1 - MANDATORY CONDITIONS**

The following conditions in Annex 1 are mandatory under the provisions of the Licensing Act 2003:

1. None applicable to licence BPL0176.

**ANNEX 2 - CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE**

The following conditions in Annex 2 are conditions consistent with the operating schedule submitted by the applicant within the application:

1. Persons being abusive or showing adverse effects of alcohol or drugs shall not be served.
2. The premises management shall not permit any alcohol or illegal substances on the licensed premises.
3. The licence holder shall ensure that staff receive adequate training on how to deal with any potential disturbances that may occur.
4. Cash shall be kept in a secure till and removed at regular intervals.
5. The premises shall be well lit and maintained.
6. Fire safety equipment on the licensed premises shall be regularly serviced.
7. Any problems or spillages which occur on the licensed premises shall be dealt with as a matter of urgency in order to maintain a safe environment.
8. Litter receptacles shall be provided for collection of rubbish and refuse.
9. Customers for takeaways shall be requested to wait in the designated waiting area for collection of orders.
10. The entrance door shall be kept closed (save for access or egress) in order to minimise noise emissions.
11. Customers shall be requested to keep noise to a minimum.
12. After 23:00hrs staff on duty shall exercise caution when serving persons who appear under 15 years old.

**ANNEX 3 - CONDITIONS ATTACHED AFTER A HEARING BY THE LICENSING AUTHORITY**

Not applicable.