



## LICENSING AND GAMBLING SUB COMMITTEE – 11TH NOVEMBER 2021

**SUBJECT: DETERMINATION OF PREMISES LICENCE APPLICATION**

**REPORT BY: LEE MORGAN LICENSING MANAGER**

### 1. Application Details

<u>Applicant</u>	<u>Premises</u>	<u>Application Type</u>
Brew Monster Brewing Company Ltd Unit 1 Lon y Twyn Caerphilly CF83 1NW	Brew Monster Brewing Company Ltd Unit 1 Lon y Twyn Caerphilly CF83 1NW	Variation Premises licence

#### 1.1 Application for Variation of Premises Licence

An application has been submitted to vary the premises licence for the above premises. The proposed application for consideration is set out in 1.3 of this report.

#### 1.2 Site Plan/Photographs

The plan of the licensed area is reproduced as **Appendix 1**.

A location plan is reproduced as **Appendix 2**.

#### 1.3 Proposed Trading Times and Licensable Activity

The application for the Variation of the Premises Licence seeks to permit the following Licensable Activities:

- **Supply of Alcohol (on and off sales)**

Saturday 09.00 to 12.00

Sunday 09.00 to 23.00

The following description is taken directly from the application – “amend the times for the supply of alcohol and the hours the premises is open to include Sundays (09.00 to 23.00) and Saturday mornings (9.00 to 23.00) which are not currently included.”

“These will allow us to offer breakfast brunch and lunch on these days.”

### **1.3.1 Existing Permissions**

- **Supply of Alcohol (on and off sales)**

Monday to Saturday, 16:00 to 23:00

New Year's Eve, 16:00 to 02:00 the following morning

- **Late Night Refreshment (indoors only)**

New Year's Eve, 23.00 to 02.00 the following morning

- **Recorded Music (indoor only)**

Monday to Saturday, 16:00 to 23:00

New Year's Eve, 16:00 to 02:00

### **1.3.2 Existing Conditions**

1. The designated premises supervisor will ensure that all staff are trained in their responsibilities with regard to the sale and supply of alcohol. Training records will be maintained for all members of staff and made available for inspection by any authorised officer at any reasonable time. This will include training of underage sales, drug awareness and drunk and disorderly behaviour. All such training to be updated on an annual basis, or for instances when legislation changes and should include training on how to deal with difficult customers. The training should be clearly documented and signed and dated by both the trainer and the member of staff receiving it.

2. CCTV system shall be installed. The system will be maintained in good working order and operated at all times the premises are open to the public and will continually record when licensable activities take place and for a period of two hours afterwards; the CCTV shall cover all parts of the licensed areas to which the public have access (excluding the toilets). The images shall be retained for a period of 28 days and produced to a Police Officer and any authorised officer of the Licensing Authority and as soon as is reasonably practical upon request

The premises licence holder shall ensure that there are trained members of staff during licensed hours to be able to reproduce and download images into a removable format at the request of any authorised officer of the Licensing Authority or police officer.

3. An incident book shall be kept at the premises and maintained on site. It shall be made available on request to an authorised officer of the local authority or member of the Police. The register will record details of all crimes at the premises, complaints received of a licensing nature, any incidents of disorder, any refusal for the sale of alcohol and any visits by the emergency services.

4. Persons using the smoking shelter will not be permitted to take food or drink outside, and notices to this effect shall be displayed at suitable locations.

5. The premises licence holder shall ensure that there are sufficient litter bins and ashtrays within the vicinity of the premises to collect any waste arising from the carrying on of licensable activities and should also ensure that such receptacles are emptied when full.

6. No waste or bottles shall be moved to external areas between 23:00 and 08:00.

7. The collection of refuse, bottles and recyclable materials shall only take place between 08:00 and 18:00.

8. An approved proof of age scheme shall be adopted, implemented and advertised within the premises such as 'Challenge 25' whereby an accepted form of photographic identification shall be requested before any alcohol is sold to any person who appears to be under 25 years of age. Acceptable proof of age shall include identification bearing the customers photograph, date of birth and integral holographic mark or security measure. Suitable means of identification would include PASS approved proof of age card, photo-card driving licence and passport.

9. Publicity materials notifying customers of the operation of the Challenge 25 scheme shall be displayed at the premises, including a Challenge 25 sign of at least A5 size at the entrance to the premises and where practicable at each point of sale.

10. The premises should be cleared of customers within 30 minutes of the last supply of alcohol on any day.

11. The premises licence holder shall ensure that all drinking glasses used within the premises are of toughened or safety glass to the appropriate safety standard, in that they shall not produce sharp shards when broken.

12. Customers will not have access to the production/brewery area of the building. This area will be closed off and will only be accessible by staff using a keycode.

13. Prominent and clear notices displayed at points where clientele leave the building, instructing them to leave the premises and area quietly.

14. Recorded music will not be played in any outside area at all times on any day.
15. All alcoholic drinks will be consumed indoors within the licensed area.
16. Off-sales will be restricted to the sale of sealed packaged products (bottles, cans, 5 litre microkegs) which are intended for consumption at home.
17. No performance of striptease, lap dancing, entertainment of a sexual nature or other similar adult entertainment will be permitted on the premises.
18. The premises licence holder shall ensure participation in any Pub Watch or similar scheme operating in the locality of the licensed premises.

#### **1.4 RELEVANT CONSIDERATIONS**

Caerphilly County Borough Council Licensing Policy **Appendix 3**

National Guidance **Appendix 4**

#### **1.5 RELEVANT REPRESENTATIONS RECEIVED DURING APPLICATION PROCESS**

##### **1.5.1 Responsible Authorities:**

Fire Safety, the Local Health Board, Heddlu Gwent Police, and Environmental Health Pollution Team, have responded to the application and have indicated that they have no representations / objections in respect of the variation submitted.

##### **1.5.2 Other Persons:**

#### **Residents**

<b>Document</b>	<b>Date Received</b>	<b>Appendix Reference</b>
Resident A Newhouse Representation	<b>20/10/2021</b>	<b>Appendix 5a</b>
Resident B Booth Representation	<b>20/10/2021</b>	<b>Appendix 5b</b>
Resident C Williams / Griffiths Representation	<b>20/10/2021</b>	<b>Appendix 5c</b>
Resident D Butler Representation	<b>20/10/2021</b>	<b>Appendix 5d</b>
Resident E Newbury Representation	<b>20/10/2021</b>	<b>Appendix 5e</b>

Resident F Brown Representation	20/10/2021	Appendix 5f
Resident G Tilley Representation	20/10/2021	Appendix 5g
Resident H Harris Representation	20/10/2021	Appendix 5h

## 1.6 SUMMARY OF REPRESENTATIONS

Representations have been received from 8 residents during the consultation process.

Resident A expresses concern in relation to noise/disturbance so early on a weekend, the premises emitting unpleasant odours and parking issues in restricted bays and yellow lines. Adding to the hours it is stated would add to the nuisance already being made.

Resident B & C detail identical concerns in that the prior occupant of the unit closed on Saturday afternoons and Sunday. Concern was expressed about the failure to address overturned wastebins associated with the venue. Comment as made in respect of noise nuisance from building works undertaken and use of internal lighting has increased light pollution. Reference is made to the number of works vehicles contributing to parking related issues.

Resident D details concerns at the premises linked to prevention of public nuisance, crime and disorder and public safety before the premises has opened and raises the potential for increased traffic and noise. Reference is made to the withdrawal of Sunday opening from the initial application in September 2020. Noise from building works, odours from brewing, waste bins left on pavements and the parking of employee and works vehicles has caused issues during school drop off/collection times.

Resident E references that the company have yet to trade and there has been insufficient testing of the suitability of the hours tested. Comment is made concerning noise from depositing waste at 2 other licensed premises in the vicinity being audible which is believed will increase when this premises opens. Concern is detailed about the attitude demonstrated by workmen and owner of the premises making use of their garden uncomfortable. Reference is made to abuse / assault suffered on two occasions by persons fuelled by alcohol and occasions when cans and general takeaway litter deposited on vehicles / gardens.

Resident F expresses concern in relation to the applicant reneging on Sunday opening even before opening their premises. Reference is made to incidences of public nuisance in relation to building works and air conditioning units and use of internal lighting throughout the night causing light pollution. The failure of the applicant to issues with waste bins is detailed and parking / non removal of employee / works vehicles is referenced.

Resident G details an objection on behalf of her mother and expresses concern that the proposed changes will have a hugely detrimental effect on mental health and wellbeing. Concern is expressed in relation to noise, mess, smell and disruption if additional hours granted. Reference is made to noise from an air conditioning unit being unacceptable. Issues with a waste bin and depositing of food waste and wrappers into the resident's garden are detailed. Reference is made to the premises having had a detrimental impact on the neighbourhood before it has opened.

Resident H details that he wished to object to application for Saturday and Sunday as this was something that the applicant promised he would not do. Reference is made to agreeing with the contents of the submission by Resident F.

## **1.7 APPLICANT RESPONSE**

The applicant has acknowledged receipt of the resident representations and has indicated that he would respond to the same at the hearing.

## **1.8 LICENSING ASSESSMENT**

The Licensing Assessment is a provisional summary, based on representations received prior to the hearing. The Head of Public Protection, Community and Leisure Services reserves the right to amend or vary the provisions contained in the summary and recommendation, subject to any change in the material facts that become known at the hearing. The Sub-Committee is obliged to determine this application with a view to promoting the licensing objectives which are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance;
- The protection of children from harm

In making its decision, the Sub Committee is obliged to have regard to:-

- Licensing Act 2003
- Statutory Guidance issued under S182 of the Licensing Act
- The Council's own licensing policy, and
- All representations made and evidence presented

NOTE: The Sub-Committee may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. Any such actions must be necessary in order to promote the licensing objectives.

Statutory Power - Licensing Act 2003. This is a Council function which is delegated to this committee to decide.

## 1.9 **OBSERVATIONS**

This application relates to the variation of an existing premises licence for additional sale of alcohol hours on Saturday and Sunday. No representation / objection responses were received from Fire Safety, the Local Health Board, Heddlu Gwent Police and Environmental Health Pollution Team. The Section 182 Home Office Statutory Guidance recognises Responsible Authorities (RA's) as experts in their field.

In the absence of comments from the Responsible Authorities (RA's), they appear satisfied with the applicant's ability to promote the licensing objectives for the additional hours requested by the variation application.

Members will be aware of the Section 182 Home Office National Guidance, in particular Paragraph 9.12 which states -

*'Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.'*

Objections have been received during the 28day consultation period from 8 residents. Concern is raised within a number of representations in respect of the applicant's submission for additional hours, despite not having undertaken any licensable activities to date, at the site, at the time of submitting the variation application. However, the council has no discretion or remit to prevent an applicant from making an application to vary an existing licence at any time, whether or not trading and licensable activities have indeed commenced.

Members will only be able to consider the hours sought for Saturday and Sunday as detailed on this variation application and not the merits of the existing licence held.

Members will note the residents' concerns in respect of the applicant being 'untested' given that the company is yet to undertake licensable activities at the site. If the applicant had already commenced licensable activities and operated in line with the licensing objectives, without adverse impact upon residents then, resident fears may

have been allayed. Members are guided to advice offered in relation to hours within the Section 182 Home Office National Guidance Paragraph 10.14 which states:

*'Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.'*

Members will be required to determine whether granting the additional hours on Saturday (3 hours) between 9.00 and midday and Sunday (14 hours) between 9.00 and 23.00hrs will undermine the licensing objectives namely the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

The 9am hours sought by the applicant are in keeping with those held by a number of alcohol licensed premises in close proximity in the town. As an example, Caerphilly Municipal Club permits alcohol sales on Saturday & Sunday from 09.00 – 02.30. Caerphilly Visitor Centre permits alcohol sales Saturday & Sunday – 10.00 – 18.00, Ten Degrees permits alcohol sales on Saturday – 09.00 - 01.00 and Sunday 10.00 – 00.00, finally the Gatehouse permits alcohol sales Saturday & Sunday 12.00 – 01.00.

Some of the concerns expressed by residents are understandable especially given the applicant is yet to undertake licensable activity from the premise, however the applicant cannot be held responsible for any existing or historic issues that have arisen as a result of activities held other licensed premises in the vicinity.

Should any residents have concerns in relation to noise / nuisance or anti-social behaviour linked to already licensed premises, then these matters should be reported to the Licensing Team for investigation. The matters identified within the comments submitted by residents in relation to this application are being addressed with the relevant premises.

Whilst it is understood that residents will be concerned by the same, matters such as increased traffic and parking will not be a consideration for Members of this Sub-Committee, as they are not considerations under the Licensing Act 2003.

Reference by residents is made to the undermining of the prevention of public nuisance licensing objective from building or renovation work, however such issues do not form part of licensable activity and would therefore not be a consideration for Members as no licensable activities was being undertaken. Clearly, if residents had concerns about the times at which work was being undertaken or noise from works / renovation, these should have been communicated to Environmental Health Pollution team for investigation. Likewise, any concerns in relation to odour or light pollution generated by the premises.

Having examined the public protection database, aside from reports in relation to vermin and missed refuse collection, there does not appear to be any complaints/service

requests in relation to noise, odour or light pollution recorded for the period since the grant of premises licence for Brew Monster in September 2020 to date.

Whilst there have been anticipatory concerns raised in relation to the potential for increased noise and disturbance, if additional hours were approved. Existing conditions already attached to the licence will require that any licensable activity will be indoors only (with the ability to provide off sales in sealed containers.)

Advice is offered in relation to relevant, vexatious or frivolous representations and is provided within Paragraph 9.4 of Section 182 Home Office National Guidance which states *'....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....'*

Paragraph 28.23 of the council's licensing policy details that *'Decisions as to the validity of representations will normally be made by officers of the Licensing Authority. In borderline cases, the benefit of the doubt about any aspect of a representation will 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.'*

Irrespective of the outcome of this application, protection is and will be afforded to local residents' by virtue of Statutory Nuisance provisions of the Environmental Protection Act 1990.

Further protection is afforded where it is evidenced when undertaking licensable activities that a licensee is undermining the licensing objectives both Responsible Authorities and residents have the ability, to apply for a review of the premises licence.

It is worth highlighting that if Members determined to refuse or limit hours for the provision of sale of alcohol as part of this variation. Opening hours of a premises do not constitute a licensable activity, and therefore, the premises could subject to other controls e.g planning, could open and provide for service of breakfast / food for the hours specified.

In relation to references to Planning by residents, Paragraphs 17.11 of the Council's Statement of Licensing policy provides guidance to Members as the two regimes are separate entities and states *'The Licensing Authority is not bound by decisions made by the Planning Committee and vice versa.'*

Furthermore Paragraph 17.12 which states *'Where, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes that is different to the licensing hours, the licensee must observe the earlier closing time in order to avoid any breach of their planning permission - for which they may be liable to prosecution under planning law (and vice versa where the licensing hours finish earlier than the planning permission).'*

Paragraph 17.6 details that ‘ *Applications for premises licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned. However, applications for licences may be made before any relevant planning permission has been sought or granted by the Local Planning Authority.*’

## **1.10 RECOMMENDATION**

Having had regard to comments received from residents but noting the absence of comments from Responsible Authorities, it is recommended that the variation to permit the additional retail sale of alcohol hours sought namely **Saturday 09.00 to 12.00 and Sunday 09.00 to 23.00 be approved.**

Background Papers:

[Link to Statutory Guidance issued under S182 of the Licensing Act 2003](#)

[Link to Caerphilly CBC Statement of Licensing Policy](#)

Date of this report: 2<sup>nd</sup> November 2021

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