

Bonhomie Application to Vary Premises Licence

Legal & Policy Points & Sec 182 Guidance

There are no remaining Representations from any of the Statutory Licensing Authorities (or indeed non-Statutory Authorities). This means that each and every Statutory Authority each recognised in law as an expert in their own field do not believe that the Licensing Objectives will be in any way undermined by the granting of this Application. This includes the Police lawfully recognised as the lead Authority for Crime and Disorder

Para 42 Toulson LJ Hope & Glory Court of Appeal.

42. Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order,

the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to public nuisance. Although such questions are in a sense questions of fact, they are not questions of the “heads or tails” variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgement rather than a matter of pure fact.

Decision of the High Court in Daniel Thwaites plc v Wirral Borough Magistrates’ Court [2008] EWHC 838 (Admin)

The licensee successfully judicially reviewed that decision. Mrs. Justice Black was also critical of the way the Justices used their local knowledge, saying “There can be little doubt that local magistrates are also entitled to take into account their own knowledge, but ... they must measure their own views against the evidence presented to them.” She particularly made that point because the evidence was that the responsible authorities were untroubled and that the history of the premises when operating to the longer hours did not substantiate the Justices’ fears.

In her conclusions, Black J stated that the Justices should have looked for “real evidence” that greater regulation was required in the circumstances of the case. Their conclusion that it was required was, in her judgment, not a conclusion to which a properly directed bench could have come. **Here, it was said, they proceeded without proper evidence**, gave their own views excessive weight and the police views none at all.

Sec 182 Guidance to the Licensing Act 2003

Purpose

7. 1.7 This Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates’ courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

Licensing objectives and aims

2. 1.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:
 - (3rd paragraph) recognising the important role which pubs and other licensed premises play in our local communities by **minimising the regulatory burden on business, encouraging innovation and supporting responsible premises**;

Statement of Policy (Sec 182 Guidance)

Planning and building control

64. 14.64 The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa. However, as set out in chapter 9, licensing committees and officers should consider discussions with

their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.

The Applicants history brief Resume

BELGIQUE THEYDON LTD
(trading as bonhomie)

14 Forest Drive,
Theydon Bois
Epping
CM16 7EY

Director Information

Christopher Keen (Manager/ Director)

Career Experience

- Customs Broker – 10 years
- Jeweller – 10 Years
- Winery/Cellar Door/Restaurant owner and manager (Alcohol licence held) – 4 years
- Restaurant manager Belgique (Alcohol licence held) – 2 years
- Business Manager for Belgique chain of restaurants (Alcohol licence held) – 2 years
- Director/Manager of bonhomie (Alcohol licence held) – 3 years

Christine Barry (HR and Finance)

Career Experience

- Head teacher BSc Ma - 21 years
- University Professor for UConn -12 years
- Trainer and workshop deliver for local authorities and private enterprises -22 years
- DBS checked October 2022
- Child protection trainer for Bonhomie – 2.5 years

They both live in close proximity to Bonhomie and are very much part of the local Community even receiving a Christmas Card from the Parish Council Cllr Cowup (naming other Councillors and Councillor Officers including Jennifer Endean the author of the Representation) thanking them for their all their assistance to us and the village throughout the year

and particularly noting all the support for the Litter Pick Up throughout the year. Bonhomie is much loved by the local community. Would like to highlight that there are no individual resident objections against this Application to Vary hours.

Response to the Parish Council Representations & Comments from the Planning Department.

Planning have now confirmed that they had received the Planning Application to change hours/condition(s)

Given the ongoing challenges facing the Hospitality Licensed Leisure Trade from Covid Closures to the recession and more with many Operators going out of business it has become necessary for the Operator to adapt and change the Business model to financially sustain the business. The business won't survive, jobs will be lost, and a much-valued local Venue (customers include local Councillors) will be lost with responsible experienced Operators losing their livelihood.

Addressing the concerns of the Parish Council no Responsible Authority each a legally recognised expert in their own sphere of expertise has made a Representation against this Application.

This means that given the history and the checks and balances in place they do not believe that there will be the issues of Crime & Disorder, excessive drinking, and the protection of children from harm.

Regarding the two dine- in restaurants the other side of the road please note that the former Kuzine restaurant is now Open as Filika. (which has an outside Licence). Please also note that within a short radius around the corner there are two Pubs (including one facing the end of the street and two Curry restaurants as well as a Tesco selling alcohol among others.

Please note that the Parish Council objected to the Variation of Licence in 2018. Chris Keen was there, and please note that this has not caused any issues.

Please also note that each Licensing Application should be considered on its' own merits and that there is certainly no Saturated Area Licensing Policy/ CIZ etc. in place for Theydon Bois.

It is somewhat surprising that the Parish Council is so strongly of the view that Bonhomie's Variation of Existing Premises Licence must be refused

along with the (somewhat surprising) certainty of what they believe would happen.

Chris Keen has explained to the Parish Council how the lighting will not be in strong conflict with the Theydon Dark Skies Policy.

The Dark Skies Policy we believe falls under the Local Plan (renewal 5 years after Dec 2017) which refers to Planning Permissions. We note that 5.121 states the importance of employment growth in the area. We feel that by not granting this Variation an SME (Small Medium Enterprise) Business will be lost as well as jobs of those who work there and income for suppliers and the like. This would be contrary to the Local Plan's employment growth in the area strategy, wouldn't it?

Whilst acknowledging the Parish Council's concerns we have included some stated cases, Policy and Guidance as well as the quality of the Applicant(s) to help assist the Committee with considering how much weight should be attached to the Representation and help assist their decision making.

Respectfully submitted

Andy Newman

Fully Authorised Licensing Agent.