

**IN THE MATTER OF:**

**A PROPOSED PREMIER INN, CHIPPING CLOSE, ST ALBANS, BARNET**

**HEARING:**

**WHITBREAD GROUP PLC**

**APPLICANT**

**WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT**

**INTRODUCTION**

1. This is an application for a new Premises Licence pursuant to Section 17 of the Licensing Act 2003 for a proposed 100 bedroom Premier Inn at the above location.
2. A hearing is required as representations from 3 residents have been received.
3. The applicant is Whitbread Group Plc which operates some 785 licensed premises in England, Wales and Scotland. These comprise principally family friendly hotel premises with associated food led bar and restaurant operations. Premier Inn have over 72,000 bedrooms.
4. The proposed development represents an inward investment by Whitbread in excess of £2 million and will lead to the creation of some 50 jobs.
5. Whitbread are responsible and experienced operators of family friendly licensed premises (the majority in town or city centre locations) with robust systems in place for the exercise of due diligence to ensure their premises are properly and responsibly run in accordance with the law and to ensure the avoidance of the commission of regulatory offences and the possibility of public nuisance and/or crime and disorder in particular.

6. The nearest residents likely to be affected by the proposed development will be those residents who are staying in the proposed Premier Inn itself. Whitbread offer a "good night guarantee" to such customers under which a customer is refunded the cost of their accommodation if their night is disturbed. The amenity of their customers and particularly hotel residents is a paramount concern and priority. As a consequence any impact on those residing further away is minimised or even eradicated.
7. As a development site, these premises have yet to be developed but upon completion and before opening, a Designated Premises Supervisor will be appointed, a Senior Manager of the premises with appropriate qualifications and all staff will be trained as part of Whitbread's national development programme.
8. What is proposed here will be a hotel facility with food and beverage offering on the ground floor. The majority of the customers will be taking table meals and the premises laid out accordingly. It should be noted that many sites similar to this already operate around the Country without particular issues. For a development of this type, typical menus are attached at Annex 1 of this written submission. This gives an indication of the type of food and beverage on offer including childrens menus.
9. The Hotel accommodation will have its own dedicated Hotel reception at ground floor level with Hotel accommodation on the ground and upper floors comprising in all as indicated 100 rooms which will be unlicensed. The reception area is manned and supervised 24 hours a day.
10. Non-residential trade within a Premier Inn is an important but limited aspect of the business.
11. No representations have been received from any Responsible Authority, particularly from the Police, in connection with crime and disorder or public nuisance or Environmental Health in connection with possible noise nuisance. A discussion took place with the Police and appropriate conditions agreed with the Police were included within the application at the time of lodging.

12. Representations have been received from 3 local residents as appear in the Committee Report.

## **The Law**

### **The Licensing Objectives.**

13. Central to the statutory regime are the four licensing objectives which are the only relevant areas for consideration in licensing applications. They are as follows:

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

### **The Guidance**

14. Under Section 182, the Secretary of State is required to issue Guidance to Licensing Authorities on the discharge of their functions under the Act. Section 4(3) requires Licensing Authorities to have regard to the Guidance.

15. So whilst the requirement to have regard to the Guidance is binding on Licensing Authorities, paragraph 1.9 of the Guidance recognises that :

"This Guidance cannot anticipate every possible scenario set of circumstances that may arise and, as long as Licensing Authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an Appeal or Judicial Review and the reasons given will then be a key consideration for the Courts when considering the lawfulness and merits of any decision taken".

16. Although the Guidance cannot be said to have statutory force, those parts of the Guidance which express the key aims and objectives of the legislation must have

significant regard paid to them because any decision which undermines the legislative scheme may be found to be unlawful (Padfield –v- Ministry of Agriculture, Fisheries and Food (1968) AC997: R (on the application of British Pub & Beer Association) –v- Canterbury City Council (2005) EWHC 1318 Admin).

### **The Application Process**

17. Section 17 sets out the procedure for making a Premises Licence Application and Section 18 sets out the provisions for determination of that application where representations have been made by the Responsible Authorities or other persons.

18. Section 18 provides that where an application for a new Licence is properly made, following receipt of relevant representations, the Licensing Authority must hold a hearing following which it may, if it thinks it is necessary, take one or more of the steps set out in Section 18(4) as follows :

(a) to grant the Licence subject to :-

- (i) the conditions mentioned in sub-section 2(a) modified to the extent the Authority considers appropriate for the promotion of the licensing objections; and
- (ii) any condition must under Section 19, 20 or 21 be included on the Licence.

(b) to exclude from the scope of the Licence any of the licensing activities to which the application relates.

(c) To refuse to specify a person on the Licence as Premises Supervisor.

(d) To reject the application.

### **Conditions**

19. The general principles which govern the imposition of conditions upon Premises Licences may be summarised under 4 heads :-

- (1) A condition may only be attached to a Licence if it is appropriate for the promotion of one or more of the licensing objections.
- (2) A condition must not duplicate other statutory provisions.
- (3) The conditions must be proportionate.
- (4) In order to give rise to criminal liability a condition must be framed so as to give precision and clarity for definition in the prescribed Act.

20. Relevant extracts from the Guidance are as follows :-

(1) Conditions should only be imposed only if appropriate to promote one of the licensing objectives (Guidance paragraph 10.10).

(2) The same paragraph indicates that "Conditions should be determined on a case by case basis and standardised conditions which ignore those individual aspects should be avoided".

(3) Paragraph 1.17 states each application must be considered on its own merits. This is essential to avoid the imposition of disproportionate overly burdensome conditions on premises where there is no need for such condition. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

(4) Guidance paragraph 2.21 stipulates "beyond the immediate surrounding of the premises these are matters for the personal responsibility of individuals under law and an individual engaged in anti-social behaviour is accountable for their own right. However it would be perfectly reasonable for the Licensing Authority to impose a condition following relevant representations to require Licence Holder or club to place signs on exits around the building encouraging patrons to be quiet until they leave the area and to respect the right of people living nearby to a peaceful night.

(5) All licensing determinations should be considered on a case by case basis (9.42)

(6) The determination of the Licensing Committee must be evidence based on what is before them (9.43) and Daniel Thwaites Plc –v- Wirral Borough MC (2008 EWHC 838)

### **Role Of The Responsible Authorities**

21. (9.12) 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 reasons 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.

22. It is of course the case that there has been no Responsible Authority representations to this application, however, conditions have been agreed with the Police and the Applicant is content for those conditions to be imposed on any Licence granted.

### **Residential Representations Received**

23. As mentioned above, representations have been received from 3 local residents.

24. Insofar as there may be a suggestion that the use of these premises may lead to a potential detrimental effect on the residential amenity of those in the vicinity with a perceived risk that this will result in a rise in anti-social behaviour and public

nuisance as a result of the food and beverage facility at this location, no evidence appears to be offered or is available to support any such assertion.

25. The application limits licensable activities to non-residents at 23.00 Monday – Sunday (in accordance with the Planning Permission granted) and which is significantly less than the normal terminal hour for developments similar to this across our client's estate and which is normally included for occasional flexibility.
26. As further mentioned, the Hotel reception area is manned 24 hours a day providing a further degree of supervision of the overall premises throughout the day and night.
27. Although the local residents who have opposed the application have anxieties, it is the view of the Applicant that these anxieties are substantially unfounded (borne out by their experience of the many similar developments which they operate) but in any event are mitigated by conditions offered within the application and those conditions agreed with the Police who have principal responsibility in respect of control of crime and disorder and indeed public nuisance.

### **Barnet Council Licensing Policy**

28. The Statement of the Licensing Policy adopted by Barnet Council is relevant.
  - a) It is also reasonable for the Council as a Licensing Authority to expect that other Responsible Authorities should intervene where the basis for the intervention falls within the remit of that other Responsible Authority. For example, the Police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the Local Authority exercising Environmental Health functions to make representations where there are concerns about noise nuisance. Each Responsible Authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other Responsible Authority (2.7)
  - b) The Authority recognises that the licensing application should not be seen as re-run of the Planning Application process and that there should be a clear

separation of the Planning and licensing regimes to avoid duplication and inefficiency. However, the Authority will normally expect applicants to demonstrate that their proposed use of the premises is lawful in planning terms, including complying with any conditions that may be imposed upon a Planning Consent prior to applications under the Act being submitted. (4.4)

In summary:

- a. The applicant is a well-known and highly respected operator of licensed premises throughout England, Wales and Scotland without particular issue.
- b. The amenity of their own residents is of paramount importance and the management of the premises will be designed to ensure minimum impact upon those residents and indeed any other residents within the areas.
- c. No evidence is or can be put forward specific to this proposed development that problems and disturbance will occur.
- d. No evidence is or can be advanced or is otherwise available that Whitbread are not a responsible operator or that they do not have in place effective and credible due diligence policies to ensure the proper management of their hotel premises
- e. In addition, the premises will bring significant investment into the area.
- f. In addition there will be careers created with 50 new full and part time jobs, with the opportunity to progress through the Whitbread Academy.
- g. The style of business to be operated are family friendly and will be a positive addition to the Barnet area is such that it will improve the offer to customers within the Barnet area and will not impact adversely.

**John Gaunt & Partners**

**November 2018**

