

16 May 2024

Title	Application for a Premises Licence Applicant: Forbidden Fruit Restaurant & Bar LTD Premises: "Forbidden Fruit" 2 New Parade Ashford Surrey TW15 2UF
Purpose of the report	For Determination
Report Author	Lucy Catlyn (Principal Licensing Officer 01784 444295)
Ward(s) Affected	Ashford Town

Description and Location	<p>Forbidden Fruit Restaurant & Bar Ltd has applied for a grant of a premises licence for the provision of, late-night refreshment, Supply of Alcohol.</p> <p>"Forbidden Fruit" is located at 2 New Parade Ashford Surrey United Kingdom TW15 2UF .</p> <p>The location plan is attached at Appendix A.</p>
The Application	<p>The application is to determine the grant of a premises licence for:</p> <p>The provision of late-night refreshment (indoors only):</p> <ul style="list-style-type: none"> • Saturday 23:00 to 00.00 • New Years Eve 23.00 to 01.00 <p>Supply of alcohol (on Sales only):</p> <ul style="list-style-type: none"> • Tuesday, Wednesday Thursday 09:00 to 22:00 • Friday 09:00 to 23.00 • Saturday 09:00 to 00:00 • Sunday 09:00 to 22:00 • New Years Eve 23.00 to 01.00 <p>The opening times applied for:</p> <ul style="list-style-type: none"> • Tuesday, Wednesday Thursday 09:00 to 22:30 • Friday 09:00 to 00:30 • Saturday 09:00 to 00:30 • Sunday 09:00 to 22:30 • New Years Eve until 01.30

	The application form is attached at Appendix B . The licensable area plan is attached at Appendix C .
Representations	<p>Relevant representations have been received from three 'other persons'.</p> <p>No relevant representations have been received from any of the responsible authorities.</p> <p>The representations are attached at Appendix D.</p>
Options	<p>1. The Sub-Committee is requested to consider the application for the grant of a premises licence its merits.</p> <p>2. Having had regard to the representation, the Sub-Committee must take such steps as it considers appropriate for the promotion of the licensing objectives.</p> <p>The options are:</p> <ul style="list-style-type: none"> • To grant the application subject only to such conditions as are consistent with the operating schedule and the mandatory conditions; or • To grant the application and modify the conditions of the licence, by alteration, addition, or omission; or • To reject the application.

1. Summary of the report

- 1.1 This is an application for a new premises licence for the provision of late-night refreshment and supply of alcohol.
- 1.2 A plan of the premises is attached at **Appendix C**.

2. Application Summary

- 2.1 The premises licence application form has been amended from the original application submitted in response to representations from 'other persons'. The final application which is attached at **Appendix B** describes the premises as: "Forbidden Fruit is envisioned as a refined destination, seamlessly blending the elegance of fine dining with the charm of a cozy desert shop".
- 2.2 The applicant has submitted a copy of their menu and photos of the front and inside of the premises. These are attached **Appendix E**.
- 2.3 The applicant's agent advises that the premises has seating for up to 24 people, but they are looking to add more in the future. The plan submitted states that the seating capacity is 49 people.
- 2.4 **Licensable activities proposed.**
- The Provision of Late night Refreshment
 - Supply of Alcohol

2.5 The times proposed for the carrying out of licensable activities.

The provision of late-night refreshment (indoors only):

- Saturday 23:00 to 00.00
- New Years Eve 23.00 to 01.00

Supply of alcohol (on Sales only):

- Tuesday, Wednesday Thursday 09:00 to 22:00
- Friday 09:00 to 23.00
- Saturday 09:00 to 00:00
- Sunday 09:00 to 22:00
- New Years Eve 23.00 to 01.00

2.6 The proposed opening hours of the premises

- Tuesday, Wednesday Thursday 09:00 to 22:30
- Friday 09:00 to 00:30
- Saturday 09:00 to 00:30
- Sunday 09:00 to 22:30
- New Years Eve until 01.30

2.7 Below are the timings for other licensed premises in the same postcode:

Sainsburys 6 New Parade Church Road Ashford TW15 2UF	Sale of Alcohol every day from 06:00 until 00:00 Late Night Refreshment every day from 23:00 – 24:00	75 foot distance from applicant premises
Select News 5 New Parade Church Road Ashford TW15 2UF	Sale of Alcohol every day from 06.00-23.00	46 foot distance from applicant premises
Tarla Café & Grill 11 New Parade Church Road Ashford TW15 2UF	Sale of Alcohol every day from 08.00-20.00	151 foot distance from applicant premises

2.8 The application has been consulted upon and adverts published in line with the regulations for the Licensing Act 2003. The application was advertised in the Surrey Advertiser on 12 April 2024.

2.9 Details of the application have been published on the Council's website.

3. Promotion of the Licensing Objectives & conditions agreed by applicant.

3.1 Box M of the application form (**Appendix B**) details the proposed steps to be taken by the Applicant to promote the licensing objectives should the licence be granted.

3.2 In response to Representations from ‘other persons’ the applicant has amended their conditions from the original application submitted.

4. Representations

4.1 Representations from Responsible Authorities

4.2 There are no representations from any of the Responsible Authorities.

4.3 Representations from ‘other persons’

4.4 Three relevant representation have been received and are attached at **Appendix D**.

4.5 The grounds for objection are summarised below in relation to each Licensing Objective.

Prevention of public nuisance

- Fear of increased levels of disturbance

Prevention of crime and disorder

- Increase in anti-social behaviour

4.6 On 18 April 2024 the Licensing Authority spoke to the applicant’s agent to advise that representations had been received. The agent replied that his client was happy to meet with the objectors and a new application form was submitted with the removal and live and recorded music. There was also an explanation submitted of what the premises was going to be and this is annexed at **Appendix F**.

4.7 An amended application was sent to the two representees the Licensing Authority had at the time on 22 April 2024. Further to this, the applicant further reduced and amended their application and a copy of the application was sent to all of the representees on 29 April 2024. One representee replied to summarise and this is attached at **Appendix G**.

4.8 A copy of all of the representations was sent to the applicants agent on 1 May 2024. The agent replied to the Licensing Authority on 1 May 2024 advising “our client has decided to stick with the final application and go to hearing.”

4.9 The applicant’s agent has advised “The landlord owns the car park behind them, and they have 1 space allocated to them which the owner or duty manager will be using. They have seating for up to 24 people, but they are looking to add more in the future”.

4.10 Issues which are not relevant to the licensing objectives and cannot be considered by a Licensing Sub-Committee:

- Objections based on the public's need
- Anti-social behaviour beyond the control of the licensee

5. Licensing Policy

5.1 The Sub-Committee must have regard to the Council's own Statement of Licensing Policy when determining this application. The following sections of the Council's Licensing Policy are relevant to this application and are attached at **Appendix H**:

- 16.1 - 16.6 Promoting the Four Licensing Objectives
- 16.7 - 16.23 Prevention of Crime and Disorder
- 16.31 - 16.40 Prevention of Public Nuisance

6. National Guidance

6.1 The Sub-Committee must also have regard to the revised Guidance issued in December 2022 by the Secretary of State under section 182 of the Licensing Act 2003. The following chapters are relevant in the consideration of this application and are attached at **Appendix I**:

- Paragraphs 2.1 – 2.7 Crime and Disorder
- Paragraphs 2.21 – 2.27 Public Nuisance
- Paragraphs 3.1 – 3.2 Licensable activities
- Paragraphs 3.12 – 3.20 – Late night refreshment
- Paragraphs 9.1 – 9.10 Determining Applications
- Paragraphs 9.32 – 9.41 Hearings
- Paragraphs 9.42 – 9.44 Determining actions that are appropriate for the promotion of the licensing objectives.
- Paragraphs 10.1 – 10.13 Conditions attached to premises licences and club premises certificates

7. Making a decision

7.1 When considering an application for a grant of a new Premises Licence, the Sub-Committee shall carry out its functions with a view to taking steps it considers appropriate for promoting the licensing objectives. The licensing objectives are:

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

7.2 The legal framework from which licensing decisions must be made, consists of the Licensing Act 2003 and regulations, the national guidance issued under section 182 of the Licensing Act 2003, case law, and the Council's own Statement of Licensing Policy.

- 7.3 The Sub-Committee must consider the application, relevant representations, and evidence provided by the parties at the hearing and within the report documentation.
- 7.4 In making its decision the Sub-Committee must promote the licensing objectives only, taking into account National Guidance and the Council's own Statement of Licensing Policy.
- 7.5 The Sub-Committee must give reasons for its decision.
- 7.6 It is only where additional and supplementary measures are appropriate to promote the licensing objectives that there will be a requirement for appropriate, proportionate conditions to be attached.
- 7.7 Conditions on licences must:
- be precise and enforceable.
 - be unambiguous.
 - not duplicate other statutory provisions.
 - be clear in what they intend to achieve; and,
 - be appropriate, proportionate, and justifiable.
- 7.8 In determining the application, the Sub-Committee will need to consider whether there is actual evidence of problems in relation to the licensing objectives at this premises. Where the representations are unable to provide evidence of observed problems, as in the case of a new licence application, the Sub-Committee should be convinced that there is a very real threat of the fears or the dangers described in the representations actually occurring, before applying any conditions to address such fears or dangers.
- 7.9 The decision made by the Sub-Committee will be subject to appeal rights to the Magistrates' Court as detailed in section 181 and Schedule 5 of the Licensing Act 2003.

Appendices:

Appendix A – Location Plan

Appendix B – Application

Appendix C - Plan

Appendix D – Representations from other persons

Appendix E – Copy of menu and photo of front and inside of premises

Appendix F – Email from applicant

Appendix G – Email from other person summarising

Appendix H – **Relevant sections of Spelthorne Borough Council's Statement of Licensing Policy 2024-2029, paragraphs**

- 16.1 - 16.6 Promoting the Four Licensing Objectives
- 16.7 - 16.23 Prevention of Crime and Disorder
- 16.31 - 16.40 Prevention of Public Nuisance

Appendix I – National Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 revised guidance December 2023:

- Paragraphs 2.1 – 2.7 Crime and Disorder
- Paragraphs 2.21 – 2.27 Public Nuisance
- Paragraphs 3.1 – 3.2 Licensable activities
- Paragraphs 3.12 – 3.20 – Late night refreshment
- Paragraphs 9.1 – 9.10 Determining Applications
- Paragraphs 9.32 – 9.41 Hearings
- Paragraphs 9.42 – 9.44 Determining actions that are appropriate for the promotion of the licensing objectives.
- Paragraphs 10.1 – 10.13 Conditions attached to premises licences and club premises certificates