

ASHTON GARDENS – PLAN FOR CAFÉ BAR

Fylde Council is currently applying for a licence that would permit the following in Ashton Gardens:

- **Alcohol sales** (indoor and outdoor) on and off the premises from 9am to midnight seven days a week
- **Regulated and other entertainment** (indoor and outdoor) on and off the premises from 9am to midnight seven days a week
- **Provision of late night refreshments** (indoors and outdoors) on and off the premises from 11pm to midnight seven days a week

This document is a synopsis of the application and the process by which objection and representation might be made by groups and individuals.

Date for representations and objections: **Before 21 August 2009**

SYNOPSIS OF THE APPLICATION

Location: The new Ashton Institute building, and part of Ashton Gardens

Application Date: 22 July 2009

Applicant: D Bell, Fylde Borough Council, Town Hall, St Annes

Existing Permissions/ Restrictions: *(see later for more detail)*

- The gardens already benefit from a Premises License (without alcohol)
- The entire area of the gardens is covered by the Local Authorities (Alcohol Consumption in Designated Public Places) Regulations
- There is a covenant in the 1914 conveyance of the freehold which precludes use of the gardens for the sale of alcohol except on a temporary licence

Description of the premises by the applicant: "It is anticipated that the premises will be used by the community as a cafe bar and consists of 60 covers with outside seating area.

Activities proposed:

1. Regulated entertainment: 9am to midnight, seven days a week to include:

Plays, (indoors and outdoors)

Films and video (indoors),

Live music (indoors and outdoors) (occasional amplified/unamplified music from solos, trios, groups and bands),

Recorded music (indoors and outdoors),

Performances of dance (indoors and outdoors) for the entertainment of patrons as well as guests dancing

And anything of a similar description to the forgoing

2. Entertainment: 9am to midnight, seven days a week to include making music, dancing, entertainment of a similar description (indoors and outdoors) (Any variety acts in the future providing entertainment of a similar description. Includes comperes for functions, quizzes with an audience etc. The cafe and patio area may be made available to visiting groups/schools/entertainers including visiting groups bringing their own equipment).

3. Provision of late night refreshment 11pm to midnight (indoors and outdoors) (Provision of hot food / beverages)

4. Supply of alcohol 9am to midnight seven days a week (indoors and outdoors)

No adult entertainment.

An application to vary the Designated Premises Supervisor (DPS) will be made when the building of the premises is nearing completion

Summary of measures to promote the licensing objectives - as stated by the applicant

General:

The provision of food shall form a substantial element of the operation of the premises

Prevention of crime and disorder

DPS, when present, and all staff will ensure police instructions are complied with

DPS to have a nominated stand-in if they are absent

No-one to sell alcohol unless a personal licence holder or authorised by one or DPS

No promotions of unlimited alcohol for a set price

Hot, soft, and non-alcoholic drinks available at all times

Off sales in sealed containers only. Unfinished wine bottles to be re-corked before removal from licensed premises

Public safety

Adequate provisions to keep empty bottle stores secure

'Appropriate measures' to ensure staff prevent the removal of bottles and glasses from the curtilage of the licensed premises

'Frequent' collection of glasses and bottles

Adequate first aid and fire fighting provision

Public nuisance

Staff will ask customers to leave quietly

No regulated entertainment on the patio after 22:30hrs (note this is not what the application says)

All windows and doors to be closed after 22:00 hrs except for access when regulated entertainment is taking place.

Protection of children from harm

A policy to prevent sales to under 18s and 18-21s to produce proof of age

Staff training in the proof of age scheme

Soft, and non-alcoholic drinks available

Until recently, events needed a Temporary Events License for each event that was held, but recently some entertainment has been licensed.

This application will create permanently 'licensed premises' comprising the new building now being erected, and the area between that and the entrance gates from St George's Road / Garden Street.

A premises licence authorises the holder of the licence to use the premises to which the licence relates for licensable activities.

A premises licence has effect until the licence is revoked or surrendered, but otherwise is not time limited unless the applicant requests a licence for a limited period.

It is understood that the council is applying for the license, but will in effect transfer the benefit of it to whichever business is eventually selected to run the premises

WHAT IF I WANT TO OBJECT?

Fylde Council publishes guidance for those wishing to make representations. Details are available from the licensing department at the town hall or at: [http://www.fylde.gov.uk/licensing-and-business-services/licensing/licensing-act--2003-/](http://www.fylde.gov.uk/licensing-and-business-services/licensing/licensing-act--2003/)

Broadly speaking your ability to object is limited. The licensing panel will only consider objections based on:

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

The licensing panel will not take account of views or comments such as '*we have enough in the town already*' they will ONLY consider arguments based on the four issues above.

People who may make representations are also restricted to 'those living in the vicinity of the premises' and include individual people, businesses or bodies representing such people or businesses.

SO HOW DO I GO ABOUT MAKING AN OBJECTION?

The requirement to apply for any licence exists only because the action is potentially harmful. – otherwise it would not be deemed to require regulation. The underlying principle of licensing is to prevent or restrict the ability of the applicants to cause harm.

You can make representations by writing a letter to The Licensing Team at Fylde Borough Council, Town Hall, St Annes FY8 1LW or by emailing it to licensing@fylde.gov.uk They will also advise further on how representations should be made.

In your letter you should provide:

1. The name of the premises, (Ashton Gardens, St Annes)
2. Your address
4. The ground(s) for your objection

You should describe how your life will be affected and why you are against the application. You must give reasons for your objection, and you must make sure that you base your representation on at least one of the following grounds;

Public Nuisance

This is the most common reason. For example, you might complain there is already noise or nuisance from the premises, and that the application will make that worse or encourage it to go on for longer. Noise at and after closing time is also a public nuisance problem, as is litter. The noise from entertainments – which could include live bands, is also a relevant matter.

Crime and Disorder

e.g. fighting, drug problems, anti-social behaviour, disorder etc. You should state what the problems you know of at present and whether the police were involved (if you know). You should describe how often problems occur and whether these problems are ongoing and whether you think the application would make them worse.

Protection of Children from Harm

This is not commonly used but if you believe that, for example, under-age drinkers might be served or if there are other child protection issues then you should set out why children are at risk of being harmed.

Public Safety

For example if you believe it might be over-crowded, for example, or crowds of drinkers outside might be intimidating, or if you believe that there is any other risk to public safety, you should describe the problem in your letter.

It is important to deal with each aspect of the application that you object to.

Common issues that people address might include:

Nuisance – If you are concerned with existing nuisances from users of the gardens, you should set out the effect that the nuisance has on you. For instance litter, urination, bottles and cans being left around. If you are kept awake by noise you should describe the noise you can hear, how loud it is, how often you are disturbed and what the effect is on you, for example disturbed sleep, lack of peace and quiet, or perhaps you have to keep your windows shut in summer and so on.

Sale of alcohol – if you believe that the sale of alcohol at the times specified would cause problems, you should explain why you believe so. Perhaps you believe it would create a bad example or make a peaceful area more rowdy.

Opening and closing times - this is often the most important issue for residents, as this is when the premises' customers will be passing through the neighbourhood. If you already experience nuisance e.g. from users of the gardens now and think this will make it worse, say so and state how long the disturbance currently goes on for.

Regulated entertainment If you think playing live music, or amplified music, karaoke etc will disturb you; you should address this in your representation. It's useful to describe how close your home or business is to the premises and how you believe that you will be disturbed by the noise that will be created. It is also important that you give details of any noise problems you currently suffer. If you are already keeping windows closed, wearing earplugs, turning your television up, then you should outline them in your representation letter. Note that there is already a licence for entertainment to 10:30pm in the gardens (*see next paragraph*)

ARE THERE ANY FACTS TO BACK UP MY OBJECTION?

Existing permissions / restrictions

Present license

In the last year or so, council granted itself permission for regulated entertainment within the whole of the Gardens. This allows the performance of plays, live music, recorded music and dance from 09.00 - 22.30 hours. This condition will stay in place even if the present application is approved. The present application would extend this from 10:30pm to midnight at the St George's Road entrance to the gardens as well as adding alcohol and late night refreshments.

'Alcohol Restricted Area'

The whole of the gardens is included in the town centre alcohol restricted area under *the Local Authorities (Alcohol Consumption in Designated Public Places) Regulations*. Approval of the application would override this in respect of the defined premises area at the St George's Road entrance. It might be difficult to prevent people who have bought alcohol within this area carrying it out with them to the seating around the bowling greens, or to sit on the war memorial steps or the playground, or elsewhere.

Covenant

The 1914 conveyance of the freehold to the council says: The council *..will not use any part of the pieces of land hereby assigned or any buildings thereon for the sale of wines spirits or intoxicating liquors save and except under or by occasional or temporary licenses from time to time granted by or with the consent of the Licensing Authority for the district in which the premises are situated...*"

Covenants are, in effect, tradable commodities that protected someone when the land first changed hands and the covenant was made, but that person can sell on the benefit of the covenant. Many are bought up by insurance companies and ground landlords, who demand payment for the release of such covenants.

The Council's solicitor has advised this covenant has not been removed to date, and he does not anticipate being instructed to seek its removal. This probably means the Council believes it can disregard the covenant, quite possibly because it regards it as not enforceable for one reason or another.

Some crime statistics (June 08 to May 09) per 1000 population

	Ashton Ward	Fylde Average
Calls to the police	322	228.4
Total Recorded Crime	91.9	49.7
Violence Against the Person	15.5	9.5
All Criminal Damage	26.6	13.3
Calls to Police on Anti-Social Behaviour	74.1	47.2

Source: <http://www.saferlancashire.co.uk/statistics/statistics/table-ward-rolling-20081231.asp>

Alcohol-related hospital admissions

Rate of alcohol-related admissions trend per 100,000

	2002/03	03/04	04/05	05/06	06/07	07/08
Fylde	872	860	888	983	1162	1222

Source: National Indicator (NI39) Datasets

Recent trend: alcohol-related admissions per 100,000 (2008/09)

	Q1	Q2	Q3	Q1-Q3	% inc on Qs1-3 last yr
Fylde	314	351	352	1018	9.8%

Source: National Indicator (NI39) Datasets

Alcohol Harm Reduction Strategy for Blackpool 2008 – 2011

Produced by the BSafe Blackpool Partnership this notes that the alcohol industry brings some economic prosperity through employment, yet paradoxically 105,000 working days a year are lost due to alcohol misuse, at an estimated cost upwards of £10,500,000 per year

It also notes there are clear links between alcohol consumption and crime, particularly violence.

Alcohol related crime has a negative impact on the individual (victim or offender) and places huge burdens on wider society and public services, to an estimated national annual cost of £7.8bn.

Alcohol use can directly affect cognitive and physical function, reducing self-control and leaving individuals less capable of negotiating a non-violent resolution to conflicts with relationships In Blackpool, alcohol related violent crime represented over 60% of all violent crime and approximately half of all domestic abuse related assaults

Noise and disturbance from 'Summer Dayz' festival

Some will remember the 'Summer Dayz' festival held on 15th August 2004. Below are some contemporary quotes from a letter sent to Fylde Council by a resident whose property adjoins the gardens. Sections of the letter reporting bad language have been removed.

"...Hundreds of glass bottles were smashed, mostly deliberately, so that all the grassy areas are now covered with glass, and children will not be able to play there again safely, and the scale of that glass is such that this will continue indefinitely. The council have already brought a special machine to try to clear the glass, but it was ineffective, and there are thousands of pieces of glass in the grass now, for ever. A big plastic bin was set alight, and left to burn with flames twelve feet into the air at 10 pm, and nobody did anything about it....."

"....The public address system, quite apart from being deafening all day, and churning our music often with nothing but loud drums, was used for endless swearing...."

"....Large numbers of youngsters were drinking alcohol all day, and later on, there were endless people very drunk indeed, hardly able to walk, and very intimidating to us, just a few feet away from us, urinating into our garden, under our noses. Although we stood and gazed, in disbelief, we never dared speak a word to any of these frightening people, for fear of our own safety. There was illegal under-age drinking on a vast scale in every section of the park....."

WHAT CAN THE LICENSING PANEL DO?

Whilst they could refuse the whole application, this is unlikely. However they might look at the aspects that are different from, or extend, the present entertainment permission.

Modify the times

You could ask the Licensing Panel to modify the times of some aspect(s) of the license. For example, a licence already exists for regulated entertainment within the whole of the Gardens (*for the performance of plays, live music, recorded music and dance*) from 09.00 - 22.30 so you might ask for a restriction of the hours for regulated entertainment on this application to cease at 22:30 instead of midnight as the present ones do.

Impose conditions

You could ask for conditions to be imposed, as requiring alcohol only to be served if bought with and as part of a meal, or requiring the outdoor area to have separate staff to ensure that glasses and bottles do not leave the licensed area. Glasses and glass bottles can be dangerous weapons. As an alternative you might ask for glass to be prohibited and only polycarbonate drinks containers to be allowed. This might be especially relevant given the proximity of the children's and toddler's play areas. You might also believe that to maintain public order, the Designated Premises Supervisor (DPS) should be present whenever alcohol is being served and not be able to delegate their role to a more junior member of staff, and you could ask for this condition to be imposed.

Alcohol Control

Bearing in mind the application's statement *"The cafe and patio area may be made available to visiting groups/schools/entertainers including visiting groups"* You might feel it is inappropriate for alcohol to be served at all where children are involved. The licensing authority is required to protect children from moral, psychological and physical harm.

You might feel that alcohol would encourage some people to have their cognitive and physical function affected, reducing self-control and leaving individuals less capable of civilised behaviour in the gardens. You might think this puts children in harms way.

Or you might feel that a better solution would be to limit the consumption to the inside of the building and to say 10:30 pm and then only to be taken with meals.

You might also believe it would be impossible for the (eventual) proprietor to adequately prevent the movement of alcohol from the licensed area into the rest of the gardens which are the subject of the *Local Authorities (Alcohol Consumption in Designated Public Places) Regulations*. Whilst this does not prohibit the consumption of alcohol (*it allows the police to decide whether to confiscate it or not*), you might think it makes something of a mockery of their efforts to stop under-age consumption of alcohol in the gardens and that maintaining an outright prohibition on the sale of alcohol in the gardens would help protect children from harm, prevent public nuisance, crime and disorder.

You might wish to make the point that it is always possible to cater for one-off events by applying for a temporary events license and a permanent license is not appropriate.

FINALLY

If you do make representations, please copy them to the "Responsible Bodies" if you can. These are the bodies the Council will take particular note of so you should also try to influence their view. They are:

Police Authority

Lancashire Constabulary
Licensing Department Western Division, Bonny Street., Blackpool, Lancs.
FY1 5RL Tel No: 01253 293933
No email address provided.

Fire Authority

FAO Station Officer Garrod
Lancashire Fire and Rescue Service
St Annes Fire Station. St Andrews Road North, St Annes, Lancs. FY8 2JQ
Tel No: 01253 722268
No email address provided.

Protection of Children

Paul Jenkins, Lancashire Safeguarding Children's Board Manager
Room B52, PO Box 61 ,County Hall, Preston. PR1 8RJ, Tel: 01772 536288
lscb@cyp.lancscc.gov.uk

Weights & Measures

Mr D Johnnie
Principal Officer for Underage Related Sales
Lancashire Trading Standards
58-60 Guildhall Street, Preston. PR1 3PR
Tel No: 01772 533573
No direct email available but the Trading Standards general one is
tsd@ts.lancscc.gov.uk

WEB LINKS

FYLDE BOROUGH COUNCIL

The main page for this application is on Fylde Council's website. Sadly the system they use produces very long web addresses that are far too long to type, so the easiest way is to go to

<http://www.fylde.gov.uk/>

The in the left hand side panel choose "Business and Licensing"

Then choose "Licensing"

Then choose "Licensing Act 2003"

From this page all the FBC documents are available from the links on the RIGHT HAND side of the page. (Especially "Making Representations" and "Licensing Policy")

LEGISLATION

If you want the explanatory note to the legislation, it's here:

http://www.opsi.gov.uk/acts/acts2003/en/ukpgaen_20030017_en_1

Revised Guidance on some aspects was also issued at

http://www.culture.gov.uk/reference_library/publications/3667.aspx/

OTHER INFORMATION

Westminster CAB produce a helpful leaflet on how to object. It's at

<http://www.licensingadvice.org/advice3>

The Magistrates Association

Made comments on a proposal to remove the requirement for the designated premises supervisor for community premises. Their comments are at:

http://www.culture.gov.uk/consultation_responses/rro_designatedpremises/Sonia_Andrews.rtf

South Hams Council also produce guidance on meeting their licensing objectives for applicants in their area. You might find it interesting to see what another council requires.

www.southhams.gov.uk/guidance_licensing_objectives.pdf