

## LICENSING SUB-COMMITTEE

<b>DATE</b>	7 <sup>th</sup> January 2021
<b>REPORT OF</b>	Clive Tritton – Interim Director for Economy and Growth
<b>SUBJECT</b>	Receipt of representations regarding an application for a new Premises Licence at The Gingerbread House, Church Lane, Humberston
<b>STATUS</b>	Open

### CONTRIBUTION TO OUR AIMS

#### **Stronger Economy:**

Support for premises that promote the licensing objectives through appropriate action against those that do not.

#### **Stronger Community:**

Reduce incidence of crime, anti-social behaviour and public nuisance associated with licensed premises

Promotion of public safety and child protection in relation to licensed premises

### EXECUTIVE SUMMARY

The Licensing Authority under the Licensing Act 2003 (“the Act”) has a duty to determine applications for any Licence under the Act where relevant representations have been made. This duty has been delegated to the Licensing Sub-Committee. This case involves representations made by Mr & Mrs Scoffin, Mr Miller, Mr Beasley, The Parish Church of St Peters and The Humberston Parish Council on the grounds of Crime & Disorder and The Prevention of Public Nuisance.

### RECOMMENDATIONS

To determine the application for a Premises Licence and consider any relevant representations under s18 of the Act. To take such steps as considered **appropriate** for the promotion of the licensing objectives.

### REASONS FOR DECISION

Must have regard to:-

- North East Lincolnshire Council’s Statement of Licensing Policy.
- Guidance issued by the Secretary of State under s.182 of the Act.

Steps taken must be **appropriate** for the promotion of the Licensing Objectives, namely:-

- the prevention of crime and disorder;
- public safety
- the prevention of public nuisance; and
- the protection of children from harm.

## 1. BACKGROUND AND ISSUES

These are fully contained in the report of Iain Peck.

## 2. RISKS AND OPPORTUNITIES

**Crime and Disorder** – If the Sub-Committee finds this licensed premises has undermined the licensing objectives, it must consider what, if any, steps are appropriate to prevent this. If appropriate steps are not taken there is a risk that the licensing objectives will not be promoted.

**Human Rights** – The premises licence holder is entitled to a fair hearing; article 6 of the European Convention of Human Rights applies. Article 8, the right to respect for private and family life, also applies as the “licence” is crucial to the livelihood of the premises licence holder. The Human Rights of the wider community are also engaged.

**Equality and Diversity** – No direct effects

**Value for Money** – The aim must be to take action that prevents problems persisting and using further licensing resources.

**The impact on the Social, Economic and Environmental well-being of the Borough** – Action taken to ensure that all licensed premises promote the licensing objectives will have a positive impact in these respects.

**Environmental Sustainability Implications** - None

## 3. OTHER OPTIONS CONSIDERED

The steps which may be taken are:-

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence.

The conditions of the licence are modified if any of them is altered or omitted or any new condition is added. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to 3 months. It may also be decided that no action is necessary and consideration given to whether a warning should be issued to the licence holder and/or recommend improvement within a particular period of time.

#### **4. REPUTATION AND COMMUNICATIONS CONSIDERATIONS**

There are potential positive reputational implications for the Council resulting from the decision where appropriate action has been taken. An action plan has been agreed with the Council's communications service covering information requirements and communications channels to be utilised.

#### **5. FINANCIAL CONSIDERATIONS**

This report relates to a determination required in response to an application made under the Licensing Act 2003. The process is governed by statutory regulations and the fees involved are statutory. There are no direct resource or funding implications in the first instance but there may be on appeal (see Section 5).

#### **6. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

Not applicable

#### **7. FINANCIAL IMPLICATIONS**

The premises licence holder, the responsible authorities and any relevant person have a right of appeal against the decision made to the Magistrates and/or High Court. If the Licensing Sub-Committee takes a step which is considered unnecessary or unlawful by a higher court there is a risk that an award of costs may be ordered against the Council in favour of the successful appellant. Such costs are difficult to quantify or estimate.

#### **8. LEGAL IMPLICATIONS**

These are covered in the body of the report of the Licensing Officer.

#### **9. HUMAN RESOURCES IMPLICATIONS**

There are no Human Resource Implications.

#### **10. WARD IMPLICATIONS**

Humberston & New Waltham

#### **11. BACKGROUND PAPERS**

Please refer to the index of Members Papers.

#### **12. CONTACT OFFICER(S)**

Iain Peck, Senior Licensing Enforcement Officer

**CLIVE TRITTON**  
**INTERIM DIRECTOR FOR ECONOMY AND GROWTH**

# LICENSING

## LICENSING ACT 2003

### Report to Licensing

### Sub-Committee following receipt of Relevant Representations

***The Gingerbread House  
Church Lane  
Humberston  
DN36 4HZ***

**NORTH EAST LINCOLSHIRE COUNCIL**  
**LICENSING AUTHORITY**

**LICENSING ACT 2003**

**Report to Licensing Sub-Committee**  
**following receipt of Relevant Representations**

**1. Summary Of Application -** (Full details in Application Form)

**1.1 Premises:** The Gingerbread House, Church Lane, Humberston, DN36 4HZ

**1.2 Applicant:** The Gingerbread House Limited

**1.3 Date Application Received:** 6<sup>th</sup> November 2020

**1.4 The Proposed Operation:**

The applicant applied for a Premises Licence to include the following:

**Supply of Alcohol (on and off the premises)**

Monday to Sunday            0900 until 2200 hours

**Recorded Music (Indoors)**

Monday to Saturday        0900 until 2200 Hours

Sunday                         1000 until 2200 Hours

**Proposed conditions:**

**These are the measure to promote the licensing objectives put forward by the applicant in the application:**

- CCTV System to be installed to monitor entrances, exits, and other parts of the premises in order to address the prevention of crime objective.
- A clear and legible notice outside the premises indicating the normal hours under the terms of the premises license during which licensable activities are permitted.
- Clear and conspicuous notices warning of potential criminal activity, such as theft, that may target customers will be displayed.
- Not selling of alcohol to drunk or intoxicated customers.
- Custom will not be sought by means of personal solicitation outside or in the vicinity of the premises.

- Prevention and vigilance in illegal drug use at the retail unit area.
- Staff will be well trained in asking customers to use premises in an orderly and respectful manner and prevent drinking alcohol at the retail unit (ex. canned or bottled beer).
- Internal and external lighting fixed to promote the public safety objective.
- Well trained staff adherence to environmental health requirements.
- Training and implementation of underage ID checks.
- A log book or recording system shall be kept upon the premises in which shall be entered particulars of inspections made; those required to be made by statute, and information compiled to comply with any public safety condition attached to the premises licence that requires the recording of such information. The log book shall be kept available for inspection when required by persons authorised by the Licensing Act 2003 or associated legislation.
- All parts of the premises and all fittings and apparatus therein, door fastenings and notices, lighting, heating, electrical, air condition, sanitary accommodation and other installations, will be condition.
- Free water will be available to any persons on site.
- Noise reduction measures to address the public nuisance objective.
- Prominent, clear and legible notices will be displayed at the exit requesting the public to respect the needs of nearby residents and to leave the premises and the area quietly although we will be closing at 10pm.
- Deliveries of goods necessary for the operation of the business will be carried out at such a time or in such a manner as to prevent nuisance and disturbance to nearby residents.
- The Licensee will ensure that staff who arrive early morning or depart late at night (ex. for unpacking, pricing newly delivered goods) when the business has ceased trading conduct themselves in such a manner to avoid causing disturbance to nearby residents.
- Customers will be asked not to stand around loudly talking in the street outside the premises.
- Customers will not be admitted to premises above opening hours.

- The movement of bins and rubbish outside the premises will be kept to a minimum after 10.00pm. This will help to reduce the levels of noise produced by the premises. Bins are fixed to one position so there should be no noise from these.
- Any lighting on or outside the premises will be positioned and screened in such a way so as to not cause a disturbance to nearby residents.
- Adequate waste receptacles for use by customers will be provided in the local vicinity
- "Challenge 25" sign which is a retailing strategy that encourages anyone who is over 18 but looks under 25 to carry acceptable ID (a card bearing the PASS hologram, a photographic driving license or a passport) if they wish to buy alcohol.
- Well trained staff about requirement for persons' identification, age establishment etc.
- All the details provided in Training Record Book available the retail unit. Log Book will be kept upon the premises all the time.
- Children will be on site but as with our other premises, we encourage strong family values and will not be selling alcohol that would generally appeal to children such as WKD alcopops. Staff will be vigilante at all times to prevent any underage drinking. It is not unusual in this day an age for alcohol to be sold alongside where children relax and play, while we acknowledge we provide a children's library, the approach to selling alcohol with the venue will be sensible and aimed at a market which sits well above those wishing to have a drinking session we are realistically talking about 1 to 2 drinks with food.

### **Conditions agreed with Humberside Police**

- Any CCTV system will need to be registered in accordance with the Data Protection Act, and warning signs displayed in public areas of the premises.
- There shall be sufficient cameras to cover those areas that are not easily supervised from the sales counter, including outside areas where it is intended to conduct licensable activities.
- A monitor should be placed in such a position so as to be easily viewed by staff working at the premises.
- The system must be capable of continuously recording in colour, providing real time pictures of evidential quality in all lighting conditions, and copies of such recordings shall be retained for a period of not less than 30 days.

- Any system installed should be capable of producing copies of recordings on site.
- Copies of recordings shall be provided on request to a person under the direction and control of the Chief Constable or an officer of North East Lincolnshire Council.
- The designated premises supervisor will be responsible for the operation of the system and shall ensure that it is maintained in accordance with these codes of practice./ The Premises Licence Holder must ensure an appointed member of staff is capable of downloading CCTV footage in a recordable format at all times the premises are operating.
- Records of maintenance of the CCTV system shall be kept by the person responsible and the system shall be maintained in working order and checked weekly. Records of any maintenance/faults/weekly checks shall be endorsed by signature by the DPS or other responsible named individual, and actions taken must be recorded. The record shall be produced on request to a person under the direction and control of the Chief Constable or an officer of the local authority on production of their identification.
- Cameras must be positioned to view all access to and egress from the premises (including fire exits) and all areas where the sale of alcohol occurs.
- Recordings must be made of each trading period conducted at the premises, and must be correctly time and date marked.
- CCTV camera views are not to be obstructed.
- The premise licence holder/DPS/Duty Manager shall ensure that there is an adequate risk assessment of the need for SIA door supervision at the premises during events and shall provide door supervision in accordance with that risk assessment. Such an assessment shall be written down and kept at the premises and be available for production on demand by a person under the direction and control of the Chief Constable or an officer of North East Lincolnshire Council.
- An incident log shall be kept at the premises, and made available on request to a person under the direction and control of the Chief Constable or an officer of North East Lincolnshire Council, which will record the following:
  - all crimes reported to the venue
  - all ejections of patrons
  - any complaints received
  - any incidents of disorder
  - all seizures of drugs or offensive weapons
  - any refusal of the sale of alcohol
  - any visit by a relevant authority or emergency service

- Challenge 25 shall be implemented and a proof of age policy is to be applied with the accepted means of proof of age being:
  - Passport
  - Photo Driving Licence
  - A recognised valid photo-id card bearing the PASS hologram
  - any future accredited and accepted proof of age, as defined by Humberside Police
- Signs shall be displayed stating that the premises operates a Challenge 25 Policy.
- The premises shall adopt and operate a comprehensive drugs policy, a copy of which shall be retained at the premises and made available for inspection if requested by officers under the direction and control of the Chief Constable of Humberside Police and employees of the Licensing Authority.
- Staff training will be given to all staff working at the premises. Such training shall be documented and recorded in a book/folder kept solely for that purpose. It will record the date and names of those trained and the person providing it. All present shall sign the book. The frequency of the training shall be once every six months. The training shall cover all aspects of the responsible sale of alcohol (Licensing objectives, age verification, how to detect proxy sales, consequences of underage sales, serving to drunks and street drinkers etc), conflict management and drugs policy. The book will be available to be viewed on demand by a person under the direction and control of the Chief Constable or an officer of North East Lincolnshire Council.
- When events are held at the premises, a thorough risk assessment will be completed for the use of Polycarbonate or crushable glassware and decanting of all bottles. Polycarbonate or crushable glassware will also be used upon the request of Humberside Police or the Local Authority.
- All alcoholic or soft drinks served for consumption in outdoor areas will be served in either a plastic bottle with caps retained at the bar or in a polycarbonate / plastic crushable / non glass vessel.
- Staff will conduct regular litter checks on the front of the premises and remove any litter/debris/glass to dispose of responsibly. The checks shall be recorded and signed by the person completing them. The record shall be made available on request by an officer of the Local Authority or an officer under the direction and control of the Chief Constable.
- Any alcohol purchased for consumption on the premises must not be consumed in the library area, as indicated on the plan.
- Alcohol for consumption on the premises will only be served to a person sat at a table.
- There will be a minimum of 40 covers inside the premises at all times.

## **2. Summary of Representations –** (Full details in report)

5 representations have been submitted in relation to this application.

### **2.1 Representation 1:**

**2.1.1 Date representations received:** 4<sup>th</sup> December 2020

**2.1.2 Persons making representation:** Mr & Mrs Scoffin

**2.1.3 Licensing objectives affected:** Prevention of Public Nuisance

#### **2.1.4 Summary of Recommendations:**

- No alcohol to be consumed outside.
- Opening hours for food and drink to be limited until 18.00 hrs latest apart from special evenings. Earlier on a Sunday.
- No alcohol to be available to buy unless a meal is being purchased to eat inside.
- No increase of outside seating.
- We understand that the music licence is to only cover background music and there will be no live music.

### **2.2 Representation 2:**

**2.2.1 Date representations received:** 4<sup>th</sup> December 2020

**2.2.2 Persons making representation:** Mr E Miller

**2.2.3 Licensing objectives affected:** Prevention of Public Nuisance

**2.2.4 Summary of Recommendations:** None recommended

### **2.3 Representation 3:**

**2.3.1 Date representations received:** 4<sup>th</sup> December 2020

**2.3.2 Persons making representation:** Mr R Beasley

**2.3.3 Licensing objectives affected:** The Prevention of Crime & Disorder,  
Prevention of Public Nuisance

**2.3.4 Summary of Recommendations:** None recommended

### **2.4 Representation 4:**

**2.4.1 Date representations received:** 4<sup>th</sup> December 2020

**2.4.2 Persons making representation:** Humberston Village Council

**2.4.3 Licensing objectives affected:** Prevention of Public Nuisance

**2.4.4 Summary of Recommendations:**

- Removal of Off Sales
- No outside seating

### **2.5 Representation 5:**

**2.5.1 Date representations received:** 4<sup>th</sup> December 2020

**2.5.2 Persons making representation:** The Parish Church of St. Peter Humberston

**2.5.3 Licensing objectives affected:** Prevention of Public Nuisance

**2.5.4 Summary of Recommendations:**

- Outright refusal of licence

## **2. Mediation**

All representations were received on the last day for representation to be received and given the feelings of persons submitting representations mediation by the Licensing Section was not possible prior to this hearing.

## **3. Statement of Licensing Policy**

The following sections of North East Lincolnshire Council's Statement of Licensing Policy 2015 – 2020 are considered relevant to these representations:

- Licensing Objectives: 2.1 – 2.5
- Consultation: 4.1 – 4.6
- Extent of Control: 6.2.1
- Need: 6.4.1
- Licensing Hours: 6.6.2
- Premises Licence: 8.2.1 – 8.2.3
- Mediation: 8.6.2
- Representations: 8.7.2 – 8.7.3
- Prevention of Crime & Disorder: 9.2.4 – 9.2.6
- Prevention of Public Nuisance: 9.4.1 – 9.4.7

## **4.Guidance issued under Section 182 of the Licensing Act 2003 –**

This guidance is provided for Licensing Authorities carrying out their functions. It is regarded by the Government as a key mechanism for promoting best practice, ensuring consistent application of licensing powers across the country and for promoting fairness, equal treatment and proportionality. It does not however replace any statutory provisions of the 2003 Act and it is for the Licensing Authority to take their own professional and legal advice about its implementation.

The following sections of the Guidance are considered relevant to these representations:

- Licensing Conditions: 1.16
- Prevention of Crime & Disorder: 2.1 – 2.6
- Public Nuisance: 2.16 – 2.21
- Advertising Applications: 8.80 – 8.82
- Hearings: 9.31 – 9.40
- Relevant, vexatious and frivolous representations: 9.4 -9.10

## **5. General Advice on Determination of the Application –**

- 5.1** The sub-committee are advised that findings on any issues of fact should be on the balance of probability.
- 5.2** The sub-committee are advised that in arriving at any decision, it must have regard to relevant provisions of national guidance and North East Lincolnshire Council's Statement of Licensing Policy. Reasons must be given for any departure.
- 5.3** The sub-committee are advised that the final decision should be based on the individual merits of the application and the factual findings made at the hearing.
- 5.4** Section 18 of the Licensing Act 2003 states that where relevant representations have been made and a hearing is held to consider them, the sub-committee can take such of the steps set out below as it considers **appropriate** for the promotion of the licensing objectives – in this case if it is considered the Prevention of Crime and Disorder, Public Safety, the Prevention of Public Nuisance or the Protection of Children from Harm are likely to be affected.
- Grant the licence with modified conditions. This means the proposed conditions could be altered or omitted or new conditions added.
  - Exclude any licensable activity to which the application relates.
  - Reject the application

If none of these steps are considered appropriate the application should be granted in the form it was made.

- 5.5** Conditions should be proportionate to the size, style and characteristics of the premises and the activities proposed or taking place and must be appropriate
- 5.6** The sub-committee are advised that they must take into account the following Human Rights provisions:
- Everyone affected by a decision has a right to a fair hearing.
  - Everyone has the right to his private and family life, his home and his correspondence.

## **6. Observations**

### **6.1 Representation Details**

### **6.1.1 Proximity of a School**

Whilst the connection to the prevention of children from harm is acknowledged, this matter falls outside the scope of licensing law.

### **6.1.2 Traffic / Parking**

The issues of increased traffic and limited parking are not relevant matters in relation to the licensing objectives. Legally these matters cannot be dealt with under this legislation.

### **6.1.3 Licensing Hours**

Home Office Guidance states that applicants are expected to include positive proposals in their application on how they will manage any potential risks and it is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. (Sections 8.40 & 8.41)

North East Lincolnshire Council's Statement of Licensing Policy states –

“Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and characteristics of their premises and events” (9.4.5)

“The Licensing Authority intends to interpret “public nuisance” in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area. However premises licence holders will only be deemed responsible for the impact which directly relates to the vicinity of individual premises under their control.” (9.4.2)

“Applicants need to be clear that the Licensing Authority will normally apply stricter conditions, including controls on licensing hours, where licensed premises are in residential areas and where relevant representations have been received. Conversely, premises for which it can be demonstrated have effective measures planned to prevent public nuisance, may be suitable for 24-hour opening.” (9.4.3)

The initial application made no specific reference to the proximity of residential premises in this case.

#### **6.1.4 General Anti – Social Behaviour**

Home Office Guidance states:

“Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night” (2.21)

North East Lincolnshire Council’s Statement of Licensing Policy states –

“The Licensing Authority will only seek to put in place measures and/or conditions that are within the remit of individual licensees, and/or others in possession of relevant authorisations to control and that are in the ‘vicinity’ of those premises. This Policy should not be seen as a mechanism for the general control of anti-social behaviour by persons once they are away from an individual licensed premises and therefore beyond the direct control of the licence holder” (6.2.1)

The applicant has undertaken to provide signage asking for people leaving the building to respect neighbours and to keep noise to a minimum

#### **6.1.5 Need for premises**

This is not a relevant issue for this deliberation

#### **6.1.6 Letter dropping applications to local residents**

Not a legislative requirement see Section 182 Guidance to The Licensing Act 2003 - Advertising Applications: 8.80 – 8.82

### **6.2 Additional Observations**

#### **6.2.1 Temporary Events Notices**

The Gingerbread house had TEN’s on 09/12/2016, 16/04/2017 and 26/10/2018 – Licensable activities authorised by these TEN’s were Sale of Alcohol and Regulated Entertainment.

No complaints were received by the Licensing Section in relation to these events

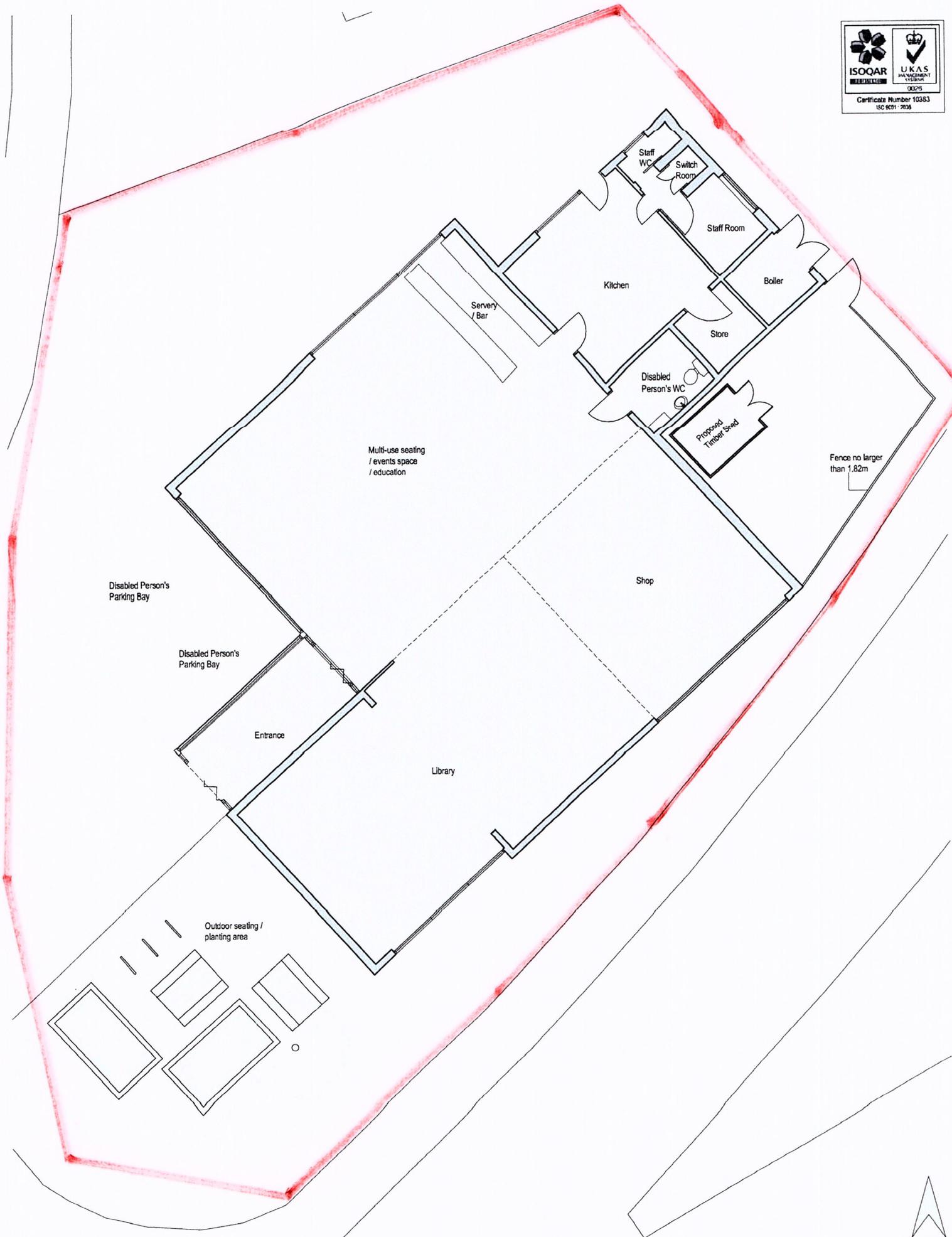
**6.2.2** Section 6.1 details the issues raised as points of objection in the representations and provides advice as to legal relevance in the determination of this application.

**6.2.3** Section 2 details the proposed suggestions provided by those making representations to make the application more acceptable to them. However the main point for initial consideration in relation to any committee action must be whether any of the licensing objectives are likely to be affected and then whether any particular action is appropriate to resolve the issue in question. (see section 5)

**6.2.4** All premises licences are subject to the power of review if it is considered the licensing objectives are not being promoted.

**Report prepared by– Iain Peck Senior Licensing Enforcement Officer**

**18/12/2020**



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Figured dimension only to be taken from this drawing. All dimensions to be checked on site. Hodson Architects Ltd to be informed immediately of any discrepancies before work proceeds.

Rev	Date	Remarks	Drawn By	Checked By	Client
A	17.06.15	North point added			Nathan Taylor
B	13.06.15	Plotting Area Added			Project Title: The Gingerbread House
C	10.10.15	Shed and Fence added			Drawing Title: Proposed Plan
D	04.11.15	Disabled parking bays removed			Drawn By: L.Longstaff
					Checked By: [blank]
					Date: 09.06.2016
					Scale: 1:100 @ A3
					Revision: D
					Drawing Number: A458.P002
					Scale: [blank]
					Author: [blank]
					Plotting: [blank]

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