

Southend-on-Sea Borough Council

Agenda
Item No.

Report of Director of the Department for Place
To
Licensing Sub-Committee
On
24th July 2015

Report prepared by: Deborah Bentham

Oyster Creek, The Leas Shelter, Southend-on-Sea, Essex
Application for the Grant of Premises Licence

LICENSING ACT 2003

A Part I Public Agenda Item

1. Purpose of Report

- 1.1 This report considers an application by Antonia Waite for the grant of a Premises Licence.

2. Recommendation

- 2.1 That the Sub-Committee determines the application.
- 2.2 Should the Sub-Committee decide to approve the application, the relevant mandatory licence conditions must be applied. (These are set out in Appendix 1).
- 2.3 Appendix 2 sets out possible conditions, drawn from the application, for the Sub-Committee's consideration.

3 Background

- 3.1 The application premises is described in the application as " a 1920s single storey building originally constructed as a sun shelter". It is situated below the cliffs across the road from the Estuary and has a garden to the front.

4 Proposals

- 4.1 The application was received by the Licensing Authority on 22 May 2015 and is for the grant of a Premises Licence. The last day of consultation for this application was 19 June 2015
- 4.2 The application was amended by the applicant so as to reduce the terminal hours originally sought for the sale of alcohol by 30 minutes each day.
- 4.3 Details of the amended application to be determined by the Sub-Committee can be summarised as follows:

- a) To permit the sale of alcohol (for consumption on the premises) on Mondays to Saturday from 11:00 hours to 22.30 hours and on Sundays from 11:00 hours to 21:30 hours.
(NOTE: The application originally sought terminal hours of 23.00 Monday to Saturday and Sunday 22.00)

4.4 The proposals are more fully documented in the application form which has been copied to Sub-Committee Members

5 Application Procedures

- 5.1 Applicants for grant of licence are required by law to send copies of their applications to all of the "Responsible Authorities". They are also required to display a notice giving brief details of the application in a prescribed form at the application site, and to publish the same information in a newspaper circulating in the area.
- 5.2 Eleven representations have been received from interested parties. Two of which were provided in one correspondence.
- 5.3 Discussions took place between the applicant, Police and the Licensing Authority acting as Responsible Authority and this resulted in additional conditions being agreed by all parties as set out in appendix 2 of this report.
- 5.4 A copy of the representations has been provided to the Sub-Committee Members. In accordance with the legislation, all parties have been invited to attend the hearing.

6 Matters for Consideration

- 6.1 Formal objections having been made and not withdrawn or resolved, the Licensing Authority is obliged to hold a hearing to consider them. Further, having regard to such representations, the Authority is required to take steps (if any) as it considers appropriate for the promotion of the Licensing Objectives.

Thus, the Authority may:

- a) Grant the licence, subject to conditions consistent with the operating schedule (modified as considered appropriate for the promotion of the Licensing Objectives) and subject to relevant mandatory conditions;
 - b) Exclude from the scope of the licence any of the licensable activities to which the application relates;
 - c) Refuse to specify a person in the licence as the premises supervisor;
 - d) Refuse the application.
- 6.2 The Licensing Act 2003 requires that the Licensing Authority must carry out its functions under the Act with a view to promoting the Licensing Objectives. These are:
- a) The prevention of crime and disorder;
 - b) Public safety;
 - c) The prevention of public nuisance; and
 - d) The protection of children from harm.

- 6.3 In carrying out its licensing functions, the Licensing Authority must also have regard to:
1. Its Licensing Statement, and
 2. The guidance issued by the Secretary of State.
- 6.4 The Licensing Authority has, in accordance with the requirements of the Act, prepared and published a Statement of Licensing Policy, following formal consultation. Copies of this document, together with the statutory guidance, have been made available to all Licensing Committee Members.

7 Background Papers

- 7.1 Council's Statement of Licensing Policy.

8. Appendices

- 8.1 Appendix 1 - Mandatory conditions.
- 8.2 Appendix 2 - Conditions, drawn from the application, for the Sub-Committee's consideration.

APPENDIX 1

MANDATORY CONDITIONS

The Licensing Act 2003 lays down certain mandatory conditions which must be applied to Premises Licences. These are summarised below:-

- 1) No supply of alcohol may be made under the premises licence
 - a) at a time when there is no designated premises supervisor in respect of the premises licence or
 - b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
- 2) Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- 3) Any individual who carries out security activities at the premises must be licensed by the Security Industry Authority.
- 4) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—

- (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
- (ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

(d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;

(e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

- 5) The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
- 6) The responsible person shall ensure that free potable water is provided on request to customers where it is reasonably available.
- 7) 1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
- (a) a holographic mark, or
- (b) an ultraviolet feature.
- 8) The responsible person shall ensure that:-
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
- (i) beer or cider: ½ pint;
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
- (iii) still wine in a glass: 125 ml;
- (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
- (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.
- 9) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- 10) For the purposes of the condition 9 —
- a. “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979(1);
- b. “permitted price” is the price found by applying the formula— **$P = D + (D \times V)$** , where— (i)P is the permitted price, (ii)D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale

- or supply of the alcohol, and (iii)V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- c. “relevant person” means, in relation to premises in respect of which there is in force a premises licence—
 - i. the holder of the premises licence,
 - ii. the designated premises supervisor (if any) in respect of such a licence, or
 - iii. the personal licence holder who makes or authorises a supply of alcohol under such a licence;
 - d. “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
 - e. “valued added tax” means value added tax charged in accordance with the Value Added Tax Act 1994(2)

11) Where the permitted price given by sub-section (b) of Condition 10 would (apart from this condition) not be a whole number of pennies, the price given by that sub-section shall be taken to be the price actually given by that sub-section rounded up to the nearest penny.

(i) Sub-section (ii) applies where the permitted price given by sub-section (b) of sub-section (ii) on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.

(ii) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

APPENDIX 2

CONDITIONS DRAWN FROM THE OPERATING SCHEDULE

1. The Licensee shall ensure that a 'Challenge 25' scheme is operated, whereby any person who appears to be under 25 years of age is required to produce means of identification proving they are over 18 years of age. The only authorised means of identification shall be passport, UK photo driving licence or 'PASS' accredited card.
2. Clear and legible signs shall be displayed advising patrons who appear to be under 25 years of age that they shall be required to prove they are at least 18 years of age.
3. The Licensee shall ensure that all employees receive training on preventing sales of alcohol to underage and drunken persons and on the operating schedule / policies adopted by the premises, prior to the start of their employment. Training to be updated every six months and records be maintained by the Licensee and shall be available for inspection by the Police or Licensing Authority upon request.
4. The Licensee shall ensure that a refusal book is maintained at the premises to record any refusals of alcohol. The refusals book shall be made available to the Police/Local Authority upon request.
5. The Licensee shall operate a zero tolerance policy with regard to the use/possession of drugs in the premises.
6. The Licensee shall ensure that an incident log is maintained on the premises to record any incidents or occurrences relating to crime or disorder issues. The incident book shall be made available for inspection to Police / Local Authority Officers upon request.
7. The Licensee shall install and maintain a closed circuit television surveillance (CCTV) system which includes cameras giving facial recognition upon entry to and exit from the premises. Images shall be retained for a minimum of 31 days and made available to Essex Police on request. A member of staff shall always be on call during opening times that is able to download and burn off images from the CCTV system within 12 hours of the request. In the event of a technical failure of the CCTV system the Licensee or DPS shall report the failure to the Police Licensing Team immediately.
8. No Bottles, Glasses or Drinking Vessels to be taken beyond the boundary of the licensed area as marked on the deposited plans
9. The Licensee shall operate a free taxi / private hire vehicle booking service, the intention of which is effectively to manage the dispersal of persons from the site so as to minimise impact on the immediate environment in terms of crime and disorder and public nuisance
10. There shall be no use of the external area, save for use as a smoking area and for access and egress, between 22.00 and the start of trading hours the following day.

11. Without prejudice to condition 15. Alcohol in the external area shall be by waiter and waitress service.
12. Persons under 16 years of age shall not be allowed entry to the premises unless they are accompanied by an adult after 20.00 and will not be permitted on the premises after 22.00 and the commencement of trading the following day.
13. The licensee shall actively engage and work with the local the local Police Licensing team and actively participate in any locally run pubwatch.
14. The Licensee shall ensure that a risk assessment is carried out in regard to the use and number of door staff when required or when the Police Licensing Team have requested that S.I.A. door staff are used. A record of the door staff on duty shall be maintained including names and numbers
15. The licensee will, for Bank Holidays and any other occasion having been risk assessed by Police and requested, increase the staffing levels and use plastic drinking vessels externally.
16. Drinking vessels/bottles within the premises shall be collected on a regular basis so as to minimise the chance of them being used as weapons. Glasses used in the external area shall be of toughened glass or polycarbonate only
17. There shall be no use of the external area, save for use as a smoking area and for access and egress, on Sundays to Wednesdays between 21.00 and the start of trading hours the following day, and on Thursdays to Saturdays between 22.00 and the start of trading hours the following day . The number of smokers allowed to use the area at any one time during these hours shall be six
18. Service of alcohol shall be by waiter/waitress only and shall be limited to persons seated at a table taking a meal. The only exception shall be one drink per person (maximum 10 persons) whilst waiting for a table to become available.
19. Non alcoholic beverages shall be available during all operating hours.
20. The Licensee shall ensure that a written record is kept of all staff who are authorised by the DPS (or a personal licence holder) to sell alcohol.
21. The premises shall be run predominately as a restaurant with the sale of alcohol, for consumption on the premises, shall be linked to the purchase of a table meal.
22. There shall be no music played in the external area between 20.00 and the start of trading hours the following day
23. The Licensee shall ensure that the following number of seats are maintained at all times:
External area: maximum of 35. Internal area minimum of 40. Patrons shall not be permitted to consume alcohol in the external area unless seated at a table. The maximum capacity in the external area shall

not exceed 50 at any one time.