

# Southend-on-Sea Borough Council

Report of Deputy Chief Executive (Place)  
to

Licensing Sub-Committee A

On  
27<sup>th</sup> June 2017

Report prepared by: Mark Newton

Agenda  
Item No.

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**Baboush 96 The Ridgeway, Westcliff-on-Sea, SS0 8NU**  
**Application for the Grant of Premises Licence**  
**LICENSING ACT 2003**

***A Part I Public Agenda Item***

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## **1. Purpose of Report**

- 1.1 This report considers an application by Baboush Limited 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.
- 2.4 Appendix 3 sets out additional condition agreed with Essex Police as a Responsible Authority during the consultation period.

## **3. Background**

- 3.1 The application relates to a premises located on The Ridgeway, Westcliff-on-Sea at the western end of a parade of commercial units with some residential properties located above and in the surround roads.
- 3.2 The premises has operated for many years as a restaurant and has held a Premises Licence with Southend Borough Council since the introduction of the Licensing Act in 2005.

## **4. Proposals**

- 4.1 The application was given to the Licensing Authority on the 10 April 2017 and is for the grant of a Premises Licence.

4.2 Details of the application can be briefly summarised as follows:

- a) To permit the sale of Alcohol on and off the premises on Sundays to Thursdays from 10:00 to 00:00 (midnight) and on Fridays & Saturdays from 10:00 to 01:00. The terminal hour is extended on a number of notable days.
- b) The Provision of Late Night refreshment on Sundays to Thursdays from 23.00 until 00:30 and on Fridays & Saturdays from 23:00 to 01:30. The terminal hour is extended on a number of notable days.
- c) The provision of Regulated Entertainment comprising films, live music, recorded music on Sundays to Thursdays from 10:00 to 00:00 (midnight) and on Fridays & Saturdays from 10:00 to 01:00. The terminal hour is extended on a number of notable days.
- d) Opening hours for the premises are unrestricted.

4.3 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 Representations were received from forty three (43) local residents, Chalkwell Residents Association and the Environmental Protection Team. One local resident representation was later withdrawn.
- 5.3 An addition condition was agreed with Essex Police during the consultation period which can be found at Appendix 3
- 5.4 Copies of the representations have 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 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. Existing Licensing Controls**

- 7.1 The existing Premises Licence permits the following activities.
- a) The sale by retail of alcohol for consumption on and off the premises.
  - b) The provision of late night refreshment.
  - c) The provision of regulated entertainment comprising live music, recorded music, performances of dance and the provision of entertainment facilities comprising making music and dance (Entertainment facilities are now deregulated) .
- 7.2 A copy of the existing licence that includes all licence hours and conditions has been provided to members of the Licensing Sub Committee.

## **8. Background Papers**

- 8.1 Council's Statement of Licensing Policy.

## **8. Appendices**

- 8.1 Appendix 1 - Mandatory conditions.
- 8.2 Appendix 2 - Possible conditions drawn from the application, for the Sub-Committee's consideration.
- 8.3 Appendix 3 - Additional condition agreed with Essex Police.



## 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 in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children:-

- (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 (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);
- (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;

- (d) Provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on:-
    - (i) The outcome of a race, competition or other event or process, or
    - (ii) The likelihood of anything occurring or not occurring;
  - (e) 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.
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 tap water is provided on request to customers where it is reasonably available.
7. The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
- 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 a holographic mark.
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; and
  - (b) Customers are made aware of the availability of these measures.
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 10 above —
- 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-paragraph shall be taken to be the price actually given by that sub-paragraph 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. 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.
3. 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.
4. The Licensee shall install and maintain a closed circuit television surveillance (CCTV) system to the Home Office standards. Images shall be retained for a minimum of 31 days and made available to Essex Police on request. A member of staff who is trained to view/download images from the CCTV shall be on call at all times when the premises are open.
5. 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. Training records shall be maintained by the Licensee and shall be available for inspection to Police or Local Authority upon request (within 48 hours if not kept on site).
6. Signs shall be displayed at the exit of the premises requesting that customers leave the premises quietly and with consideration so as not to disturb nearby residents.
7. The following minimum number of covers shall be maintained at all times:-  
  
Ground floor 60 covers  
First Floor 40 covers
8. No bottles, glasses or other containers (other than bona fide off sales) shall be taken outside the curtilage of the premises show outlined in red on the plan of the premises accompanying this application.
9. The maximum number patrons allowed on the premises at any one time shall not exceed 200 persons.
10. The outside area cross hatched in blue shall not be used for any purpose between 23:00 and 08:00 the next day.

11. The licensee shall maintain a priority booking system with a local taxi/private hire operator and shall take all reasonable steps to ensure that after 23:00 all patrons wait inside the premises for the arrival of their taxi/private hire vehicle. (to be clarified at hearing)
12. No adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children may be provided

## ***APPENDIX 3***

### **ADDITIONAL CONDITION AGREED WITH ESSEX POLICE**

1. Alcohol sale on the ground floor shall be table sales by way of waiter or waitress service.