

Southend-on-Sea Borough Council

Agenda
Item No.

Report of Corporate Director for Place
To
Licensing Sub-Committee A
On
18th October 2016

Report prepared by: Mark Newton

Shell Sovereign, 96-118 Prince Avenue, Southend-on-Sea, SS2 6NN
Application for the Variation of Premises Licence
LICENSING ACT 2003

A Part I Public Agenda Item

1. Purpose of Report

- 1.1 This report considers an application by Shell UK Oil Products Limited for the grant of a variation 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 Proposed Revised Conditions - (following consultation with the Licensing Authority)**

3. Background

- 3.1 The application relates to a premises located on the corner of the Prince Avenue (A127) and Hopleythink Lane, Southend-on-Sea, along a stretch of road with a mix of commercial and residential properties. The application is to vary the existing premises licence.
- 3.2 The premises has operated for many years as a service station and has held a Premises Licence with Southend Borough Council since December 2013.

4. Proposals

- 4.1 The application was given to the Licensing Authority on the 20th June 2016.
- 4.2 Details of the variation application which are to be determined by the Sub-Committee can be briefly summarised as follows:
- To amend the premises licence to extend the sale of alcohol (to match the existing permitted trading hours) to 24 hours a day, 7 days per week.
 - To amend some of the conditions attached to the current licence.

- 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 a variation 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- 5.2 Representations were received from two Ward Councillors and one other Councillor (which was later withdrawn).
- 5.3 A representation was received from one Responsible Authority, namely the Licensing Authority. However amended conditions were agreed during the consultation period which can be found at Appendix 2. The Licensing Authority representation was later withdrawn.
- 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 off the premises.
- b) The provision of late night refreshment.

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.

9. Appendices

9.1 Appendix 1 - Mandatory conditions.

9.2 Appendix 2 - Proposed Revised Conditions - (following consultation with the Licensing Authority)

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.

PROPOSED AMENDED CONDITIONS - (FOLLOWING CONSULTATION WITH THE LICENSING AUTHORITY)

- 1) The site will have a Tokheim eye digital CCTV camera surveillance system. The Tokheim eye system will only store relevant images so that images can be quickly viewed as images are captured from the cameras as soon as movement is detected. The Tokheim eye will be motion based system. The Tokheim stores the receipt number and filling number together with the images captured. This unique connection means that the system is capable of retrieving images of events or a particular filling transaction by receipt or filling number or alternatively retrieving images by date and time. The system is a motion based recording system, and therefore will record on motion only, images will be retained for a period of no less than 31 days.
- 2) There will be a minimum of 4 internal cameras and 5 external cameras.
- 3) Access to the equipment and recordings shall be provided to the Police within 24 hours of a request being made, contact details of the Retailer will be kept on site and made available to the Police for the purpose of obtaining access to the equipment and recordings.
- 4) Spirits (with the exception of spirit mixers and/or mixed spirit drinks) shall be located behind the counter.
- 5) Between the hours of 23:00 and 05:00 hours each day, the site shall operate a closed door policy and all service shall take place via the night hatch.
- 6) Staff shall be trained with regard to their responsibilities in retail sale of alcohol and regular refresher training will also be undertaken. Training records can be made available for inspection upon reasonable request by the Police or other relevant officers of a responsible authority.
- 7) A Challenge 25 policy shall be operated at the premise. Acceptable forms of identification are a passport, photo card driving licence or 'PASS' accredited identification card.
- 8) Notices advising a Challenge 25 Policy is in operation will be displayed in prominent location within the premises including at the point of sale
- 9) The Licensee shall ensure that a refusal log is maintained at the premise to record any refusals of age restricted products. The refusal log shall be made available to the Police/Local Authority upon request.
- 10) 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/ Responsible Authority Officers upon request.