

Southend-on-Sea Borough Council

Report of Director of Technical & Environmental Services
to
Licensing Sub Committee (A)
on
16th January 2012

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Agenda
Item No.

Fat Cats Club, 1st & 2nd floors, 14-16 Southchurch Road Southend-on-Sea, Essex
Application for Review of Premises Licence
Licensing Act 2003

A Part 1 Public Agenda Item

1. Purpose of Report

- 1.1 This report considers an application by Essex Police for the review of the existing Premises licence.

2. Recommendation

- 2.1 That the Sub Committee determines the application.

3. Background

- 3.1 The premises comprise an established Private Members Club operating under a premises licence in the top two floors of a three storey building in central Southend. The upper floor is used as a function room.

4. The Review Application

- 4.1 The application for review was made by Essex Police, and was received on 20th October 2011. The application relates to all four of the licensing objectives.

- 4.2 The grounds stated in the application are summarised as follows:-

The premises have been the centre of various reports and actual incidents over a period of many years. These include drug use, smoking and the sale of stolen goods. There have also been breaches of the premises licence.

5. Application Procedure

- 5.1 Applicants for review of licences are required by law to send copies of their applications to all of the responsible authorities and to the premises licence holder.

5.2 The Licensing Authority is required to advertise the review by displaying prominently a notice at, on or near the site of the premises to which the application relates, for a period of 28 days. Such a notice is also required to be displayed at the offices, or main offices, of the Licensing Authority, in a central and conspicuous place. These notices have been displayed, and have been checked frequently. Following these procedures, no further representations were received.

5.3 Copies of the initial application, and supporting evidence, have been provided to the Sub Committee Members. In accordance with the legislation, all parties have been invited to attend the hearing.

6. Matter for Consideration

6.1 A valid application for review having been made, the Licensing Authority is obliged to hold a hearing to consider it and any relevant representations.

6.2 The Authority must, having regard to the application and relevant representations, take such steps (if any) as it considers necessary for the promotion of the licensing objectives.

6.3 The steps 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 3 months;
- e) to revoke the licence.

6.4 For this purpose, the conditions of the licence are modified under paragraph a) above if any of them is altered or omitted, or any new condition is added.

6.5 Where the Licensing Authority modifies the conditions of the licence, or excludes a licensable activity, it may provide that the modification or exclusion is to have effect only for such period (not exceeding 3 months) as it may specify.

6.6 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;
- d) the protection of children from harm.

6.7 In carrying out its licensing functions, the Licensing Authority must also have regard to

- i) Licensing Statement, and
- ii) The guidance issued by the Secretary of State.

- 6.8 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.
- 6.9 Where the Licensing Authority makes a determination in respect of a review, the determination does not have effect:-
- a) until the end of the period given for appealing against the decision, or
 - b) if the decision is appealed against, until the appeal is disposed of.

7. Existing Licensing Controls

- 7.1 The venue has the benefit of a Premises Licence, held by Langtons Leisure Limited.
- 7.2 The Premises Licence was converted from a justices' licence on 2nd October 2005 under transitional provisions. The premises licence has never been varied and therefore all conditions placed by the Magistrates' and in force at the time of the conversion remain in place to date.
- 7.3 A copy of the premises licence has been supplied to the sub-committee

8. Background

- 8.1 The Council's Statement of Licensing Policy

9. Appendices

- 9.1 Appendix 1 – Extract from statutory guidance.

EXTRACT FROM STATUTORY GUIDANCE.

(NB Numbers from this point forward are references from the guidance)

THE REVIEW PROCESS

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of a premises licence.
- 11.2 At any stage, following the grant of a premises licence, a responsible authority, or an interested party, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.3 The Regulations allow applications for reviews to be made electronically, as long as the licensing authority agrees and the applicant submits a subsequent written application. The licensing authority may also agree in advance that the application need not be given in writing. However, these applications are outside the formal electronic application process and may not be submitted via businesslink or the licensing authority's electronic facility.
- 11.4 In addition, a review of the licence will normally follow any action by the police to close down the premises for up to 24 hours on grounds of disorder or noise nuisance as a result of a notice of magistrates' court's determination sent to the licensing authority.
- 11.5 Licensing officers may not initiate their own reviews of premises licences, but elected members of the licensing authority may request reviews if they are concerned about licensed activities at a premises or such matters are brought to their attention (see paragraph 8.15 above). Officers of the local authority who are specified as responsible authorities under the 2003 Act, such as environmental health officers, may also request reviews on any matter which relates to the promotion of one or more of the licensing objectives.
- 11.6 Representations made by a department of the local authority which is a responsible authority should be treated by the licensing authority in precisely the same way that they would treat representations made by any other body or individual.
- 11.7 In every case, the representation must relate to particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time could give grounds for a review of an

existing licence as well as direct incidents of crime and disorder around a particular public house.

- 11.8 Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.
- 11.9 It is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims. It is therefore equally important that reviews are not used to drive a wedge between these groups in a way that would undermine the benefits of co-operation. It is good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. A failure to respond to such warnings is expected to lead to a decision to request a review.

POWERS OF A LICENSING AUTHORITY ON THE DETERMINATION OF A REVIEW

- 11.16 The 2003 Act provides a range of powers for the licensing authority on determining a review that it may exercise where it considers them necessary for the promotion of the licensing objectives.
- 11.17 The licensing authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. However, where responsible authorities like the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to concerns, licensing authorities should not merely repeat that approach.
- 11.18 Where the licensing authority considers that action under its statutory powers are necessary, it may take any of the following steps:
- to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
 - to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;

- to suspend the licence for a period not exceeding three months;
- to revoke the licence.

11.19 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

11.20 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.21 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems which impact upon the licensing objectives.

11.22 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as a necessary means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives.