

Southend-on-Sea Borough Council

Report of Corporate Director Enterprise, Tourism and the Environment

to

Licensing Sub-Committee (B)

on

1st October 2012

Report prepared by: Deborah Bentham

Agenda
Item No.

103 Hamlet Court Road, Westcliff-on-Sea, Essex, SS0 7ES
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 Mr J Zimmerman and Hossein Mahdavian, 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 conditions drawn from measures agreed between the applicant and Essex Police.
- 2.5 Appendix 4 sets out conditions drawn from measures agreed between the applicant and the Licensing Authority.
- 2.6 Appendix 5 sets out additional conditions drawn from measures agreed between the applicant and The Councils Environmental Protection.

3 Background

- 3.1 The application relates to a previously licensed bar with a small upstairs restaurant. Although the premises has a restaurant facility it has in the past been run predominantly as a bar and late night venue. The premises closed in Spring 2011 and has remains so since.

4 Proposals

4.1 The application was given to the Licensing Authority on 17th July 2012 and is for the grant of a Premises Licence.

Details of the application which are to be determined by the Sub-Committee can be briefly summarised as follows:

- a) To permit the sale of alcohol for consumption on and off the premises from 12.00 to 22.30 on Sundays to Thursdays and Fridays and Saturdays from 12.00 to 00.30 on the following mornings.
- b) To provide regulated entertainment indoors comprising live music, and entertainment facilities for making music from 12.00 to 22.30 on Sundays to Thursdays and on Fridays and Saturdays from 12.00 to 00.30 on the following mornings.
- c) To provide regulated entertainment indoors comprising recorded music, and entertainment facilities for dancing (and similar activities) from 12.00 to 23.00 on Sundays to Thursdays and on Fridays and Saturdays from 12.00 to 01.00 on the following mornings.
- d) To supply late night refreshment inside the premises from 23.00 to 01.00 on the following mornings on Fridays and Saturdays.
- e) To extend all licensable activities on Christmas Eve and New Years Eve from 12.00 to 01.00 on the following mornings.
- f) To allow the premises to remain open from 12.00 to 23.00 on Mondays to Thursdays and on Fridays and Saturdays from 12.00 to 01.00. (extended to 1.30am the following mornings on Christmas Eve and New Years Eve).

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 No representations were made by the Responsible Authorities; however, conditions were agreed with Essex Police, the Licensing Authority and the Councils Environmental Protection Team and these set out as **Appendices 3, 4, 5 respectively**.

5.3 Two letters spanning three addresses making representations have been received.

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 objection 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 necessary 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 necessary 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 operating schedule.
- 8.3 Appendix 3 - Conditions agreed between the applicant and Essex Police.
- 8.4 Appendix 4- Conditions agreed between the applicant and the Licensing Authority
- 8.5 Appendix 5 - Conditions agreed between the applicant and the Council's Environmental Protection team.

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 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. (1) 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.
- (2) 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.

CONDITIONS DRAWN FROM THE OPERATING SCHEDULE

1. A zero tolerance policy on the use of illegal drugs shall be enforced
2. The Licensee shall ensure that posters are displayed reminding patrons not to disturb local residents
3. Consultation shall be carried out with the department of children and learning and the police to ensure that all reasonable child protection measures are in place. (to be clarified at hearing).
4. Staff shall be trained to be aware of child protection, public nuisance, crime and disorder and public safety issues and procedures relating to the licensing objectives under the licensing Act 2003.
5. 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 shall be provided.

APPENDIX 3

CONDITIONS AGREED BETWEEN BY THE APPLICANT AND ESSEX POLICE.

1. A Refusal Register will be maintained with regard to the refusal of alcohol The register is to be made available for inspection upon request from any Officer authorised pursuant to the provisions of the Licensing Act 2003.
2. A Incident Record will be maintained to record all incidents that take place on the premises. The record is to be made available for inspection upon request from Police.
3. Written records of staff training shall be retained on the premises and made available to the Police/Licensing Authority upon reasonable request
4. The DPS shall be responsible for regular suitable staff training to cover all four of the licensing objects along with drunk and underage sales.
5. The Licensee shall ensure that an effective Closed Circuit Television (CCTV) surveillance system that records in real time covering licensable areas the entrance/exit, licensable areas and for the length of Alley/Walk Way from premises to pavement shall be maintained. Recording shall be retained for Thirty Days. A suitably qualified person shall be available at reasonable notice to download/transfer images from the CCTV recording when requested by the Police.
6. The Licensee shall adopt Challenge 25 scheme whereby any persons who appear to be under the 25 yrs of age shall be asked to produce means of identification proving that they are over 18 years of age. The only authorised identification will be either: Full Passport, Photographic UK Driving License or PASS Accredited Card.
7. A zero tolerance on the use/possession of illegal drugs will be enforced. This will be advertised within the premises.
8. The DPS/PLH shall take a proactive participation in any Behave or be Banned Scheme (BOBB) and the club/pubwatch operating within the area.
9. A minimum of two door supervisors will be employed on Friday and Saturday Evenings from 8pm until 30 minutes after the last licensable activity or until all the customers have left
10. No Bottles, Glasses or Drinking Vessels to be taken beyond the boundary of the licensed area as marked on the deposited plans.

11. The licensee shall within three months from the date of the grant create a scheme of written policies in agreement with police which shall include:
- Disorder Policy
 - Dispersal Policy
 - Drugs Policy to include regular toilet checks.
 - Property Policy
 - Noise Policy

APPENDIX 4

MEASURES AGREED BETWEEN THE APPLICANT AND THE LICENSING AUTHORITY IN ITS ROLE AS RESPONSIBLE AUTHORITY

1. No use shall be made of the outside areas save for access and egress between 9pm and 9am, with the exception of the side alley leading from the street to the main entrance which may be used as a smoking area. For clarity; external area's are defined as the area's marked 'side garden' and 'back garden' on the deposited plans. During this period the rear garden access gate from the side alley shall be closed except for access during an emergency
2. The first floor balcony and the escape route from it to the back garden, shall be closed for public use at all times except for access during an emergency.
3. Between 9pm and 9am use of the side alley leading from the street to the main entrance accessible solely via the double external door to the north elevation, shall be limited to access and egress and as a smoking area for a maximum of 10 persons. and shall be monitored and managed directly by the Premises Licence Holder or his/her representative. No drinks shall be permitted to be taken into this area during these times.

CONDITIONS AGREED BETWEEN THE APPLICANT AND THE COUNCILS ENVIRONMENTAL PROTECTION TEAM

1. Except in emergency and with the exception of the entrance doors to the ground floor, the external door and all windows to the licensed areas, or accessible there from, shall remain closed after 21:00 when the premises are used for any licensable activity and at all times during the playing of music and amplified speech until the following commencement of permitted hours. Suitable devices shall be provided and maintained to prevent the unauthorised opening of the door and windows accessible by patrons except in case of emergency.
2. Except for ingress and egress, both the internal and external double entrance doors to the north (side) elevation shall remain closed after 21:00 when the premises are used for any licensable activity and at all times during the playing of music and amplified speech until the following commencement of permitted hours.
3. Except in emergency, the external doors to the south and east elevations of the ground floor licensed area of the building shall remain closed at all times during permitted hours. Suitable devices shall be provided and maintained to prevent the unauthorised opening of the doors except in case of emergency.
4. Power supplies to all sound amplification equipment shall be solely via suitable audio level limiting devices. The limiting devices shall be set by an appropriately qualified acoustician (not a sound engineer) having particular experience in audio control work, at such a level as to prevent statutory noise nuisance affecting the occupants of any noise sensitive premises, having regard to minimum background and ambient levels throughout the licensed periods. The devices shall thereafter be maintained at the levels set by the acoustician and shall be accessible only to the Personal License Holder or his/her representative for maintenance purposes. Original records of all data obtained, certified by the acoustician, together with the settings of the devices determined as being appropriate, shall be retained and available for inspection by any Officer authorised pursuant to the provisions of the Licensing Act 2003.
5. Sound levels beyond the site boundary arising from the use of all non amplified entertainment equipment shall be such as to prevent statutory noise nuisance affecting the occupants of any noise sensitive premises.
6. Discharge points to any mechanical ventilation, air conditioning and refrigeration systems shall be confined to the north (side) elevation of the building.