

# Southend-on-Sea Borough Council

Agenda  
Item No.

Report of Deputy Chief Executive (Place)  
To

Licensing Sub-Committee

On

16<sup>th</sup> October 2017

Report prepared by: Mark Newton

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Oyster Beach Brasserie & Sports Bar, 99-101 Ness Road, Shoeburyness SS3 9DA  
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 Oysterfleet PLC 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 Proposed Amended and Additional Conditions - (following consultation with Essex Police and the Licensing Authority as a Responsible Authority during the consultation period).

#### 3. Background

- 3.1 The application relates to a premises located on Ness Road and the junction of Campfield Road along a stretch of commercial units with some residential properties above.
- 3.2 The premises was previously trading as an M-Local convenience store which was licensed for off sales. This licence was surrendered 29<sup>th</sup> September 2016.

#### 4. Proposals

- 4.1 The application was resubmitted to the Licensing Authority on the 30<sup>th</sup> August 2017 following advertising irregularities. All those making representations to the earlier application were asked to resubmit their representations.

- 4.2 Details of the application which are to be determined by the Sub-Committee can be briefly summarised as follows:
- a) To provide the sale of Alcohol on and off the premises and the provision of regulated entertainment comprising plays, films, indoor sporting events, live music, recorded music, the performances of dance and anything similar daily from 08:00 to 00:00.
  - b) The Provision of Late Night refreshment on daily from 23:00 to 00:00.
  - c) To be open to the public daily without restriction (since amended to 08:00 to 00.30 upon agreement with Essex Police and the Licensing Authority).
- 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 five local residents.
- 5.3 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.

## **8. Background Papers**

- 8.1 Council's Statement of Licensing Policy.

## **9. Appendices**

- 9.1 Appendix 1 - Mandatory conditions.
- 9.2 Appendix 2 - Amended/additional conditions agreed with Essex Police and the Licensing Authority.
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## 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 free tap water is provided on request to customers where it is reasonably available.
6. a) 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.
- b) 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.
- c) 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—
  - (i) a holographic mark, or
  - (ii) an ultraviolet feature.
7. 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.
  - (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.

8. 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.
9. 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)
10. 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.
11. The admission of children to the exhibition of any film shall be restricted in accordance with the recommendations of the British Board of Film Classification.





### AMENDED/ADDITIONAL CONDITIONS AGREED WITH ESSEX POLICE AND THE LICENSING AUTHORITY

1. The Licensee shall ensure that a minimum of 100 covers are maintained at all times.
2. 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.
3. The Licensee shall ensure that 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.
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 ensure that an effective closed circuit television surveillance (CCTV) system that records in real time covering licensable areas the entrances/exit Ness Road frontage and back yard shall be maintained. Recording shall be retained for 30 days. A member of staff shall always be on duty that is able to download/transfer images from the CCTV recording when requested to do so by the police or licensing authority. Suitably worded signage of sufficient size and clarity shall be displayed at the entrance to the premises stating CCTV operates in and around these premises.
6. The Licensee shall ensure that in the event of a technical failure of the CCTV equipment the Licensee/Designated Premises Supervisor (DPS) shall report the failure, to the Police Licensing Team Immediately.
7. 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, including refresher training every six months Training records shall be maintained by the Licensee and shall be available for inspection by the Police or Licensing Authority upon request.
8. The Licensee shall ensure that a written record is kept on the premises of any person authorised to sell alcohol by the DPS or a Personal Licence Holder. That record shall be made available to any officer authorised under the Licensing Act upon request.
9. No Bottles, Glasses or Drinking Vessels to be taken beyond the boundary of the licensed area as marked on the deposited plans.

10. The Licensee shall ensure that only toughened glass drinking vessels shall be used on the premises. Bottles shall be decanted into such vessels prior to service.
11. The Licensee shall operate a zero tolerance policy with regard to the use/possession of drugs at the premises shall be maintained and shall be advertised within the premises on posters or similar means.
12. 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
13. For the first two months from the time of opening there will be two SIA door supervisors from 21:00 hours until the close of trade, and or, all customers have left on every Friday and Saturday night. This will include any Bank holidays within this period and the day preceding them. After this period the use of SIA staff will be risk assessed by the Licensee or DPS. Should the Police identify certain days or events that door supervisors should be used then this will be advised in writing outlining the requirement and times during which they will be required.

Where SIA licensed door supervisors are used at the premises a record shall be maintained (on the premises) which is legible and details:

The day and date when door supervisors were deployed;

- The name and SIA registration number of each door supervisor on duty at the premises; and
- The duty start and end time for each door supervisor.

This record shall be immediately provided to Police or Licensing Authority staff upon request.

14. The rear area shall be closed between 22:00 - 08:00 hours daily. Doors will be closed except for access & egress. Furniture shall be removed from this area between those hours.
15. In the event that any 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 are provided, these shall be limited to such times when persons under 18 years of age are not present.
16. The Licensee shall ensure that external bottle bins are not used or emptied between 18:00 hours and 08:00 hours the following day.
17. The Licensee shall ensure that deliveries are only accepted between 08:00 and 18:00 hours.
18. No music shall be provided to the external area.

19. A noise limiting device(s) (the specification and design to be agreed with Southend Borough Council's Environmental Health Service) shall be fitted so that all regulated entertainment is channelled through the device(s). The installation of such devices shall take place under the supervision of a suitably qualified acoustic consultant, registered with the Institute of Acoustics or Association of Noise Consultants, who will provide a certificate of the completion and verification of the calibration and set up. The initial set up is to be witnessed by Council Officers from the Environmental Health Department. Entertainment noise control devices or automatic volume control systems shall be secured within robust lockable security boxing, or similar, to prevent unauthorised access to and tampering with the controls. Access to the controls shall be restricted to the licensee/s.
  
20. The Licensee or an appropriate representative shall actively take part in any local Licensing / Watch / BOBB / DISC scheme and engage and work with the local Police community and Licensing teams.
  
21. Hours open to the public shall be amended to 08.00 to 00.30