

Southend-on-Sea Borough Council

Agenda
Item No.

Report of Deputy Chief Executive (Place)

To

Licensing Sub-Committee A

On

4 September 2018

Report prepared by: Mark Newton

Kiosk 10, Chalkwell Esplanade, Westcliff-On-Sea, Essex, SS0 8JQ
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 Kiosk 10 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 amended condition agreed with Essex Police.

3 Background

- 3.1 The application relates to a premises located on Chalkwell Esplanade adjacent to the beach. Close to the junction with Chalkwell Avenue.
- 3.2 The premises which is a new build kiosk, replaced the previous building and is currently trading as an unlicensed café.

4 Proposals

- 4.1 The application was given to the Licensing Authority on the 11 July 2018.
- 4.2 Details of the application can be briefly summarised as follows:

- a) To permit the sale of alcohol on the premises daily between 09.30 and 21.00.
- b) Opening hours for the premises are 08:00 to 21:00 daily.
- c) The application was amended by the applicant so as to:
 - I. To reduce the hours for the sale of alcohol to 11:30 to 20:00 daily.
 - II. To remove the seasonal variation relating to New Year's Eve, hours open to the public.
 - III. To confirm the terrace (or veranda) area will not form part of the licensed area.

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 Three representations have been received from local residents. One local resident representation was later withdrawn.
- 5.3 No representations were made by any of the Responsible Authorities. A condition was amended 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 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 application, for the Sub-Committee's consideration.

8.3 Appendix 3 - Amended 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 must 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—
 - (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 in a manner which carries a significant risk of undermining a licensing objective; .
 - (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 in a manner which carries a significant risk of undermining a licensing objective; .
 - (d) 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; .

- (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
- 5) The responsible person shall ensure that free potable 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
(ii) still wine in a glass: 125 ml;
- (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
- (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 8 —
- a. “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
- 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

10) Where the permitted price given by sub-section (b) of Condition 9 would (apart from this condition) not be a whole number of pennies, the price given by that sub-section shall be taken to be the price actually given by that sub-section 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.

CONDITIONS DRAWN FROM THE OPERATING SCHEDULE

- 1) The sale of alcohol shall be ancillary to the purchase of a substantial meal and be served by waiting staff only. Substantial meals are defined as meals purchased from the premises with a cost in excess of £5.00
- 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, UK military ID or 'PASS' accredited card.
- 3) The Licensee shall ensure that signage is displayed advising customers that a 'Challenge 25' policy is in force.
- 4) The Licensee shall ensure that a refusal book is maintained at the premises which details all refusals to sell age restricted products. Each entry shall, as minimum, records the date and time of the refusal and the name of the staff member refusing the sale. All entries shall be made as soon as possible. The refusal book shall be made available to the Police or Licensing Authority staff upon request.
- 5) The Licensee shall ensure that all staff engaged in the sale or supply of alcohol on the premises shall have received training in relation to the protection of children from harm (including under-age sales), how to recognise drunkenness and the duty not to serve drunk persons. Refresher training shall be carried out at least every six months. The training must be given to a new member of staff before they are permitted to sell alcohol. Training records shall be kept on the premises for a minimum of 12 months and made immediately available to authorised Police or Licensing Authority staff upon reasonable request. Those holding an appropriate licensing qualification and/or a Personal Licence shall be exempt from this requirement.
- 6) The Licensee shall ensure that a written record is kept on the premises of all persons authorised by the Designated Premises Supervisor or a Personal Licence Holder to sell or supply alcohol in their name. Such records shall be made available to the Police or Licensing Authority staff upon request.
- 7) The premises shall install and maintain a closed circuit television surveillance (CCTV) system which at all times complies with the below requirements:
 - a) CCTV shall be provided in the form a recordable system, capable of providing pictures of evidential quality in all lighting conditions particularly facial recognition;
 - b) CCTV cameras shall cover all public areas including all entrances and exits;
 - c) CCTV equipment shall be maintained in good working order, be correctly time and date stamped. Recordings shall be kept for a minimum period of 31 days;
 - d) At all times, whilst the premises is open for licensable activities, there shall be members of staff on call who is able to provide viewable copies of recordings to the Police or Licensing Authority staff upon reasonable request;

- e) The recording equipment and data storage devices shall be kept in a secure environment and fitted with security functions (such as passwords) to prevent recordings being tampered with;
- 8) The Licensee shall ensure that an incident log is maintained on the premises and made immediately available to the Police or Licensing Authority staff upon request. The log shall be completed as soon as is possible and shall record the following:
- a) All crimes reported to the venue
 - b) All ejections of patrons
 - c) Any complaints received concerning crime and disorder
 - d) Any incidents of disorder

AMENDED CONDITION AGREED WITH ESSEX POLICE

- 1) The minimum covers to be maintained at all times shall be no fewer than 10 and no more than 30.