

# Southend-on-Sea Borough Council

Report of the Executive Director  
(Neighbourhoods and the Environment)

To

Licensing Sub-Committee B

On

31 July 2020

Report prepared by: Mark Newton

Agenda  
Item No.

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Yemek, 15 Palmeira Parade, Western Esplanade, Westcliff-on-Sea, SS0 7RR

Application for the Variation of a Premises Licence

LICENSING ACT 2003

*A Part I Public Agenda Item*

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## 1. Purpose of Report

This report considers an application by Serdar & Sons Ltd for the 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 condition must be applied. (This is set out in Appendix 1).

2.3 Appendix 2 sets out conditions drawn from the operation schedule, together with amended and additional conditions (following consultation with The Licensing Authority and Essex Police during the consultation period) for the Sub-Committee's consideration.

## 3. Background

3.1 The application relates to an existing licensed premises located on Western Esplanade close to the junction with Shorefield Road, Westcliff-on-Sea, within a parade of small cafés & eateries, of which 5 are already licensed for off sales.

## 4. Proposals

4.1 The application was given to the Licensing Authority on the 9<sup>th</sup> June 2020 and is for the variation of a Premises Licence.

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

- a) To change The supply of alcohol for consumption on & off the premises:

Mondays to Saturdays from 09:00 to 00:00.

Sundays from 10:00 to 23:00

Thus extending the current hours for on sales and adding off sales

- b) To add the Provision of Late Night Refreshment:

Mondays to Saturdays from 23:00 until 23:30

- c) To change the opening hours:

Mondays to Saturdays from 08:00 to 00:00.

- 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 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 A representation was received from one local residents.
- 5.3 No representations were made by any of the Responsible Authorities. Conditions were agreed with Essex Police and The Licensing Authority during the consultation period which can be found at **Appendix 2**.
- 5.4 A copy of the representation has 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 activity and timings.

- a) The sale of alcohol for consumption on the premises

Mondays to Saturdays 12:00 - 23:00  
Sundays 12:00 - 22:00

- b) The provision of regulated entertainment comprising of recorded music

Mondays to Sundays 9:00 – 23:00

- c) The opening times are daily from 08:00 and 23:00

7.2 A copy of the existing Premises Licence has been supplied to the Sub-Committee.

## **8. Background Papers**

8.1 Council's Statement of Licensing Policy.

## **9. Appendices**

9.1 Appendix 1 - Mandatory condition.

9.2 Appendix 2 - Conditions drawn from the the operation schedule, together with amended and additional conditions (following consultation with The Licensing Authority and Essex Police during the consultation period).



**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.

For the purposes of the above condition —

- 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 9 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.





## APPENDIX 2

### **CONDITIONS DRAWN FROM THE OPERATING SCHEDULE, TOGETHER WITH AMMENDED AND ADDITIONAL CONDITIONS (FOLLOWING CONSULTATION WITH THE LICENSING AUTHORITY AND ESSEX POLICE DURING THE CONSULTATION PERIOD).**

- 1) All conditions on the current premises licence shall remain, namely:
  - i. The Licensee shall ensure that alcohol is sold only as an accompaniment to a meal. No sales of alcohol will take place without food.
  - ii. No adult entertainment shall take place at the premises.
- 2) The delivery of alcohol shall only be made only to a residential or business address, where it is clearly evident that the customer is a resident or occupies the business.
- 3) The delivery of alcohol shall not be made to a person in a public place such as a street corner, park or bus stop etc.
- 4) Customers shall be reminded that it is a criminal offence for a person under 18 years to purchase or attempt to purchase alcohol, and that it is also an offence to purchase alcohol on behalf of a person aged under 18 years.
- 5) ID verification shall be made when orders containing alcohol are delivered (no ID no delivery) – acceptable proof of age shall include identification bearing the customer's photograph, date of birth and integral holographic mark or security measure.
- 6) An incident log shall be kept at the premises, and made immediately available to police or Licensing Authority staff upon reasonable request 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

The incident log shall be retained for at least 12 months from the date of the last entry.

- 7) A refusals record shall be maintained at the premises which details all refusals to sell alcohol. Each entry shall, as a minimum, record the date and time of the refusal and the name of the staff member refusing the sale. All entries must be made as soon as possible and in any event within 4 hours of the refusal and the record must be made immediately available to the Police, Trading Standards or Licensing Authority staff upon reasonable request. The refusals record shall either be electronic or maintained in a bound document and retained for at least 12 months from the date of the last entry.
- 8) A Challenge 25 scheme shall be operated, whereby any person who appears to be under the age of 25 years of age is required to produce on request an item which meets the mandatory age verification requirement and is either a:

- Proof of age card bearing the PASS Hologram;
- Photocard driving licence;
- Passport; or
- Ministry of Defence Identity Card

The premises shall clearly display signs at the each point of sale and in areas where alcohol is displayed advising customers that a 'Challenge 25' policy is in force.

- 9) The Licensee shall ensure that a written record is kept of any person authorised to sell alcohol by the DPS or a Personal Licence Holder. The record shall be kept for at least 6 months and shall include the date of the authorisation and the name and signature of the person authorising and each person who has been authorised. The records shall be available on request to any officer authorised by the Licensing Act.
- 10) The Licensee shall ensure that all employees receive training on Challenge 25, and preventing sales of alcohol to underage and drunken person. Refresher training shall take place at intervals of no more than 6 months. Written training records shall be maintained by the Licensee, and shall be kept for at least 12 months. The records shall be available on request to any officer authorised by the Licensing Act.