

Southend-on-Sea Borough Council

Report of Executive Director
(Neighbourhoods and the Environment)

To

Licensing Sub-Committee B

On

16 February 2021

Report prepared by: Paul Richards

Agenda
Item No.

Birdwood, 125 Leigh Road, Leigh-on-Sea, SS9 1JH

Application for a Premises Licence

LICENSING ACT 2003

A Part I Public Agenda Item

1. Purpose of Report

This report considers an application by Jason Richard Rogers for 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 Environmental Health Authority during the consultation period) for the Sub-Committee's consideration.

3. Background

3.1 This application is for a New Premises Licence. The application describes the premises as a Café, Restaurant and Bakery, located on the corner Leigh Road and Dundonald Drive. The premises forms part of a mixed commercial premises on both sides of road, with residential dwellings above each premises.

4. Proposals

4.1 The application was submitted to the Licensing Authority on the 30th November 2020. The hearing was delayed by agreement with the applicant.

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

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

Mondays to Sundays from 08:00 to 23:00.

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

Mondays to Sunday from 23:00 until 23:30

- c) Hours the premises are open to the Public:

Mondays to Sundays from 08:00 to 23:30.

- 4.3 Although this is a new application, the main effect of this proposal will be to allow an earlier time for licensable activities and revise the existing conditions.
- 4.4 The proposals are more fully documented in the application form which has been copied to Sub-Committee Members.

5. Application Procedures

- 5.1 Copies of Applications for a New Premises Licence are required by law to be sent 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 Seven (7) representations were received from local residents, objecting to the application. Three (3) out of the seven residents have withdrawn, their representation, after communication with the Licensing Agent Mr Matt Bell.
- 5.3 Leigh-on-Sea Town Council submitted an objection to the application, and also withdrew after communication with Mr Matt Bell.
- 5.4 Conditions were agreed with The Licensing Authority and Environmental Health, both acting as a Responsible Authority during the consultation period which can be found at **Appendix 2**.
- 5.5 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.

7. Existing Licensing Controls

- 7.1 This premises has an 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 Late Night Refreshments of recorded music:

Mondays to Saturday 23:00 – 23:30

- c) Recorded Music

Monday to Saturday 12:00 - 23:00
Sunday 12:00 - 22:00

- d) The opening times:

Monday to Saturday 12:00 - 23:30
Sunday 12:00 - 22:30

- 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 CONDITION

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 CONSULATION WITH THE LICENSING AUTHORITY AND ENVIRONMENTAL HEALTH DURING THE CONSULATION PERIOD).

1. The premises shall be predominantly operated as a restaurant and take-away/delivery service and the sale of alcohol for consumption off the premises shall be linked to the purchase of food.
2. On the ground floor a minimum of 20 covers shall be available at all times. On the first floor, except when in use for activities that do not involve on-site customers, there shall be a minimum of 12 covers available.
3. All alcohol sales for consumption on the premises shall be delivered via a waiter/waitress service to tables.
4. There shall be no use of the outside area between 21:00 and 09:00 the following day except by customers smoking at the front of the premises (Leigh Road) During those times the maximum capacity permitted within that area shall not exceed six persons. Waste receptacles shall be made available for smokers to use and the area swept of associated litter at the end of each trading session.
5. Furniture in the external area not permanently fixed shall be stored and not be available for use after 21.00 and 09:00 the following day.
6. All doors and windows to remain closed except for access and egress between 21:00 hours and 09:00 the following day. Other than for restaurant use all doors and windows to remain closed except for access and egress during opening hours.
7. 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.
8. At the point of placing an order either by telephone or via a website, customers will be informed that the premises operate a Challenge 25 policy and detail what forms of identification may be required upon delivery.
9. The Licensee shall ensure that signage is displayed advising customers that a 'Challenge 25' policy is in force.
10. 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 recognize drunkenness and the duty not to serve drunk persons. Refresher training shall be carried out at least every six months. Training records shall be kept on the premises (or otherwise be accessible on the premises) for a minimum of 12 months and made immediately available to the Police or Licensing Authority staff upon request. The foregoing requirement shall not apply to staff that hold a Personal Licence.
11. The Licensee shall ensure that a refusals record is 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. The record shall be made immediately available to the Police or Licensing Authority staff upon request.

12. The premises shall have installed and maintain a closed-circuit television surveillance (CCTV) The 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) Equipment shall be maintained in good working order, be correctly time and date stamped, recordings must be kept in good working order and 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 able to immediately 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;
13. Signs shall be displayed at all public entrances advising customers that CCTV is operating at the premises.
14. An incident log shall be kept at the premises and made immediately available to the Police or Licensing Authority staff upon request. The log 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
 - e) All seizures of drugs or offensive weapons
 - f) Any faults in a CCTV system, searching equipment or scanning equipment mandated as a condition of the licence.
 - g) Any complaints of noise nuisance
15. 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 provided to any officer authorised under The Licensing Act
16. The emptying of bins into skips or waste receptacles, refuse collections or deliveries will not take place between 21:00 and 07:00.
17. The Licensee shall ensure that signage is displayed advising customers to leave the premises in a respectful manner and to close their car doors as quietly as possible.
18. No speakers shall be located in external areas