

Southend-on-Sea Borough Council

Agenda
Item No.

Report of Corporate Director for Place
To
Licensing Sub-Committee A
On
10th June 2016

Report prepared by: Mark Newton

The Melrose 168 Hamlet Court Road, Westcliff-on-Sea, SS0 7LJ
Application for the Variation of Premises Licence
LICENSING ACT 2003

A Part I Public Agenda Item

1. Purpose of Report

- 1.1 This report considers an application by Jenny Louise Green for the grant of a 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 conditions must be applied. (These are set out in Appendix 1).**
- 2.3 **Appendix 2 sets out Proposed Revised Conditions - (following the application to remove conditions no longer considered appropriate), for the Sub-Committee's consideration.**
- 2.4 **Appendix 3 sets out conditions the applicant seeks to remove.**

3. Background

- 3.1 The application relates to a premises located on the corner of Hamlet Court Road and Burdett Avenue, Westcliff-on-Sea, along a stretch of commercial units with some residential properties located above and in the adjacent road. The application is to vary the existing premises licence.
- 3.2 The premises has operated for many years as a public house and has held a Premises Licence with Southend Borough Council since the introduction of the Licensing Act in 2005.

4. Proposals

- 4.1 The application was given to the Licensing Authority on the 11th May 2016.
- 4.2 Details of the variation application which are to be determined by the Sub-Committee can be briefly summarised as follows:

- a) To vary the sale of Alcohol for both on and off the premises on Fridays and Saturdays until 02:30. The terminal hour is extended until 02:30 on Christmas Eve and Boxing Day and on Sundays preceding a statutory bank holiday.
- b) To offer the provision of Late Night Refreshment from 23:00 to 02:30 Fridays and Saturdays. The terminal hour is extended until 02:30 on Christmas Eve and Boxing Day and on Sundays preceding a statutory bank holiday.
- c) To be open to the public from Sundays to Thursdays from 08:00 to 00:30 and Fridays and Saturdays from 08:00 to 03:00 hours. The terminal hour is extended until 03:00 on Sundays preceding a statutory bank holiday. Christmas Eve and Boxing Day.
- d) Removal of conditions considered no longer appropriate. These are outlined at **Appendix 3**

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 a 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 Representations were received from two Responsible Authorities, namely the Licensing Authority and Essex Police.
- 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.

7. Existing Licensing Controls

7.1 The existing Premises Licence permits the following activities.

- a) The sale by retail of alcohol for consumption on and off the premises.
- a) The provision of late night refreshment.
- b) The provision of regulated entertainment comprising films, indoor sporting events, live music, recorded music and anything of a similar description.

7.2 A copy of the existing licence that includes all licence hours and conditions has been provided to members of the Licensing Sub Committee.

8. Background Papers

8.1 Council's Statement of Licensing Policy.

9. Appendices

9.1 Appendix 1 - Mandatory conditions.

9.2 Appendix 2 - Proposed Revised Conditions - (following the application to remove conditions no longer considered appropriate)

9.3 Appendix 3 - Conditions the applicant seeks to remove

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.

10. 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)
11. 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.

PROPOSED REVISED CONDITIONS -
(FOLLOWING THE APPLICATION TO REMOVE CONDITIONS NO LONGER
CONSIDERED APPROPRIATE

1. The Licensee shall ensure that no amplified sound shall be provided under this licence (excepting background music) until such time as:-
 - i. A report from a suitably qualified and experienced acoustic consultant (who would normally be a member of the Institute of Acoustics and/or the Association of Noise Consultants) is commissioned to consider sound containment properties of the premises, including the party wall between the bar and the adjoining residential properties. Any recommendations shall be considered and works carried out as necessary. A copy of the report shall be provided to Southend on Sea Borough Council's Environmental Protection Team.
 - ii. A suitable tamper proof sound limiting device, approved by Southend on Sea Borough Council's Environmental Protection Team, is installed at the premises and set at an agreed level as determined by a suitably qualified acoustic consultant (eg member of the Institute of Acoustics) and in consultation with Southend on Sea Borough Council's Environmental Protection Team.
 - iii. Such sound limiting device is connected to all electrical sockets that may be used in the premises for the purpose of providing amplified sound.
Thereafter:
 - iv. All amplified sound (including audio, live and recorded music) shall be played through the approved sound limiting (cut-out) device and shall be maintained at a level that shall not cause nuisance to residents in the local vicinity of the premises.
2. The Licensee shall have and maintain an efficient close circuit television surveillance system. The sighting of cameras will be in consultation with the reasonable requirements of Essex Police. Recordings shall be retained for at least 30 days. This will include the side beer garden as well as the immediate external frontage to the premises.
3. A manager/Supervisor shall always be on duty who is trained to download and transfer images from the CCTV recording when requested to do so by the Police.
4. A suitably worded sign of sufficient size and clarity shall be displayed at the point of entry to the premises, in the area of the alcohol display, and in a suitable location at the point of sale advising customers that CCTV is operating in the premises.
5. The Licensee shall ensure that all staff receive training on preventing sales of alcohol to underage and drunken persons and the operating schedule/policies adopted by the premises. Such training records shall be maintained by the Designated Premises Supervisor and shall be available for inspection by the Police or Licensing Authority at their request.

6. The Licensee shall ensure that members of staff are utilised to regularly check the toilets during operating hours to monitor/prevent unlawful activities including the taking of illegal substances. A written record of such checks shall be kept in a separate folder.
7. The Licensee shall ensure that employees use the challenge 21 scheme whereby any persons who appear to be under 21 years of age shall be asked to produce means of identification proving that they are over 18 years of age. The only authorised identification shall be full passport, photo card driving licence or PASS accredited card.
8. The Licensee shall ensure that all appropriate steps are taken to keep the sound levels within reasonable limits in respect of neighbouring properties.
9. The Licensee shall ensure that staff maintain a refusal register with regard to the sale of alcohol within the premises. The register shall be made available for inspection upon request from the Police.
10. The Licensee shall ensure that an Incident log is maintained where all Incidents are recorded in respect crime and disorder. This should be made available to the Police or Licensing Authority upon any reasonable request.
11. The Licensee shall ensure that noise levels are reduced (style/volume) by way of a wind down period at the end of the trading session to assist with dispersal. In addition, other steps that are considered by the Licensee to reasonably assist with this shall be undertaken.
12. All reasonable steps will be made to prevent customers from exiting the premises with any drinking vessels/bottles, except where consumed in the side beer garden to prevent any littering and broken glass outside the premises.
13. The Licensee shall ensure that staff monitor the outside area to prevent customers from the following potential problems: standing on the highway causing an obstruction: becoming intoxicated and using inappropriate language to passing persons. General litter being discarded.
14. The Licensee shall ensure that drinking vessels/bottles within the premises are collected on a regular basis so as to minimise the same being used as weapons/causing accidents.
15. The Licensee shall introduce a policy to assist in the dispersal of patrons from the venue and immediate vicinity, and instruct staff in the implementation of this policy.
16. No consumption of alcohol shall be permitted to take place outside the licensed area or beer garden. (The non-drinking area, referred to in this condition, is defined as the area to the outside of the premises and specifically, the public highway.)
17. The Licensee shall ensure that notices are displayed requesting departing patrons to have regard to their neighbours.

18. The Licensee shall undertake (and from time to time review) an assessment of the risks to persons arising from the use of glass drinking vessels (not including drinks served in bottles) as potential weapons. Where an assessment shows a significant risk, the Licensee shall ensure that only the most suitable toughened glass or non-glass drinking vessels are used.
19. The Licensee shall display a public notice visible from the highway which includes a telephone number for a responsible person on the premises to be available should a member of public wish to call to discuss any matter in relation to the premises.
20. No regulated entertainment and no music shall be provided to any external areas.
21. The Licensee shall take all reasonably practicable steps to ensure that patrons entering into and departing from the premises do not cause nuisance or annoyance to adjoining residents or passers-by.
22. All doors and windows shall be kept closed between 9pm and the start of licensable hours the following day on any day regulated entertainment is taking place except for access and egress to the premises.
23. All regulated entertainment including recorded music, disc jockey any amplified sound will be reduced to a background level from 11pm. Background level is defined as a sound level where the average person is able to have a conversation without raising their voice.

CONDITIONS THE APPLICANT SEEKS TO REMOVE

1. Any drink promotion(s) which in the reasonable opinion of the Police contributes to Crime & disorder, for example encourages irresponsible drinking, shall be withdrawn on the written request of the Police.
2. The Licensee shall continue only to employ responsible drink promotions. In the event that any drink promotion, however modest, is shown to contribute to problems within the vicinity, it shall be withdrawn upon appropriate representations from Essex Police. For the avoidance of doubt the Licensee shall not advertise, fly post, promote, sell or supply alcoholic drinks in such a way that it is intended or likely to encourage persons to consume alcohol to an excessive extent.