

Southend-on-Sea Borough Council

Agenda
Item No.

Report of the Executive Director
(Neighbourhoods and the Environment)

To

Licensing Sub-Committee A

On

16 June 2021

Report prepared by: Paul Richards

Cornichon, 109 – 111 The Broadway, Leigh-on-Sea, SS9 1AD

Application for a Premises Licence

LICENSING ACT 2003

A Part I Public Agenda Item

1. Purpose of Report

This report considers an application by Hook & Partners Solicitors acting on behalf of Regis Entertainment No2 Ltd, trading as Cornichon, at 109 – 11 The Broadway, Leigh-on-Sea, SS9 1AD, 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 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 Restaurant and Bar and is located on the corner Broadway and Oakleigh Park Drive. The premises forms part of a mixed commercial premises on Broadway, with Oakleigh Park Drive consisting of residential dwellings on both sides of the roads approximately 30 meters from the junction.

4. Proposals

4.1 The application was submitted to the Licensing Authority on the 9th April 2021. There was an extended period of the Consultation process, as the date provided on the Notice displayed at the premises stated that representations must be received by the 18th of May.

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:

Sundays to Wednesday from 10:00hrs to 00:00hrs.

Thursday to Saturday from 10:00hrs to 01:00hrs

b) The Provisions of or Live & Recorded Music

Sundays to Wednesday from 10:00hrs to 00:00hrs.

Thursday to Saturday from 10:00hrs to 01:00hrs

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

Sunday to Wednesday from 23:00hrs to 00:00hrs

Thursday to Saturday from 23:00hrs to 01:00hrs.

d) Hours the premises are open to the Public:

Sunday to Wednesday from 07:00hrs to 00:30hrs.

Thursday to Saturday from 07:00hrs to 01:30hrs.

5. Application Procedures

5.1 Copies of Applications for a New Premises Licence are required by law to be sent to all the "Responsible Authorities". The Applicant are also required to display a notice giving brief details of the application in a prescribed form at the application site for the duration of the consultation period, and to publish the same information in a newspaper circulating in the area.

5.2 I can confirm that the application process has been conducted in accordance of the Licensing Act 2003.

5.3 This Application attracted representations from Two (2) Responsible Authorities, the Police and Environmental Health, also Thirteen (13) representations from local residents.

5.4 Hook & Partners Solicitors are currently negotiating with all who submitted a representation. The Police and Environmental Health are close to agreeing some additional Licensing Conditions, but at the time of writing this report, confirmation of an agreement has not been received.

5.5 One (1) resident has formally withdrawn their representation, after receiving a response from Hook & Partners Solicitors, addressing their concerns.

5.6 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 None.

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).

APPENDIX 1

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

1. 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.
2. 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.
3. 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 training records shall be maintained by the licensee and shall be available for inspection by the police or licencing authority upon request.
4. The Licensee shall ensure that a refusal book is maintained at the premises to record any refusals of alcohol. The refusal book shall be made available to the police and local authority upon request.
5. A sound level regulatory device ("noise limiter") shall be connected to any music or public address system. The limiter shall be set by a competent person who shall be taken to be a member of the institute of acoustics of the association of noise consultants (or who can prove to the Licencing Authority that their qualifications is acceptable to either of these bodies to ensure that amplified music or speech is inaudible at one metre from the facade of the nearest noise sensitive property at any time. The device shall be maintained to ensure inaudibility and kept in proper working order. (The term "inaudible" is considered to be when the noise source is at a low enough level such as to be unrecognisable as emanating from the environment that would prevail in the absence of source. Reference taken from the Institution of Acoustics 2003 Good Practice on the Control of Noise from Pubs and Clubs).
6. Signs shall be displayed at the exit of the premises requesting that customers leave the premises quietly and with consideration so as not to disturb nearby residents.
7. The exterior seating shall be removed by 22:00hrs each day. When the external area is in use it shall be delineated by barriers or similar methods in such a way as to be obvious that is not part of the public highway.
8. The Premises Licence Holder and Designated Premises Supervisor shall ensure that;
 - a) No drinking vessel of any kind save for, and only, bona fide off sales of factory sealed goods are taken beyond the licenced area marked on the approved plans.
9. All persons under 16 years of age permitted on the premises shall be accompanied by an adult and supervised by that adult whilst on the premises.
10. No less than 40 covers shall be provided to the internal licenced areas.
11. 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 these shall be limited to such times when customers under 18 years of age are not present.

12. The Licensee shall install and maintain a close circuit television surveillance (CCTV) system to the reasonable satisfaction of Essex Police. The system shall record in real time and images shall be retained for a minimum of 30 days and made available to Essex Police on request. A member of staff shall always be on call during opening time who is able to download and burn off images from the CCTV system upon a request from the Police or Licencing Authority.

13. The Licensee shall ensure that a suitable worded sign of a sufficient size and clarity is displayed at the entrance of the premises and in the area of the alcohol display advertising customers at CCTV is operating at this premises.