

# Southend-on-Sea City Council

Report of The Executive Director of Neighbourhoods and  
the Environment

To

Licensing Sub-Committee B

On

29<sup>th</sup> March 2022

Agenda  
Item No.

Report prepared by: Paul Richards

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**Elsewhere Spaces Ltd, 1 Grove End, Rectory Grove, Leigh-on-Sea, SS9 2HB**

**Application for 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 Elsewhere Spaces Ltd, for a new 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 conditions agreed with the Licensing Authority.

## 3. Background

3.1 This application is for a new Premises Licence. The premises was previously a Café/Restaurant and has recently been acquired by the applicant. This is a new business at this premises and will continue to operate as a Restaurant.

3.2 The premises is located at the end of a parade of a mixed commercial premises on both sides of this part of the Rectory Grove, approximately 20 metres from the junction of Elm Road.

3.3 Appendix 3, a map shows the location of premises. This map shows location of the Commercial and Residential premises, within the area and are indicated by colour.

3.4 Commercial Premises are shown as Magnolia, and Residential shown as Grey. Some of the commercial premises do have residential dwellings above.

#### **4. Proposals**

4.1 The application was submitted to the Licensing Authority on the 28<sup>th</sup> January 2022. The consultation process expired on the 25<sup>th</sup> February 2022.

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

a) Provisions of Live & Recorded Music

To supply Alcohol for the consumption On & Off the premises:

Provisions of Late-Night Refreshment

**Monday to Sunday 10:00hrs – 00:00hrs**

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 Copies of applications for a New Premises Licence are required by law to be sent to all 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 During the consultation period, the Licensing Officer, acting as the Licensing Responsible Authority, and the Applicant agreed several amendments to the licence conditions which formed part of the Licence Application and can be found at **Appendix 2**.

5.3 Four (4) valid representations were received from residents, objecting to the application.

5.4 The applicant wrote to the residents addressing their concerns. One (1) resident withdrew his representation but wished that his concerns remained on file in case there were future issues.

5.5 Two (2) residents, responded stating that their representation objecting to the proposal, remained. At the time of producing this report, no response has been received from the remaining objector ~~to this Application~~. Therefore, it must be accepted that the objection still stands.

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 No existing licence is in place for this premises

## **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 with amendments, agreed with the Licensing Authority.

9.3 Appendix 3 - Map showing the location of the premises

# APPENDIX 1

## 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**

### **ADDITIONAL AND AMENDED CONDITIONS DRAWN FROM THE OPERATING SCHEDULE - AGREED WITH THE LICENSING AUTHORITY,**

1. An incident log shall be kept at the premises, and made available on request to the police or an authorised officer, which will record the following:
  - a) All crimes reported to the venue
  - b) Any complaints received
  - c) Any incidents of disorder
  - d) Any faults in the CCTV system
  - e) Any visit by a relevant authority or emergency service
  - f) Any ejections of patrons
  - g) Any refusal of the sale of alcohol
  
2. CCTV shall be installed, operated and maintained, at all times that the premises is open for licensable activities, so as to comply with the following criteria:
  - a) The licensee shall ensure that the system is checked every two weeks to ensure that the system is working properly and that the date and time are correct. A record of these checks, showing the date and name of the person checking, shall be kept and made available to Police or authorised Council officers on request;
  - b) The Police shall be informed if the system will not be operating for longer than one day of business for any reason;
  - c) One camera shall show a close-up of the entrance to the premises, to capture a clear, full length image of anyone entering;
  - d) The system shall provide full coverage of the interior of the premises and any exterior part of the premises accessible to the public;
  - e) system shall record in real time and recordings will be date and time stamped;
  - f) Recordings shall be kept for a minimum of 31 days and downloaded footage will be provided free of charge to Police or authorised Council officers on request (subject to the Data Protection Act 1998) within 24 hours of any request;
  - g) At all times, there shall be a person on the premises who can operate the system sufficiently to allow Police or authorised Council officers to view footage on request and to supply a copy of footage immediately to Police to assist with the immediate investigation of an offence.
  
3. The premises shall only operate as a restaurant where the supply of alcohol shall only be to a person seated taking a table meal there and for consumption by such a person as ancillary to their meal. Save for the premises being permitted vertical drinking for a maximum of 14 persons.
  
4. The provision of off-sales is strictly limited to customers who have been served food or drinks on the premises already, and to those making on-line orders and deliveries, ensuring that the points within this operating schedule in relation to such is followed.

5. An individual may not supply alcohol unless that individual has the written consent of the Designated Premises Supervisor or other employed Personal Licence Holder. A written record of this consent shall be retained on the premises at all times when such an individual supplies or proposes to supply alcohol and be made available immediately upon reasonable request of the Police or Licensing Authority.”
6. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the premises by the police or an authorised officer of the Council at all times whilst the premises is open.
7. In the event that an assault is committed on the premises (or appears to have been committed) the management will immediately ensure that:
  - a) The police (and, where appropriate, the Ambulance Service) are called without delay;
  - b) The crime scene is preserved so as to enable a full forensic investigation to be carried out by the police; and
  - c) Such other measures are taken (as appropriate) to fully protect the safety of all persons present on the premises.
8. The premises shall operate a zero-tolerance policy to drugs.
9. A first aid box shall be available at the premises at all times
10. Prominent, clear and legible notices shall be displayed at all exits requesting that customers respect the needs of local residents and to leave the premises and the area quietly.
11. There shall be no use of any outside area between 22:00 and 09:00 the following day, save as a smoking area. During those times, the maximum numbers of smokers shall not exceed eight (8) persons.
12. The licence holder shall ensure that any patrons smoking outside of the premises, do so in an orderly manner and are regularly monitored by staff so as to ensure that there is no public nuisance or obstruction on the public highway
13. Noise or vibration must not emanate from the premises so as to cause a nuisance to nearby properties.
14. Noise and/or odour from any flue used for the dispersal of cooking smells serving the building shall not cause a nuisance to the occupants of any properties in the vicinity. Any filters, ducting and extract fan shall be cleaned and serviced regularly.
15. In the event of a noise/nuisance complaint substantiated by an authorised officer, the licensee shall take appropriate measures in order to prevent any recurrence.
16. The delivery of goods to the premises shall be restricted to the hours between 07:00 and 21:00 Monday-Saturday. No deliveries of goods to the premises shall be made on a Sunday or Bank Holiday

17. The collection of refuse shall be restricted to the hours between 07:00 and 21:00 Monday-Saturday. No waste collections shall be made on a Sunday or Bank Holiday.
18. No glassware, bottles etc shall be disposed of externally after 21:00 or before 09:00 the following day and outside these hours shall be stored internally.
19. The outside frontage shall be swept and cleared of any rubbish and smoking litter associated with the business at the end of trade each evening.
20. All doors and windows shall remain closed from 21:00 hours, except for access or egress.
21. All speakers will be positioned as to face away from doors or windows and shall not be mounted on walls adjacent to residential properties.
22. No amplification system or speakers shall be used in the external areas of the premises.
23. The outside of the premises shall be regularly monitored to ensure that noise levels from patrons do not cause a nuisance to any nearby residents.
24. Customers shall not be allowed or encouraged to congregate in the entrance/exit of the premises except in an emergency.
25. Any outdoor furniture shall be fitted with rubber pads to the bottom of the legs to minimise noise when moved.
26. Drinks shall not be taken outside in open containers for consumption apart from to customers seated in any authorised area for external tables and chairs.
27. All sales of alcohol for consumption off the premises shall be in sealed containers only and shall not be consumed on the premises.
28. A proof of age scheme, Challenge 25, shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as: a driving license or passport / holographically marked PASS scheme identification cards.
29. Any sales tills shall offer a Challenge 25 reminder / prompt the cashier making an alcohol sale to verify that the customer is over 18.
30. All staff members engaged, or to be engaged, in selling alcohol on the premises shall receive full training pertinent to the Licensing Act. Specifically in regard to age-restricted sales, and the refusal of sales to persons believed to be under the influence of alcohol or drugs.
31. All such training shall be fully documented, signed by the employee, and kept at the premises for inspection by Police or other authorised officers. Training shall include, but not be limited to:

- a) The premises age verification policy
- b) Dealing with refusal of sales
- c) Identifying attempts by intoxicated persons to purchase alcohol
- d) Identifying signs of intoxication

32. Such training sessions shall be documented and refreshed every twelve months. All training sessions shall be documented in English. Records of training shall be kept for a minimum of one year and made available on request to authorised officers from the council or police upon request.

33. With regard to on-line orders and deliveries, the premises shall at all times ensure;

- a) The full name and address of the person making the booking is recorded.
- b) A disclaimer is on the website which states that the person making the order takes the responsibility to ensure the delivery is not intercepted by anyone under the age of 18, and that delivery shall not be made to anyone under the age of 18.
- c) At point of sale the Payment Services Provider will verify age and only authorise sales to over 18s
- d) Each sale shall state in writing that the delivery is not to be left with anyone under the age of 18
- e) Deliveries shall only be made to residential and commercial addresses.
- f) There shall be no 'safe place' delivery option for the delivery of alcohol
- g) There shall be no cash sales of alcohol