

Southend-on-Sea City Council

Agenda
Item No.

Report of Executive Director
(Neighbourhoods and the Environment)

To

Licensing Sub-Committee A

On

12th April 2023

Report prepared by: Anthony Byrne

Brakan, 1581 London Road Leigh-on-Sea SS9 2SG
Application for a Premises Licence

LICENSING ACT 2003

A Part I Public Agenda Item

1. Purpose of Report

This report considers an application by The Brakan Brothers Limited for a Premises Licence at 1581 London Road Leigh-on-Sea SS9 2SG.

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 being a restaurant. It is located on the north side of London Road between the junctions with Herschell Road and Barnard Road. The premises forms part of an area of mixed commercial premises on both sides of road, with residential dwellings above most premises.

4. Proposals

4.1 The application was submitted to the Licensing Authority on the 6th February 2023

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:
Daily from 12:00 to 22:00
- b) Hours the premises are open to the Public:
Daily from 09:00 to 22:30
- c) The applicant has specified they wish the licence to take effect as soon as possible pending nomination of a Designated Premises Supervisor. (At the time of writing this report details of this are awaited.)

4.3 The hours were amended downwards by the applicant after the application was submitted.

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 Nine (9) representations were received objecting to the application. These appear to be from local residents.

5.3 Conditions were agreed with The Licensing Authority, acting as a Responsible Authority, during the consultation period. These can be found at **Appendix 2**.

5.4 The opening hours and hours requested for licensable activities have been reduced by the applicant since making the initial application.

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 The premises is currently unlicensed.

8. Background Papers

- 8.1 Council's Statement of Licensing Policy.

9. Appendices

- 9.1 Appendix 1 - Mandatory conditions.
- 9.2 Appendix 2 - Conditions drawn from the the operation schedule.

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.

11. The admission of children to the exhibition of any film shall be restricted in accordance with the recommendations of The British Board of Film Classification.

APPENDIX 2

CONDITIONS DRAWN FROM THE OPERATING SCHEDULE AND THOSE AGREED WITH THE LICENSING AUTHORITY.

- 1) The sale of alcohol for consumption on the premises shall be linked to the purchase of a meal.
- 2) Alcohol shall only be sold ancillary to food.
- 3) Consumption of alcohol shall cease 30 minutes after the time authorised for its sale or supply.
- 4) There shall be no delivery of alcohol. Alcohol sold for consumption off the premises shall only be to customers who have purchased the alcohol at the premises following a meal.
- 5) 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
- 6) The premises shall clearly display signs at each point of sale and in areas where alcohol is displayed advising customers that a 'Challenge 25' policy is in force.
- 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 shall be made as soon as possible and in any event within 4 hours of the refusal. The record shall be made immediately available to 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) The premises shall have installed and maintain a closed-circuit television surveillance (CCTV) system which at all times complies with the below requirements:
 - i. CCTV shall be provided in the form a recordable system, capable of providing pictures of evidential quality in all lighting conditions particularly facial recognition;
 - ii. CCTV cameras shall cover all entrances and exits and the areas where alcohol sales take place;
 - iii. Equipment shall be maintained in good working order, be correctly time and date stamped;
 - iv. Recordings shall be kept in good working order and kept for a minimum period of 31 days;

Upon the reasonable request of The Police or Licensing Authority staff, within 48 hours viewable copies of recordings shall be provided.

- 9) Signs shall be displayed at all entrances and exits advising customers that CCTV is operating at the premises at all times when the premises conducts licensable activities.
- 10) A record of complaints shall be maintained on the premises to record details of any complaints received. The information to be recorded shall include the date and time of complaint and subsequent remedial action undertaken and (where disclosed) the complainant's name and address. The record of complaints shall be kept for 12 months from the date of the last record made and shall be available for inspection on demand by The Police or authorised officers of the Licensing Authority at all times the premises are open.
- 11) All staff engaged in the sale or supply of alcohol shall have received training in relation to the protection of children from harm (including under-age sales), how to recognise 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 Police, Trading Standards or Licensing Authority staff upon reasonable request.
- 12) 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.
- 13) Bottles and glasses shall not be disposed of in the waste bins to the rear of the premises between 21:00 hours and 07:00 hours.
- 14) The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards and be immediately available for use.
- 15) There shall be no use of any outside area, as shown on plan between 21.00 and 09:00 the following day, save as a smoking area. During those times, the maximum numbers of smokers 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.
- 16) There shall be no audio speakers installed in any external areas.
- 17) A telephone number for the premises, or a responsible member of staff on duty, shall be displayed so that it is visible for members of the public to lodge complaints.
- 18) Notices shall be prominently displayed at the exits requesting customers to respect the needs of local residents and businesses and leave the area quietly