

Meeting: Licensing Sub Committee A
Date: 16 June 2023
Classification: Part 1
Key Decision: No
Title of Report: **Westcliff Drinks Co, 128 Hamlet Court Road, Westcliff-on-Sea, SS0 7LN - Application for the Variation of Premises Licence**

Executive Director: Neighbourhoods & Environment
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1. Purpose of Report.

1.1 This report considers an application by The Westcliff Drinks Company Limited, for the 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 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 an additional condition (following consultation with Essex Police during the consultation period) for the Sub-Committee's consideration.

2.4 Appendix 3 sets out conditions carried forward from the existing premises licence which are not subject of the variation application.

3. Background.

3.1 The application relates to a licensed premises located on Hamlet Court Road, on the junction with St Helens Road, Westcliff-on-Sea, along a stretch of commercial units. There are a number of residential properties in the vicinity.

4. Proposals.

4.1 The application was submitted to the Licensing Authority on the 14 April 2023 and is for variation of the Premises Licence.

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

- a) To extend the licensable area to include the pavement licensed area which covers the front and the side of the building, as per the plan submitted with the application, between the hours of 9:00 and 21:00.
- b) To remove condition 7, "Customers shall not be permitted to remove from the premises any drinks supplied by the premises in open containers. (However, this condition is reinstated in the Police conditions outlined at **Appendix 2**)
- c) To remove the condition 15, "There shall be no removal of alcoholic drinks from the premises unless in sealed containers". (However, the outside area as shown on the plan would now be considered part of the 'premises', additional conditions are outlined at **Appendix 2**)

4.3 The remaining conditions will be carried forward into any varied licence granted by the Sub-Committee. These are outlined in **Appendix 3**

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 Applicants for variation of licence are required by law to send copies of their applications 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 One (1) representation was received from a local resident objecting to the application.

5.3 No representations were made by any of the Responsible Authorities. A condition was agreed with Essex Police during the consultation period which can be found at **Appendix 2**.

5.4 Copy of the representation 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 representations 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. Previous Licensing Controls

7.1 The premises has the benefit of a Premises Licence, which permitted the following licensable activities:

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

Daily between 09:00 - 23:00

- b) Regulated entertainment may be provided during the hours specified above

7.2 A copy of the previous 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 - Conditions drawn from the the operation schedule, together with an additional condition (following consultation with Essex Police during the consultation period).

9.3 Appendix 3 - Conditions carried forward from the existing licence which are not subject of the variation application.

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, TOGETHER WITH CONDITIONS (FOLLOWING CONSULTATION WITH ESSEX POLICE DURING THE CONSULTATION PERIOD

- 1) Sale or supply of alcohol shall not take place in the outside area between 21:00 and 12:00.
- 2) Patrons seated in the outside area shall be moved inside at 21:00 and the furniture shall be packed away immediately.
- 3) The sale and supply of alcohol in the outside area, as shown on the plan, shall be restricted to customers seated at a tables.
- 4) Only patrons that are being served by the premises shall be permitted to use the seating areas provided.
- 5) The Customers shall not be permitted to remove from the premises any drinks supplied by the premises in open containers.
- 6) Smoking shall not be allowed within the outside seating areas between 12:00 and 21:00.
- 7) There shall be no use of the external area between 21:00 and 09:00 the following day save as a smoking area. During those times the maximum capacity permitted within that area shall not exceed six persons.
- 8) Waste receptacles shall be made available for smokers to use, and the area swept of associated litter at the end of each trading session.
- 9) 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.
- 10) Outside areas shall be kept clear of empty glassware and any breakages shall be cleaned immediately.
- 11) Outside areas shall be swept and cleaned promptly at 21:00.
- 12) The CCTV shall cover all areas outside where alcohol is served.
- 13) There shall be no additional amplified music outside

**CONDITIONS CARRIED FORWARD FROM THE EXISTING LICENCE WHICH
ARE NOT SUBJECT OF THE VARIATION APPLICATION.**

- 01) An incident log shall be kept at the premises and made immediately available to the Police or Licensing Authority staff upon reasonable request. The log shall be completed as soon as is possible and in any case within 4 hours of the occurrence and 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. any faults in a CCTV system mandated as a condition of the licence

The incident log shall either be electronic or maintained in a bound document with individually numbered pages and be retained for at least 12 months from the date of the last entry.

- 02) 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 and the record shall be made immediately available to the 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.
- 03) No alcohol shall be supplied by an individual 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.
- 04) 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 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, Trading Standards or Licensing Authority staff upon reasonable request.

- 05) 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

The premises shall clearly display signs at the each point of sale and in areas where alcohol is displayed advising customers that a 'Challenge 25' policy is in force.

- 06) The premises shall have installed and maintained 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, recordings shall be kept in good working order and kept for a minimum period of 30 days;

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

- 07) **see 4.2 b & Appendix 2, 4 above.**
- 08) The emptying of bins or waste receptacles, refuse collections or deliveries shall not take place between 20:00 and 08:00.
- 09) No 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 may be provided.
- 10) All doors and windows to the premises shall remain closed, except for access and egress, between the hours of 21.00 and 09.00 the following day.
- 11) The emptying glass or other potentially noisy material into waste bins shall not take place between 21:00 and 09:00 the following day.

- 12) No deliveries or refuse collections shall take place between 21.00 and 08.00hrs Monday to Friday and 21.00 and 09.00 on Bank Holidays and weekends.
- 13) Smokers shall only be permitted to use the area at the front of the premises in Hamlet Court Road and shall be limited to a maximum of 8 persons at any one time. Waste receptacles shall be made available for smokers to use, and the area swept of associated litter at the end of each trading session.
- 14) There shall be no audio speaker in any external area.
- 15) **see 4.2 c above.**
- 16) Clearly visible signs shall be displayed at all times requesting customers to be quiet when leaving the premises and avoid disturbing local residents.