

**Meeting:** Licensing Sub-Committee  
**Date:** 1 August 2023  
**Classification:** Part 1  
**Key Decision:** No  
**Title of Report:** **Zinnia Restaurant, Clifftown Shore, Western Esplanade, SS1 1FU**

**Executive Director:** Environment & Place  
**Report Author:** Mark Newton

## **1. Executive Summary**

Members are invited to consider an application by Adams Leisure Ltd 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, together with additional conditions (following consultation with the Licencing Authority, Environmental Protection Team and Essex Police during the consultation period) for the Sub-Committee's consideration.**

## **3. Background.**

### **3.1 The application relates to a premises located on Western Esplanade, Southend-on-Sea with residential properties above the premises. The site previous held a Premises Licence when it was a public house known as the Esplanade which was surrendered on 3 January 2018.**

## **4. Proposals.**

### **4.1 The application was submitted to the Licensing Authority on the 1 June 2023, but the hearing was delayed following advertising irregularities.**

### **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 and off the premises:

Daily from 07:00 to 00:00 (midnight)

Sundays preceding Bank Holiday Mondays, Christmas Eve, New Years Eve, Good Friday: 07:00 to 02:00

b) The provision of late night refreshments:

Daily from 23:00 to 00:30

Sundays preceding Bank Holiday Mondays, Christmas Eve, New Years Eve, Good Friday: 23:00 to 02:00.

c) The provision of regulated entertainment comprising films, performance of dance, live and recorded music:

Daily from 07:00 to 00:00 (midnight)

Sundays preceding Bank Holiday Mondays, Christmas Eve, New Years Eve, Good Friday: 07:00 to 02:00

d) Hours of opening for the premises:

Daily from 07:00 to 00:30

Sundays preceding Bank Holiday Mondays, Christmas Eve, New Years Eve, Good Friday: 07:00 to 03:30

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 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 Eight (8) representations were received from local residents objecting to the application.

5.3 One (1) representation was received by a Responsible Authority, The Licensing Authority, which was later withdrawn. Conditions were agreed with the Licencing Authority, Environmental Protection Team and Essex Police during the consultation period which can be found at **Appendix 2**.

5.4 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. Legal Implications.

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. Background Papers.**

7.1 Council's Statement of Licensing Policy.

## **8. Appendices**

8.1 Appendix 1 - Mandatory conditions.

8.2 Appendix 2 - Conditions drawn from the the operation schedule, together with additional conditions (following consultation with the Licencing Authority, Environmental Protection Team 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.

- 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 ADDITIONAL CONDITIONS (FOLLOWING CONSULATION WITH LICENCING AUTHORITY AND ESSEX POLICE, DURING THE CONSULATION PERIOD).**

- 1) The premises shall operate as a restaurant and take-away / delivery service. This shall mean that at all times alcohol shall not be made available to customers for consumption on the premises unless they are engaged in, waiting to consume food, consuming food, or have consumed food at the premises.
- 2) 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 within 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 and be retained for at least 12 months from the date of the last entry.

- 3) 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

- 4) 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 must be made as soon as possible and in any event within 4 hours of the refusal and the record must 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.
- 5) 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.

- 6) The company shall operate the premises in line with a strict Standard Operating Procedure (SOP) to highlight and train all its staff and management in the importance and promotion of the four licensing objectives.
- 7) 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 the Police, Trading Standards or Licensing Authority staff upon reasonable request.
- 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 of a recordable system, capable of providing pictures of evidential quality in all lighting conditions particularly facial recognition;
  - II. CCTV cameras shall cover all public areas including all entrances and exits and all areas where the sale of alcohol takes place;
  - III. Equipment must 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;
  - IV. At all times, whilst the premises is open for licensable activities, there are members of staff able to immediately provide viewable copies of recordings to the Police or Licensing Authority staff upon reasonable request;
  - V. The recording equipment and data storage devices shall be kept in a secure environment and fitted with security functions (such as passwords) to prevent recordings being tampered with;
  - VI. An operational daily log report must be maintained endorsed by signature, indicating the system has been checked and is compliant: in the event of any failure, this shall be recorded immediately.

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.

- 9) The licensee shall risk assess the need for the use of door supervisors and take in to account any advice given by the Police.
- 10) Where SIA licensed door supervisors are used at the premises a record shall be maintained (on the premises) which is legible and details:
  - i. The day and date when door supervisors were deployed;

- ii. The name and SIA registration number of each door supervisor on duty at the premises;
- iii. The start and finish time of each door supervisor's worked duty period.

This record shall be retained on the premises for 3 months and be immediately provided to The Police or Licensing Authority staff upon reasonable request.

- 11) The premises shall have in place and operate a zero tolerance policy with regard to the use/possession of controlled drugs and psychoactive substances and advertise the same within the premises on posters and similar means. This policy shall specifically include but not be limited to:
  - i. Searching practices upon entry;
  - ii. Dealing with patrons suspected of using drugs on the premises;
  - iii. Scrutiny of spaces including toilets or outside areas;
  - iv. Clear expectations of staff roles (including the DPS, managers/supervisors and door supervisors);
  - v. Staff training regarding identification of suspicious activity and what action to take;
  - vi. The handling of items suspected to be illegal drugs or psychoactive substances
  - vii. Steps taken to discourage and disrupt drug use on the premises
  - viii. Steps to be taken to inform patrons of the premises drug policy/practices

A copy of this policy document shall be lodged with the Police and Licensing Authority.

- 12) There shall be no removal of alcoholic drinks from the premises unless in sealed containers.
- 13) Customers shall not be permitted to congregate and consume alcohol sold or supplied by the premises within the vicinity of the premises. The removal of alcohol shall be prevented if it is intended for such purpose.
- 14) A system of controls to limit and adjust the volume and octave band equalisation for all performances of prerecorded and live music, amplified speech, dance, films and wrestling/indoor recreation shall be installed, used and maintained and available for inspection on demand by the local authority and Essex Police officers.
- 15) A system of monitoring for noise shall be submitted and implemented that shall have a log of when it is undertaken and description of the outcomes and interventions. This shall be available on demand from local authority and Essex Police officers.
- 16) All doors and windows shall be closed during any performance of recorded, live, acoustic music, amplified speech, dance, films and wrestling/indoor recreation
- 17) Amplified sound shall not be clearly audible at the boundary of any noise sensitive premises.

- 18) No loudspeakers shall be operated, or acoustic instruments played in external areas
- 19) External areas for restaurant and licensed use shall not be used outside of the hours of 08:00 to 22:00 hours.
- 20) External smoking areas shall be limited to 10 customers
- 21) All external areas shall be monitored for compliance and prevention of public nuisance
- 22) Clearly visible signs shall be affixed at entry and exits reminding customers to leave and enter quietly
- 23) Staff shall be encouraged at the end of the evening to be quiet on leaving the premises and to respect the rights of people living nearby and on their route home.
- 24) All young children shall be accompanied by an adult at all times.