

Meeting: Licensing Sub-Committee
Date: 9th April 2024
Classification: Part 1
Key Decision: No
Title of Report: **Application for a grant of a premises licence
Broadway Fruits, 194 Thorpe Bay Broadway, SS1 3EU**

Executive Director: Alan Richards. Neighbourhoods & Environment
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1. Executive Summary

Members are invited to consider an application by Broadway Fruits 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 current Premises Licence for the Sub-Committee's consideration.

3. Background.

3.1 The application relates to a premises located on Thorpe Bay Broadway, which is made up of a mixture of commercial premises on either side with some residential properties located above and in the adjacent roads. Thorpe Bay Broadway is situated between Acadia Drive and Fermoy Road.

4. Proposals.

4.1 The application was submitted to the Licensing Authority on the 16 February 2024.

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

- a) The sale of alcohol off the premises daily between the hours of 06:00 – 23:00. (now amended to 07.00 – 23.00)
- b) The opening hours of the premises to be the same as the licensable hours.

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 Four (4) representations were received from local residents objecting to the application.
- 5.3 One (1) representation was received from a local Councillor. The representation was later withdrawn, with an agreement being reached with the applicant.

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- 6.1 Formal objections having been made and not withdrawn or resolved, the Licensing Authority is obliged to hold a hearing to consider them.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. Existing Licensing Controls

7.1 There is no licence at this premises currently.

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 current Premises Licence for the Sub-Committee's consideration.

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 CONSULTATION WITH THE LICENSING AUTHORITY AND A COUNCILLOR DURING THE CONSULTATION PERIOD).

- 1) A 'Challenge 25' scheme shall be implemented and maintained, whereby any person that appears under 25 years of age is required to prove they are over 18 by providing acceptable identification (as per the Home Office Guidance on acceptable ID – ID shall contain a photograph, date of birth, holographic mark or ultra violet feature). Clearly legible signs shall be prominently displayed stating that a challenge 25 policy is in operation at the premises.
- 2) A notice shall be displayed in a prominent position informing customers it is an offence to buy alcohol on behalf of persons under the age of 18 (proxy sales).
- 3) The Licensee shall maintain a refusals log, which shall record details of when a sale of alcohol is refused. The refusals log shall be produced for inspection on request of Police or Authorised Officers of the Council. An electronic point of sale (EPOS) system shall be installed at the tills at the premises and it shall be configured to prompt the operator to check proof of age when an 'age restricted' product is scanned. The prompt shall require the operator to confirm that the purchaser is over 18 (or any other age required by the relevant law for other products) before the next item can be scanned or the transaction completed.
- 4) 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 & Challenge 25), how to recognise drunkenness and the duty not to serve drunk persons. Refresher training shall be carried out at least every six months. Written 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.
- 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. Such consent shall contain the name and signature of both parties and the date of signing.
- 6) The premises shall install and maintain a comprehensive CCTV system. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. CCTV recordings shall be retained throughout the subsequent 31 day period and copies supplied as soon as practicable after the request of the Police or authorised officer. A staff

member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public. The staff member shall be able to show Police Officers recent data or footage with the absolute minimum of delay when requested.

- 7) Alcohol shall not be sold in an open container or be consumed in the licensed premises. Spirits shall be stored on shelves which are behind the sales counter.
- 8) No deliveries shall be made to the premises other than during the times the premises are open to the public - with the exception of newspapers, magazines, bread, milk or similar.
- 9) Customers shall actively be discouraged from congregating at the front of the premises by staff who will request them to move on.
- 10) The area in front of the premises shall be kept clean and tidy during opening hours.
- 11) The licensable hours shall be daily, between 07:00 – 23:00.

CONDITIONS IN RELATION TO DELIVERIES BY THE PREMISES

- 12) At the point of placing an order either by telephone or via a website for delivery, customers shall be informed that the premises operate a Challenge 25 policy and detail what forms of photographic identification may be required upon delivery. Also that the customer accepting the delivery may need to provide an acceptable form of photographic ID proving that they are 18 years of age or over in line with the Challenge 25 policy. Payment for age restricted products to be delivered shall be made at the time of ordering.
- 13) Prior to accepting an order for delivery, the customer shall be asked if they are over 18 years of age.
- 14) Deliveries shall not be made to public places such as parks, roadsides or landmarks. Delivery shall only be made to a bone-fide home or business address given at the time of the order.
- 15) Where delivery staff not directly employed by the licensee are engaged in the delivery of alcohol by a contracted third party supplier, The Licensee shall ensure that the contract complies with the below:
- 16) The person making the delivery shall make the appropriate identification checks at the door of the address under the Challenge 25 Scheme requirements
- 17) Any person responsible for delivering age restricted products shall be fully trained in all elements of Challenge 25, acceptable identification & identifying people who are drunk. They shall also be trained in the process for refusing a delivery in the event of a person who cannot prove their age or who appears intoxicated.