

Southend-on-Sea Borough Council

Agenda
Item No.

Report of Corporate Director for Place
To

Licensing Sub-Committee

On

14th October 2016

Report prepared by: Mark Newton

The Vine 149 Leigh Road, Leigh-on-Sea, SS9 1JF
Application for the Variation of Premises Licence

LICENSING ACT 2003

A Part I Public Agenda Item

1. Purpose of Report

- 1.1 This report considers an application by Mr Andreas Artemi for the grant of a 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 conditions must be applied. (These are set out in Appendix 1).
- 2.3 Appendix 2 sets out Proposed Revised Conditions - (following consultation with Essex Police and the Licensing Authority)

3. Background

- 3.1 The application relates to a premises located on the Leigh Road near the junction with Lord Roberts Avenue and Carlton Drive, Leigh-on-Sea, along a stretch of commercial units with some residential properties located above and in the adjacent roads. The application is to vary the existing premises licence.
- 3.2 The premises have operated for many years as a restaurant/bar and has held a Premises Licence with Southend Borough Council since the introduction of the Licensing Act in 2005.

4. Proposals

- 4.1 The application was given to the Licensing Authority on the 24th August 2016.
- 4.2 Details of the variation application which are to be determined by the Sub-Committee can be briefly summarised as follows:

To amend the approved plans to allow the restaurant area to move into a newly acquired space on the first floor. Thus the overall size of the licensed area will increase. The times and permissions on the existing licence are unchanged, save that 'Entertainment Facilities' are now deregulated.

- 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 Applicants for a variation of licence are required by law to send copies of their applications 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 Representations were received from nine local residents.
- 5.3 No Representations were made by any of the Responsible Authorities. The applicant originally offered that all conditions should carry forward onto the varied licence, however amended conditions were agreed with Essex Police and the Licensing Authority 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. 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 existing Premises Licence permits the following activities.

- a) The sale by retail of alcohol for consumption on and off the premises.
- b) The provision of late night refreshment.
- c) The provision of regulated entertainment comprising plays, films, indoor sporting events, live music, recorded music, performances of dance or any similar activity and the provision of entertainment facilities for dancing or similar activity (Entertainment facilities are now deregulated) .

7.2 A copy of the existing 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 - Proposed Revised Conditions - (following consultation with Essex Police and the Licensing Authority)

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.

10. For the purposes of the condition 10 above —
- 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)
11. Where the permitted price given by sub-section (b) of Condition 10 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

PROPOSED REVISED CONDITIONS - (FOLLOWING CONSULTATION WITH ESSEX POLICE AND THE LICENSING AUTHORITY)

- 1) The restaurant area shall be primarily used by those patrons consuming food.
- 2) The Licensees shall maintain an efficient closed circuit television surveillance system, positioned to provide a clear field of view of patrons as they enter and leave, with the object of achieving a full face and full height picture of patrons both as they enter and leave the premises. Recordings shall be retained for at least thirty days. A member of staff who is trained to view/download images from the CCTV shall be on call at all times when the premises are open.
- 3) The Licensees shall adopt the "Challenge 25" policy of requiring any patron who appears to be under the age of 25 years to prove that they are 18 or over. In this connection, proof of identity shall comprise a 10 year passport, a photo-driving licence, Portman card (or other document from time to time agreed with the Police Authority).
- 4) Only suitable toughened glass or non-glass drinking vessels shall be used on the ground floor of the premises.
- 5) All reasonable steps shall be taken to ensure that no bottles or drinking vessels are taken from the premises with the exception of bone-fide off-sales.
- 6) All reasonably practicable steps shall be taken to ensure that patrons departing from the premises do not cause nuisance or annoyance to adjoining residents or passers-by.
- 7) All reasonably practicable steps shall be taken to ensure that noise be limited to that of ambient noise levels at all neighbouring premises.
- 8) Persons under 16 years of age shall not be permitted to enter or remain in the premises after 6.00 p.m. unless accompanied by a responsible adult.
- 9) Any entertainment, services or activities of an adult nature provided by the applicant shall be restricted to times when persons under the age of 18 have no access to the premises.
- 10) Any advertising or promotion of any such events shall be appropriate for all ages to see when attending the premises at any other time.
- 11) The maximum number of patrons permitted in the premises at any one time shall not exceed 220.
- 12) The licensees shall co-operate with all reasonable projects of the Licensing and Police Authorities to achieve the licensing objectives.
- 13) The premises to be operated predominantly as a restaurant.
- 14) A minimum of 56 covers to remain laid out at all times with the exception of 12 days per calendar when they may be removed for pre-booked special events. (eg

Christenings, Wedding Receptions, etc.) there shall be no more than 2 'special event' days in any calendar month.

- 15) A notice shall be prominently displayed advising departing customers to leave the premises quietly.
- 16) A minimum of two "Door Staff shall be on the premises on Fridays and Saturdays and Sundays before Bank Holidays from 8pm to 30 minutes after closing.
- 17) All entrance and exit doors and the folding doors to the restaurant area shall be kept closed from 9pm to the closing time and when entertainment is provided except for access and egress when the premises is open to the public
- 18) A dedicated taxi telephone line shall be provided.
- 19) Only background music shall be provided in relation to regulated entertainment on Tuesdays and Thursdays between 7pm and 9pm.
- 20) A suitably designed acoustic lobby shall be provided to the front entrance.
- 21) The outside area, when in use, will be supervised between 21.00hrs and closing time.