

PREMISES/PERSONAL LICENCES SUB-COMMITTEE

30 MAY 2019

REPORT OF CORPORATE DIRECTOR [OPERATIONAL SERVICES]

LICENSING ACT 2003

Members are respectfully reminded that, in determining the matters listed under item A.1, they are exercising an administrative function but should determine each matter adopting the civil burden of proof, i.e. 'on the balance of probabilities'. The matters will be determined on the facts before the Sub-Committee and the rules of natural justice will apply. Each application must be considered in its own right and on its own merits.

Premises Licence Applications

The Licensing Act 2003 established a single integrated scheme for licensing premises that are used for the supply of alcohol, regulated entertainment or provision of late night refreshment. This system of licensing incorporates the sale of alcohol both on and off licensed premises; public entertainment such as music, dancing, indoor sporting events, boxing or wrestling, theatres, cinemas; and late night refreshment houses and take-aways.

The purpose of the licensing system is to positively promote the four 'licensing objectives'.

These are:

- The Prevention of Crime and Disorder
- The Prevention of Public Nuisance
- Public Safety
- The Protection of Children from Harm.

The options open to the Sub-Committee when considering this application are:

1. To grant the application for a premises licence subject to such conditions that are consistent with the operating schedule accompanying the application and any mandatory conditions applicable.
2. To grant the application for the premises licence subject to such conditions as are consistent with the operating schedule accompanying the application and which are modified to such an extent as the Sub Committee considers appropriate for the promotion of the licensing objectives, and any mandatory conditions applicable.
3. To grant the licence as above, but to exclude from the scope of the premises licence any of the licensable activities to which the application relates.
4. To reject the application.

When determining the application with a view to promoting the licensing objectives in the overall interests of the local community the Licensing Authority in the form of the Licensing Sub-Committee must have regard and give appropriate weight to the following:

- Full Hearing Procedure for Applications for Premises Licences/Club Premises Certificates where representations have been received.
- Tendring District Council's Statement of Licensing Policy.
- The Statutory Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003.
- The steps appropriate to positively promote the four 'Licensing Objectives'.
- Representations (including supporting information) presented by all the parties.

Human Rights Implications

A Licence is to be regarded as the property of the applicant; however their right to the use of the property must be balanced against all other public interests or representations in this matter that the Premises/Personal Licences Sub-Committee may wish to consider as appropriate, reasonable and proportionate in relation to the application that has been submitted and also the representation/s that has/have been received against it.

In making their decision as to whether to grant this application, Members of the Premises/Personal Licences Sub-Committee should also take into consideration Article 1 of the First Protocol of the Human Rights Act 1998, that individuals are entitled to the peaceful enjoyment of their property, and also Article 8 that everyone has the right to respect for his private and family life and his correspondence.

Crime and Disorder Implications

Section 17 of the Crime and Disorder Act 1998 imposes a duty on local authorities when exercising any of their functions to have due regard to the likely effect of the exercise of those functions on, and the need to do all it possibly can to prevent, crime and disorder in its area.

Members are requested to consider the information shown below where the Licensing Authority has received a representation about an application which is relevant to one or more of the four licensing objectives, and which suggests that the application may have a negative impact on one or more of the licensing objectives.

A.1 LICENSING ACT 2003 – APPLICATION NO: 19/00218/PREMA APPLICATION FOR THE VARIATION OF A PREMISES LICENCE: 5TH AVENUE, 2-4 ORWELL ROAD, CLACTON ON SEA, ESSEX CO15 1PR

1.0 APPLICATION DETAILS

1.1 Applicants

Ms Carol Pickett

1.2 Premises

5th Avenue, 2-4 Orwell Road, Clacton on Sea, Essex CO15 1PR

1.3 Agents

None

1.4 Ward

Pier

1.5 Reason for Application

To play music/karaoke on the outside seating area with speakers facing down not out to minimise disturbance to neighbouring properties.

2.0 GENERAL DESCRIPTION OF PREMISES

2.1 The original application stated the premises is an off licence/convenience store.

2.2 Proposed Opening Hours (Variation Application)

Monday to Wednesday	10:00 - 00:30
Thursday to Saturday	10:00 - 02:30
Sunday	10:00 - 00:30

3.0 CURRENT LICENSABLE ACTIVITIES

Sale of Alcohol on and off the premises

Monday to Wednesday	10:00 - 00:00
Thursday to Saturday	10:00 - 02:00
Sunday	10:00 - 00:00

Provision of facilities for dancing

Thursday to Saturday	18:00 - 02:00
Thursday to Saturday	18:00 - 00:00
Sunday	12:00 - 00:00

Performance of Recorded Music

Monday to Wednesday	10:00 - 00:00
Thursday to Saturday	10:00 - 02:00
Sunday	10:00 - 00:00

Late Night Refreshment

Monday to Sunday	23:00 - 02:00
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4.0 PROPOSED LICENSABLE ACTIVITIES (VARIATION APPLICATION)

4.1 Performance of Live Music [outside]

Saturday and Sunday	13:00 - 20:00
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4.2 Performance of Recorded Music [outside]

Saturday and Sunday	13:00 - 20:00
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5.0 STEPS THAT APPLICANTS PROPOSE TO TAKE TO PROMOTE THE LICENSING OBJECTIVES WITHIN THEIR OPERATING SCHEDULE

The applicant has stated the following steps in the application to promote the licensing objectives. These measures are reproduced as shown in the application form and are detailed below for ease of reference. These are:

5.1 Crime and Disorder

CCTV
Doorstaff
Fully licensed bar staff
TENBAC membership
Use of Plastic Glasses if requested or in company of children

5.2 Public Safety

As Above
Segregated area
First Aiders

5.3 Prevention of Public Nuisance

Speakers facing down and measures a per B

5.4 Protection of Children from Harm

No unaccompanied children inside or outside the premises

5.5 General Information in support of the application in relation to all of the licensing objectives.

All necessary steps taken as listed.
Not to exceed maximum occupancy.
All necessary safety signage; "Challenge 25" Scheme

5.6 Attached as background information under paragraph **12.0** of this report and for the information of the Members of the Licensing Sub Committee and all other relevant and interested parties to this hearing, is a copy of the current conditions of licence attached to the premises licence for 5th Avenue, 2-4 Orwell Road, Clacton on Sea, Essex.

6.0 RELEVANT REPRESENTATIONS

6.1 Interested Parties/Other Persons

6.2 The Police Reform and Social Responsibility Act 2011 (PRSR Act 2011) removed from the Licensing Act 2003 the specific reference for representations to be made by 'interested parties' and also removed the requirement that representations could only be accepted from persons living in the 'vicinity' of the premises concerned, or who had for example, a business in the 'vicinity' of the premises.

6.3 There was no guidance or definition of 'vicinity' within the Licensing Act 2003 which effectively had a limiting effect on those that could make relevant representations.

6.4 The PRSR Act 2011 replaced the references to 'interested parties' and 'vicinity' and substituted that representations can be made and accepted by the Licensing Authority from 'other persons' which means that those persons do not necessarily have to live or run a business for example in the proximity of the premises to be able to submit a valid and relevant representation.

6.5 The relevant extracts from the Section 182 Guidance that accompanies the Licensing Act 2003 advises the following in relation to 'other persons' in so far as they relate to this particular application and hearing. They are shown in italics for ease of reference.

8.12 As well as responsible authorities, any other person can play a role in a number of licensing processes under the 2003 Act. This includes any individual, body or business entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their geographic proximity to the premises. In addition, these persons may themselves seek a review of a premises licence. Any representations made by these persons must be 'relevant', in that the representation relates to one or more of the licensing objectives. It must also not be considered by the licensing authority to be frivolous or vexatious.

6.6 Representations can be made either against or in support of an application. The relevant extracts from the Section 182 Guidance that accompanies the Licensing Act 2003 advises the following in relation to this point.

9.3 Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.

6.7 1 letter of representation/objection has been received from a business/resident in relation to this application.

7.0 RESPONSIBLE AUTHORITIES

7.1 Essex Police has been consulted and submitted a representation on the grounds of noise disturbance. However, this has not been upheld by the Licensing Authority due to the noise management plan that was submitted to Environmental Control; with which they were satisfied.

7.2 The Council's Planning Authority has been consulted and no comments have been received.

7.3 The Councils Pollution and Environmental Control team has been consulted and have no objections since the submission of the noise management plan.

8.0 POLICY CONSIDERATIONS

The Licensing Authority's Statement of Licensing Policy expects applicants to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance relevant to the individual style and characteristics of their premises.

8.1 The relevant extract from the Council's Statement of Licensing Policy in respect of the 'Prevention of Public Nuisance' licensing objective is as follows:

5.0 PREVENTION OF PUBLIC NUISANCE

5.1 Licensed premises, if poorly or irresponsibly managed, can have a significant potential to impact adversely on communities through public nuisances that arise from their operation. The Licensing Authority wishes to maintain and protect the amenity of residents and other businesses from the consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

5.2 The Licensing Authority intends to interpret "public nuisance" in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.

5.3 Applicants need to be clear that the Licensing Authority may apply stricter conditions, including controls on licensing hours, where licensed premises are in residential areas and where relevant representations have been received. Any such measures should be appropriate and proportionate to the individual nature of the premises and how it intends to operate. E.g. its hours of opening, its alcohol sales and its licensable activities. It may also take into account the location of the premises. For instance, if a shop or supermarket wished to open in a location selling alcohol where there were existing known street drinking problems and alcohol related disorder and anti-social behaviour, the Licensing Authority will welcome the applicant individually and voluntarily working with the Licensing Authority and other Responsible Authorities in taking appropriate measures to reduce the existing problems, or at the very least not to contribute to them further. For example the individual off sale outlet in question may voluntarily offer not to sell very low cost, non-craft, super strength lagers, beers or ciders with an ABV of 6.5% or over, or not sell single cans of very low cost super strength lagers, beers or ciders. Any such partnership working must however fully comply with for example; the Local Government Association guidance to Local Authorities dated December 2014 on 'Reducing the Strength' schemes and the Competition and Market Authority guidance to retailers dated March 2015. Conversely, premises for which it can be demonstrated have effective controls and measures in place, or are proposed to prevent public nuisance, may be suitable for 24-hour opening for example.

5.4 In the case of shops, stores and supermarkets selling alcohol, the Licensing Authority will normally permit the hours during which alcohol is sold to match the normal trading hours during which other sales take place, unless there are exceptional reasons relating to disturbance or disorder. For instance, if a shop or supermarket wished to open for longer hours in a location selling alcohol where there were existing known street drinking problems and alcohol related disorder and anti-social behaviour, the Licensing Authority will welcome the applicant individually and voluntarily working with the Licensing Authority and other Responsible Authorities in taking appropriate measures to reduce the existing problems, or at the very least not to contribute to them further. For example the off sale outlet in question may voluntarily offer not to sell very low cost, non-craft, super strength lagers, beers or ciders with an ABV of 6.5% or over, or not sell single cans of low cost super strength lagers,

beers or ciders. Any such partnership working must however fully comply with for example; the Local Government Association guidance to Local Authorities dated December 2014 on 'Reducing the Strength' schemes and the Competition and Market Authority guidance to retailers dated March 2015.

- 5.5 Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and characteristics of their premises and events.
- 5.6 When addressing the issue of prevention of public nuisance, the applicant should demonstrate that those factors that impact on the likelihood of public nuisance have been considered. These may include:-
- (a) The location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship.
 - (b) The hours of operating, particularly between 23.00 and 07.00.
 - (c) The nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises.
 - (d) The design and layout of premises and in particular the presence of noise limiting features.
 - (e) The occupancy capacity of the premises.
 - (f) The availability of public transport.
 - (g) A 'wind down period' between the end of the licensable activities and closure of the premises.
 - (h) A last admission time.

Control Measures

- 5.7 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule, having regard to their particular type of premises and/or activities:-
- (a) Effective and responsible management of premises including for example, sufficient numbers of staff who hold a Personal Licence qualification.
 - (b) Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance, e.g. to ensure customers leave quietly.
 - (c) Control of operating hours for all or parts (e.g. garden areas) of premises, including such matters as deliveries, collections and clearing up of glasses or bottles.
 - (d) Adoption of best practice guidance (e.g. Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by the Institute of Acoustics, Licensed Property: Noise, published by BBPA).
 - (e) Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices.
 - (f) Management of people, including staff, and traffic (and resulting queues) arriving and leaving premises.
 - (g) Liaison with public transport providers.
 - (h) Sighting of external lighting, including security lighting.
 - (i) Management arrangements for collection and disposal of litter including the provision of appropriate receptacles.
 - (j) Clearly showing the name of the premises on all disposable packaging used for takeaway food and/or hot drinks.
 - (k) Effective ventilation systems to prevent nuisance from odour.

9.1 The following sections shown below in italics are taken from the Home Office Section 182 Guidance that accompanies the Licensing Act 2003 and are included for the assistance of the Licensing Sub Committee, the applicant, responsible authorities, residents and any other interested parties to this hearing. They do not however form the totality of the guidance in relation to this licensing objective which should also be considered in its entirety. These are:

2.14 *The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.*

2.15 *Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.*

10.0 RELEVANT SECTION 182 GUIDANCE- PREVENTION OF CRIME AND DISORDER

10.1 The following section shown below in italics is taken from the Home Office Section 182 Guidance that accompanies the Licensing Act 2003 and is included for the assistance of the Licensing Sub Committee, the applicant, responsible authorities, residents and any other interested parties to this hearing. They do not however form the totality of the guidance in relation to this licensing objective which should also be considered in its entirety. This is:

2.1 *Licensing Authorities should look to the police as the main source of advice on crime and disorder.*

11.0 RELEVANT SECTION 182 GUIDANCE- HOURS OF TRADING

11.1 The following sections shown below in italics are taken from the Home Office Section 182 Guidance that accompanies the Licensing Act 2003 and are included for the assistance of the Licensing Sub Committee, the applicant, responsible authorities, residents and any other interested parties to this hearing. This is:

Hours of trading

10.13 *The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.*

10.14 *Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would*

undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.

12.0 ASSOCIATED PAPERS

The following papers are attached as part of this agenda for Members of this Sub-Committee only:-

- (i) Application form and any supporting documentation.
- (ii) Location Plan.
- (iii) Copy of current licence conditions attached to premises licence
- (iv) Copy of representation [Edensor Care Centre - Letter dated 28/04/2019

Copies of all documentation concerning this application are also available from Public Experience upon request.

13.0 DECISION

- 13.1 The Licensing Sub Committee is asked to determine this application taking into consideration the application in its own right and on its own merits and also all of the relevant information that has been submitted as part of this report and at the hearing itself.

PAUL PRICE
CORPORATE DIRECTOR [OPERATIONAL SERVICES]