

## PREMISES/PERSONAL LICENCES SUB-COMMITTEE

13 AUGUST 2021

### REPORT OF CORPORATE DIRECTOR [OPERATIONS AND DELIVERY]

#### 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: 21/00326/PREMVA - APPLICATION FOR THE VARIATION OF A PREMISES LICENCE - BRITISH FLAG, 56 WEST STREET, HARWICH, ESSEX CO12 3DD**

#### **1.0 APPLICATION DETAILS**

##### **1.1 Applicants**

Admiral Taverns Limited

##### **1.2 Premises**

56 West Street, Harwich, Essex CO12 3DD

##### **1.3 Agents**

None

##### **1.4 Ward**

Harwich and Kingsway

##### **1.5 Reason for Application**

The application is made under the Licensing Act 2003 for the variation of a Premises Licence to request an increase of the opening hours and the sale of alcohol hours.

#### **2.0 GENERAL DESCRIPTION OF PREMISES**

2.1 No description supplied by the applicant.

#### **2.2 CURRENT OPENING HOURS**

Monday to Thursday	1000 – 0030
Fridays and Saturdays	1000 – 0130
Sunday	1000 – 0030

### **3.0 CURRENT LICENSABLE ACTIVITIES**

#### **Sale of Alcohol on and off the premises**

Monday to Thursday	10:00 - 00:00
Fridays and Saturdays	10:00 - 01:00
Sunday	12:00 - 23:30

#### **Performance of Live Music**

Monday to Thursday	10:00 - 00:00
Fridays and Saturdays	10:00 - 01:00
Sunday	12:00 - 23:30

#### **Performance of Recorded Music**

Monday to Thursday	10:00 - 00:00
Fridays and Saturdays	10:00 - 01:00
Sunday	12:00 - 23:30

#### **Other Entertainment falling within Act**

Monday to Thursday	10:00 - 00:00
Fridays and Saturdays	10:00 - 01:00
Sunday	12:00 - 23:30

#### **Non Standard Timings**

#### **Sale of Alcohol on and off the premises, Performance of Live Music, Performance of Recorded Music, Other Entertainment falling within Act**

A further additional hour into the morning following every Friday, Saturday, Sunday and Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday weekend.

A further additional hour into the morning following every Thursday, Friday, Saturday, Sunday and Monday for the Easter Bank Holiday weekend.

A further additional hour every Christmas Eve.

A further additional hour every Boxing Day.

On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, Midnight on 31 December).

### **3.1 PROPOSED LICENSABLE ACTIVITIES (VARIATION APPLICATION)**

#### **Opening Hours**

Monday to Thursday	1000 – 0030
Friday and Saturday	1000 – 0230
Sunday	1200 – 0000

#### **Sale of Alcohol on and off the premises**

Monday to Thursday	1000 – 0000
Friday and Saturday	1000 – 0200
Sunday	1200 – 2330

### **4.0 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:

#### **4.1 Crime and Disorder**

- The site currently operates an in-house no re-entry policy.
- The times this will be no re-entry after 10pm Monday – Thursday and 9pm Sunday.
- No re-entry for new customers past 11pm on a Friday and Saturday night.
- CCTV system in place.

#### **4.2 Public Safety**

- CCTV system in place.
- During these restrictions everyone must electronically sign in through NHS app (or proof of ID ie, driver's licence etc.)
- The site operates a firm and robust anti-drug and anti-social behaviour policy at all times.  
This includes monitoring the exterior of the Premises and will refuse entry/service when needed.

#### **4.3 Prevention of Public Nuisance**

- Customers asked to leave quietly, and respect neighbours signage placed around the premises
- The site only allows background music at a reduced level after 11pm during the week and 12 midnight Friday and Saturday.

#### **4.4 Protection of Children from Harm**

- The site operates a strict all under 18 policy (must be accompanied by a responsible adult) and the responsible adult must remain sober, also no under 18 after 8pm daily.

#### **4.5 General Information in support of the application in relation to all of the licensing objectives.**

- The application is to request an increase of licensing hours for sale of alcohol on a Friday and Saturday night.
- The tenant/DPS and staff members have worked hard through the pandemic problems and have put processes in place to make the British Flag a safe and exceptional place to meet and enjoy other people's company.
- The site has tapped into a source of revenue that is available via customers later in the evening. This extra revenue is from a group of engineers and maintenance crew that maintain the wind farms and light house boats. All stay locally so there will be no calling of taxis later into the night so not cause a nuisance with car doors closing and engines running. These customers usually over the age of 27 through to 50 and stay in local guest accommodation (guest house/short term lets). Their work and rest times vary but mainly arrive to relax with us about 10pm-11pm most weekends.
- The Premises feel the extra hour will not put any burden on emergency services or create any problems with local residents. The tenant (Peter Vaughan) can be contacted and is happy to discuss anything in respect to the application.

### **5.0 RELEVANT REPRESENTATIONS**

#### **5.1 Interested Parties/Other Persons**

**5.2** 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.

**5.3** 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.

**5.4** 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.

- 5.5 The relevant extracts from the Section 182 Guidance that accompanies the Licensing Act 2003 advises the following in relation to 'other persons'. 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.*

- 5.6 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.*

- 5.7 12 letters of representations/objections have been received from residents in relation to this application.

## 6.0 **RESPONSIBLE AUTHORITIES**

- 6.1 One representation has been received from Essex Police with the following comments:

*Essex Police decided that the application posed a risk to the residents of Harwich and formally objected to the variation on the 14th of July 2021. Essex Police made this objection under the Crime and Disorder and Public Nuisance licensing objectives.*

Full details of the objection are included in Essex Police's supplementary bundle attached to this report.

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

- 6.3 The Council's Pollution and Environmental Control team has been consulted and no comments have been received.

## 7.0 **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.

- 7.1 The relevant extracts from the Council's Statement of Licensing Policy in respect of Planning considerations (shown in italics) and also the 'Prevention of Public Nuisance' licensing objective are as follows:

- 1.20 *When the Licensing Authority is considering any application, it will avoid duplication with other regulatory regimes, so far as possible, and does not intend to use the licensing regime to achieve outcomes that can be achieved by other legislation. In particular, its licensing functions will be discharged separately from the Authority's functions as the local planning authority. **However, applications for premises licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned.** (Other permissions may be applicable to licensed premises and applicants are expected to ensure that such permissions are obtained where necessary.)*

## **5.0 PREVENTION OF PUBLIC NUISANCE**

- 5.1 Licensed premises 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 will normally apply stricter conditions, including controls on licensing hours, where licensed premises are in residential areas and where relevant representations have been received. Conversely, premises for which it can be demonstrated have effective measures planned to prevent public nuisance, may be suitable for 24-hour opening.
- 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.
- 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.

## **8.0 RELEVANT SECTION 182 GUIDANCE – PREVENTION OF PUBLIC NUISANCE**

- 8.1 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:
- 2.18 *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.*
- 2.19 *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 is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also 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.*

## **9.0 RELEVANT SECTION 182 GUIDANCE- PREVENTION OF CRIME AND DISORDER**

**9.1** 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.*

## **10.0 RELEVANT SECTION 182 GUIDANCE –PLANNING AND BUILDING CONTROL**

**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.

*13.56 The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa.*

*13.57 There are circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law.*

## **11.0 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) Essex Police Supplementary Bundle.
- (iv) Representation/objection letters .

Copies of all documentation concerning this application are also available from Licensing Section upon request.

## **12.0 DECISION**

**12.1** Each application must be considered in its own right and on its own merits only as to how it might impact on the four licensing objectives which are the Prevention of Crime and Disorder, the Prevention of Public Nuisance, Public Safety and the Protection of Children from Harm.

**12.2** The Licensing Sub Committee is therefore 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.

**DAMIAN WILLIAMS  
CORPORATE DIRECTOR [OPERATIONS AND DELIVERY]**