

PREMISES/PERSONAL LICENCES SUB-COMMITTEE

24 MAY 2018

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: 18/00213/PREMGR APPLICATION FOR THE GRANT OF A PREMISES LICENCE - HOLLAND FOOTBALL CLUB – THE CLUB HOUSE, DULWICH ROAD, HOLLAND ON SEA, ESSEX

1.0 APPLICATION DETAILS

1.1 Applicants

Holland Football Club, 10 Highview Avenue, Clacton on Sea, Essex, CO15 4DY

1.2 Premises

Holland Football Club – The Club House, Dulwich Road, Holland on Sea, Essex

1.3 Agents

None

1.4 Ward

St Pauls

1.5 Reason for Application

The application is made under the Licensing Act 2003 for a Premises Licence to include the performance of live music, recorded music, performance of dance as regulated entertainment, the provision of late night refreshments and the supply of alcohol both on and off the premises.

2.0 GENERAL DESCRIPTION OF PREMISES

2.1 The applicants have described the premises as the Club House which contains bar area and ancillary facilities, also includes toilets (disabled facility), changing rooms, showers and outside designated area.

2.2 Proposed Opening Hours

The applicants are proposing to open to the public Mondays to Thursday 1000 hours to 0030 hours. Fridays and Saturdays 1000 hours to 0230 hours and Sundays 1000 to 0130 hours

2.3 Revised Opening Hours

Environmental Services being a Responsible Authority confirmed that they would have no objections to the application if the regulated entertainment for the outside areas were amended to the following hours, to which Mr Sorrell the Chairman of the football club has agreed:-

Mondays to Thursdays	1100 – 2200
Fridays to Saturdays	1100 – 2300
Sundays	1100 – 2200

With the premises closing times amended to Mondays to Thursday 0030 hours, Fridays and Saturdays 0130 hours and Sunday 0030 hours.

Since the agreement with Environmental Services, Mr Sorrell has revised the opening times again after taking into consideration the objections submitted by residents and the amended opening hours are:-

Mondays to Thursdays	1100 – 2300
Fridays and Saturdays	1100 – 0000
Sunday	1100 – 2300

3.0 PROPOSED LICENSABLE ACTIVITIES

3.1 Performance of Live Music

Mondays to Thursdays	1100 – 2300	[indoors]
Mondays to Thursdays	1100 – 2200	[outdoors]
Fridays to Saturdays	1100 – 0000	[indoors]
Fridays to Saturdays	1100 – 2300	[outdoors]
Sundays	1100 – 2300	[indoors]
Sundays	1100 – 2200	[outdoors]

3.2 Performance of Recorded Music

Mondays to Thursdays	1100 – 2300	[indoors]
Mondays to Thursdays	1100 – 2200	[outdoors]
Fridays to Saturdays	1100 – 0000	[indoors]
Fridays to Saturdays	1100 – 2300	[outdoors]
Sundays	1100 – 2300	[indoors]
Sundays	1100 – 2200	[outdoors]

3.3 Anything of a Similar Description to Live or Recorded Music

Mondays to Thursdays	1100 – 2300	[indoors]
Mondays to Thursdays	1100 – 2200	[outdoors]
Fridays to Saturdays	1100 – 0000	[indoors]
Fridays to Saturdays	1100 – 2300	[outdoors]
Sundays	1100 – 2300	[indoors]
Sundays	1100 – 2200	[outdoors]

3.4 Supply of Alcohol [both on and off the premises]

Mondays to Thursday	1100 – 2300
Fridays to Saturdays	1100 – 0000
Sundays	1100 – 2300

3.5 Provision of Late Night Refreshment [both on and off the premises]

Fridays to Saturdays 2300 – 0000

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 in italics for ease of reference. These are:

4.1 Crime and Disorder

Customers that appear to be affected by alcohol or other substance will be asked to leave the premises. Regular comments will be made requiring customers to leave the premises in an orderly manner.

4.2 Public Safety

Fire exits will be clearly marked and unobstructed. Regular checks will be made to ensure fire doors are closed and exits unobstructed.

4.3 Prevention of Public Nuisance

The premises will always be conducted in an orderly fashion and disorderly customers will be asked to leave the premises and not re-admitted. Announcements will be made for customers to respect neighbours whilst on the premises and leaving the premises.

4.4 Protection of Children from Harm

Children will not be permitted into the premises unless accompanied by a responsible adult and they will not be permitted in the area for gaming machines. No alcohol will be served to under 18's and photo ID will be required.

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

Licensing objectives will be promoted by the actions taken above. Management of the club is operated in a manner consistent with the promotion of the four licensing objectives.

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** A petition submitted by Holland Football Club showing 320 residents in support of the application and 17 individual letters of support have been received from residents in relation to this application.

- 5.8** 147 letters of representations/objections have been received from residents in relation to this application.

6.0 **RESPONSIBLE AUTHORITIES**

No representations have been received from any other Responsible Authorities.

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) Petition supporting application
- (iv) Representations/objections 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.

PAUL PRICE
CORPORATE DIRECTOR [OPERATIONAL SERVICES]