

REPORT TO: LICENSING SUB-COMMITTEE 9th March 2016

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: MR DEREK STONE

**Licensing Act 2003 – Application for variation of a premises licence
at the Fat Fox and Atrium Bar, Victoria Road South, Southsea. PO5 2SP**

1. PURPOSE OF REPORT

The purpose of this report is for the Committee to consider an application for the variation of a premises licence under the Licensing Act 2003 (“the Act”). The matter has been referred to the Committee for determination following formal representations being made by "other persons" namely residents living nearby concerned over additional noise the extension to hours would create together with an increase in disorderly behaviour in the area in general.

2. THE APPLICATION

The variation application has been made by James Jarman the co-owner of Fat Fox and Atrium who is also the designated premises supervisor (DPS) for the premises situated in Victoria Road South.

The applicant has requested that the licence be varied in respect of the above premises so as to extend all current licensable activities by one hour on a Friday and Saturday night until 01:30. Full details below and on application at **appendix A**

- To vary the timings of Films Sunday to Thursday 12:00 to 23:59 as per existing Licence and from 12:00 until 01:30 Friday and Saturday.
- To vary live music from Sunday to Thursday 12:00 to 23:59 as per existing licence and from 12:00 to 01:30 Friday and Saturday.
- To vary the timings of performances of dance Sunday to Thursday 12:00 to 23:59 as per existing licence and from 12:00 until 01:30 Friday and Saturday.
- Recorded music as per existing licence.
- To vary performance of dance Sunday to Thursday 12:00 to 23:59 as per existing licence and from 12:00 until 01:30 Friday and Saturday.
- To vary the Late Night Refreshment provision Sunday to Thursday from 23:00 to 00:30 and on Friday and Saturday from 23:00 until 01:30
- To extend the supply of alcohol sales on Sunday 10:00 to 23:30 and Monday to Thursday 10:00 to 00:30 as per existing licence and on Friday and Saturday 10:00 until 01:30. New year and Bank Holiday times as per application Friday or Saturday 10:00 to 02:00 Sunday 10:00 until 00:30 Christmas Eve 10:00 until 01:00 and New Year's Eve 10:00 until 03:00
- To extend the hours the premises are open to the public Sunday 10:00 until 23:59 as per existing licence. Monday to Thursday 10:00 until 01:00 and on Friday and Saturday 10:00 until 02:00. On Bank Holidays Sunday 10:00 to 01:30. Friday and Saturday 10:00 to 02:30. Christmas Eve 10:00 to 02:00. New Year's eve 10:00 to 04:00

The current premises licence is attached at **appendix B**

Six local residents and a Ward Councillor have made representations which are attached at **appendix C**

3. BACKGROUND INFORMATION

This application has been submitted in accordance with the provisions of Part 3 of the Act and associated Regulations. I can confirm that public notice has been given by way of press notice, premises notice and local councillors have also been notified. There are no grounds therefore for the committee to reject the application for non-compliance with the advertising requirements prescribed by the act and regulations.

The premises are in two parts. The ground floor is the Fat Fox and this is in two halves with the main bar located on the south side of the building with limited seating in this area. The other half of the venue consists mainly of seating and tables and also a stage area. The Atrium is on the first floor with its own entrance door on the south side of the building. Access is via a winding staircase that leads into a small seating area plus a bar. The Atrium specialises in cocktails and caters for up to 70 people mainly 18 to 30 year olds. The ground floor area can hold over 200 patrons whose average ages are between 25 and 50. There have been 10 occasions since January 2015 where TENs have been granted extending hours on three days until 05:00 in the morning.

The immediate area is dominated by shops and other licensed venues / restaurants etc. To assist with this application attached at **appendix D** are the opening times of venues close to the Fat Fox.

4. OPERATING SCHEDULE – PROMOTION OF LICENSING OBJECTIVES

The applicant has detailed in the operating schedule the steps intended to be taken (and as appropriate to promote the licensing objectives) in support of this variation application. Currently the venue does not have a condition requiring SIA door supervisors to work at the venue but the management at the venue do secure door staff to work on Friday and Saturdays. Both owners are personal licence holders securing their licences in 2006 and 2007 respectively.

In consultation with the police, conditions have been agreed with the applicant and these will be added to the premises licence as part of this application process. Some old conditions will be removed and these are attached at **appendix E**

5. RELEVANT REPRESENTATIONS BY RESPONSIBLE AUTHORITIES

There are no representations submitted by any of the statutory responsible authorities. Environmental Health do have two current noise complaints open at this time from two separate complainants but have not visited these complainants to establish whether a statutory nuisance is occurring.

6. RELEVANT REPRESENTATIONS BY OTHER PERSONS

Relevant representations has been received from six local residents concerned with general issues in the area which can be summarised as follows:

- Increase in disorderly behaviour

- Increased noise over longer period of time
- Anti-social behaviour with footfall at the venue increasing over a longer period.
- Potential for other venues to increase their trading hours if this application is successful.

Ward Councillor for Saint Jude Hugh Mason has submitted a representation raising concerns regarding bars in Albert Road in general. He has indicated that an extension to Fat Fox's licensing hours should be no later than those of equivalent bars in that part of Albert Road with a closure time of no later than 01:00 on Fridays and Saturdays be approved by the Licensing Sub-Committee.

Officer note :

Please be advised that one of the representations reports police attending Fat Fox to deal with a large disturbance. This is not correct. Two customers were behaving inappropriately towards females in the venue, prior to being asked to leave. The management requested additional door support as a precautionary measure. This resulted in a number of SIA door stewards leaving venues in close proximity to support the door staff at Fat Fox. The individuals left the venue without incident.

7. POLICY AND STATUTORY CONSIDERATIONS

When determining the application to vary the premises licence the Committee must have regard to:

- Promotion of the licensing objectives which are;
 - prevention of crime and disorder
 - public safety
 - prevention of public nuisance
 - protection of children from harm
- The Licensing Act 2003;
- Judgements of the High Court, (your legal adviser will give you guidance should this become necessary).
- Its Statement of Licensing Policy;
- The statutory guidance issued by the Home Secretary in accordance with section 182 of the Act; and
- The representations, including supporting information, presented by all the parties.

Statement of Licensing Policy

The Statement of Licensing Policy lays down a general approach to the determination of licensing applications and any such application will be considered on its individual merits. Equally, any person permitted by the Act to make relevant representations to the Committee will have those representations considered on

their individual merit.

The committee should consider the fundamental principles set out in its policy, particularly paragraphs 4.6 and 4.7 which are reproduced below:

- 4.6 *Whether or not incidents can be regarded as being “in the vicinity” of licensed premises is a question of fact and will depend on the particular circumstances of the case. In cases of dispute, the question will ultimately be decided by the courts. In addressing this matter, the Licensing Authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.*
- 4.7 *Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Nonetheless, it is a key aspect of such control and licensing law will always be part of the overall approach to the management of the evening and night-time economy in town and city centres.*

The committee should also have regard to paragraphs 7.1 to 7.6 in relation to such circumstances where it may be appropriate to consider the imposition of conditions on a premises licence.

Statutory Guidance

The updated statutory guidance issued by the Home Secretary in accordance with section 182 of the Act, which came into force in March 2015, refers to the consideration of applications for the grant or variation of premises licences in Chapter 9.

Members may wish to consider the following extracts from the statutory guidance when determining this application:

Para 9.36

“... As a matter of practice, licensing authorities should seek to focus the hearing on the steps needed to promote the particular licensing objective which has given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other persons may choose to rely on their written representations. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation...”

Para 9.41

“Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representation made by the applicant or premises user as the case may be”.

Para 9.42

"The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve"

Para 9.43

"Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters.

As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business.

Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination."

Para 10.14 (Hours of Trading)

"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".

Members may also wish to consider Chapter 11 of the statutory guidance in respect of reviews of premises licences. Paragraphs 11.1 and 11.2 of the guidance states:

Para 11.1

"The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate".

Para 11.2

At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.

Appeal Provisions

Schedule 5, part 1, of the Act sets out the appeal provisions in relation to the determination of an application to vary a premises licence.

Where the Licensing Authority rejects (in whole or in part) an application, the applicant may appeal against the decision to the Magistrates' Court.

Should the committee grant (in whole or in part) an application, the applicant may appeal against any decision to modify the conditions of the licence.

Where a person who made relevant representations in relation to the application contends that:

- a) that any variation made ought not to have been made, or
- b) that, on varying the licence, the Licensing Authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way, under section 4(a) of that section,

He may appeal against the decision.

8. APPENDICES

- A.** Copy of application to vary premises licence
- B.** Copy of current premises licence
- C.** Copies of representations received
- D.** Trading hours of venues in close proximity
- E.** Agreed conditions for Premises Licence

THE COMMITTEE IS REQUESTED TO DETERMINE THE APPLICATION

For Licensing Manager
And on Behalf of Head of Service