

REPORT TO: LICENSING SUB-COMMITTEE 06 SEPTEMBER 2016

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: MR DEREK STONE

**Licensing Act 2003 – Application for variation of a premises licence
Astoria, 37-39 Guildhall Walk, Portsmouth PO1 2RY**

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 responsible authorities namely the Licensing Authority, Public Health and the Chief Officer of Police.

2. THE APPLICATION

The variation application has been made by the current licence holder Invincible Leisure Limited for the premises situated in Guildhall Walk, which is within the special policy area (See Paragraph 13.1 to 13.6 Statement of licensing policy together with supporting information at appendix B of this policy and updated supporting information attached as **appendix E**)

The applicant has requested that the licence be varied in respect of the above premises so as to permit the following:

- To extend the hours for the sale of alcohol, regulated entertainment and late night refreshment to 04:00 hours on Friday and Saturday and 02:00 hours on Sunday together with stated non-standard timings for bank holidays.
- To extend the hours of opening and closing for an additional 30 minutes beyond the terminal hour for licensable activities as set out above.
- Reduce the permitted hours for recorded music to coincide with timings for other licensable activities.
- Reduce the opening hours on a Sunday from 12:00 noon opening to 19:00 hours opening.
- Removal of identified conditions in Annex 2 (Conditions consistent with the operating schedule) of the licence.
- Imposition of additional conditions as set out in the operating schedule for the promotion of the licensing objectives.
- Approval of new drawings of the premises to reflect the current layout of the premises.

3. BACKGROUND INFORMATION

This application has been submitted in accordance with the provisions of Part 3 of the Act and associated Regulations.

A copy of the variation application is attached as **appendix A** together with a schedule of proposed changes to the licence conditions. A copy of the current premises licence is attached at **appendix B**. This includes the conditions previously imposed and a plan of the building.

I can confirm that public notice has been given by way of press notice, premises notice and local ward councillors have been informed. 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.

Astoria is located within Guildhall Walk with Hampshire Boulevard to the south, Lyberry, Brewhouse Kitchen, Rednex 44, Yates, Theatre Royal, Isambard Kingdom Brunel and Fleet Popworld to the North. There is also a Sainsbury store with off sales until 10pm.

Astoria and Lyberry have the ability to become interlinked via a rear courtyard and they are managed by Alistair Ritchie the applicant. There are 37 cctv cameras installed at this venue.

4. OPERATING SCHEDULE – PROMOTION OF LICENSING OBJECTIVES

The applicant has completed the operating schedule detailing the steps intended to be taken (and as appropriate to promote the licensing objectives) in support of this variation application. However the representations made by the three responsible authorities are on the grounds that the applicant has failed to adequately demonstrate that the proposed measures are sufficient to negate any cumulative impact and they are on the grounds of prevention of crime and disorder, prevention of public nuisance and public safety.

5. RELEVANT REPRESENTATIONS BY RESPONSIBLE AUTHORITIES

There are three representations submitted by three of the statutory responsible authorities, Licensing Authority, Public Health and the Chief Officer of Police. Attached to the police representation (police appendix A) is data showing recorded incidents within the SPA between 24/07/15 to 24/07/16

All representations are attached at **appendix C**.

Para 9:11

Responsible authorities under the 2003 act are automatically notified of all new applications. While all responsible authorities may make representations regarding applications for licences and full variation applications, it is the responsibility of each responsible authority to determine when they have appropriate grounds to do so.

Para 9:12

In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on crime and disorder objective. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regard to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However it remains incumbent on the police to ensure that their representation can withstand the scrutiny to which they would be subject at a hearing.

Para 9:20

Where a local authority's Director of Public Health in England exercises its functions as a responsible authority, it should have sufficient knowledge of the licensing policy and health issues to ensure it is able to fulfil those functions. If the authority wishes to make representations, the DPH will need to decide how best to gather and coordinate evidence from other bodies which exercise health functions in the area, such as emergency departments and ambulance services.

Para 9:21

Health bodies may hold information which other responsible authorities do not, but which would assist a licensing authority in exercising its functions. This information may be used by the health body to make representations in its own right or to support representations by other responsible authorities, such as the police. Such representations can potentially be made on the grounds of all four licensing objectives. Perhaps the most obvious example is where drunkenness leads to accidents and injuries from violence, resulting in attendances at emergency departments and the use of ambulance services. Some of these incidents will be reported to the police, but many will not. Such information will often be relevant to the public safety and crime and disorder objectives.

Para 9:22

Health bodies are encouraged to make representations in respect of any of the four licensing objectives without necessarily seeking views from other responsible authorities where they have appropriate evidence to do so.

As a consequence, both responsible authorities and the committee should consider what appropriate steps need to be taken in such cases to promote the licensing objectives. It may be that no extra steps are required.

6. RELEVANT REPRESENTATIONS BY OTHER PERSONS

There are no other representations.

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 considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person 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 10:13 (Hours of Trading)

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.

Para 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".

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.

Para 13.20 to 13.41

These paragraphs will assist members with regard to the cumulative impact of a concentration of licensed premises.

Para 13:30 in particular states

The effect of adopting a special policy of this kind is to create a rebuttable

presumption that applications for the grant or variation of premises licences which are likely to add to the existing cumulative impact will normally be refused or subject to certain limitations, following relevant representations, unless the applicant can demonstrate in the operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives. Applicants should give consideration to potential cumulative impact issues when setting out the steps they will take to promote the licensing objectives in their application.

A copy of the Statement of Licensing Policy, statutory guidance, the Act and the pool of model conditions has been supplied to each of the Members' Rooms and further copies will be available for reference at the hearing.

Determination of an application

Where an application to vary a premises licence has been made in accordance with section 34 of the Act and where relevant representations have been made, the licensing authority must hold a hearing to consider them, unless the applicant, each person who has made representations and the licensing authority agree that a hearing is unnecessary.

After having regard to the representations, the Committee may take such steps, if any, as it considers appropriate for the promotion of the licensing objectives which are:

- To modify the conditions of the licence
- To reject the whole or part of the application

And for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

In discharging its duty in accordance with the above, the Committee may vary a premises licence so that it has effect subject to different conditions in respect of:

- different parts of the premises concerned;
- different licensable activities.

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

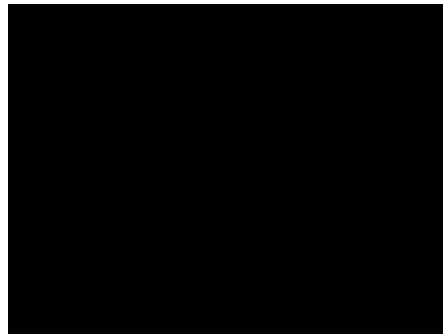
different way, under section 4(a) of that section,

He may appeal against the decision.

8. APPENDICES

- A.** Copy of the application form for the variation of a premises licence together with schedule of proposed changes to licence conditions
- B.** Copy of current premises licence to include plan
- C.** Copies of representations received
- D.** Licensed Venues in Guildhall Walk and hours of operation
- E.** Update to the supporting information for the Special Policy Area

THE COMMITTEE IS REQUESTED TO DETERMINE THE APPLICATION



For Licensing Manager
And on Behalf of Head of Service