

**REPORT TO: LICENSING SUB-COMMITTEE**

**21<sup>st</sup> June 2017**

**REPORT BY: LICENSING MANAGER**

**REPORT AUTHOR: MR DEREK STONE**

**Licensing Act 2003 – Application for grant of a premises licence. The Study and Nudles, Trafalgar House, 16 Edinburgh Road, Portsmouth. PO1 1RL.**

## **1. PURPOSE OF REPORT**

The purpose of this report is for the Committee to consider an application for the grant of a premises licence under the Licensing Act 2003 (“the Act”). The matter has been referred to the Committee for determination following the receipt of five representations from responsible authorities.

## **2. THE APPLICATION**

The application has been submitted by Mr Jon Wallsgrove, partner in Blake Morgan LLP on behalf of the applicant Nudles Portsmouth Limited. This application is attached at **appendix A**

Attached at **appendix B** is the plan

The applicant initially requested that a licence be granted so as to permit the following licensable activities:

- Provision films Monday to Sunday 09:00 until 03:00
- Provision of Live Music Monday to Sunday 09:00 until 03:00
- Provision of recorded music Monday to Sunday 09:00 until 03:00
- Provision of performances of dance Monday to Sunday 09:00 until 03:00
- Provision of anything of a similar description to live music, recorded music or performances of dance Monday to Sunday 09:00 until 03:00
- Provision of Late Night Refreshment Monday to Sunday from 23:00 until 03:00
- Supply of alcohol both on and off the premises Monday to Sunday 09:00 until 02:00
- Hours premises open to the public from Monday to Sunday from 07:00 until 03:00
- Seasonal variations and an additional hour on New Year's Eve is also requested

A revised submission has been received dated 31<sup>st</sup> May 2017 seeking the following

- Removal of "Off Sales"
- No alcohol sales or regulated entertainment within Nudles apart from Late Night Refreshment
- All licensable activities in both the Study and Nudles to cease at 02:00
- Premises close to the public at 02:30

### **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 proper public notice has been given by way of press notice and premises notice. 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 used to be occupied by JD Wetherspoon's who closed the venue on the 17<sup>th</sup> July 2016 after 13 years of trading along with 33 of its other pubs as part of a 'periodic review' of its stock. On the 29<sup>th</sup> September 2016 the premises licence was surrendered. The premises were sold to the owner of the upper floors of the building which have now been extensively converted, creating 94 student accommodation rooms to the upper floors. A bar area located on the ground floor (Access via Spring Street) will also accommodate a basement area. A restaurant/noodle bar will be located at the front of the building (Access via Edinburgh Road) and this will be separate from the main bar area with no public access between these two venues.

The proposed Designated Premises Supervisor is Mr Mark Way.

### **4. OPERATING SCHEDULE – PROMOTION OF LICENSING OBJECTIVES**

The applicant has detailed in the operating schedule the steps intended to be taken to promote the licensing objectives. These can be found in the application form at section 18.

### **5. RELEVANT REPRESENTATIONS BY RESPONSIBLE AUTHORITIES**

There are five representations from responsible authorities, these are from the Chief Officer of Police Hampshire Constabulary, and from Portsmouth City Council's Director for Public Health, Licensing Authority, Environmental Health and Planning. These representations are attached at **appendix C**

### **6. RELEVANT REPRESENTATIONS BY OTHER PERSONS**

There are no other representations.

### **7. POLICY AND STATUTORY CONSIDERATIONS**

When determining the application to grant 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 April 2017, 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 9.12**

*"...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 the 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 9.37**

*"... 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 9.38**

*"... In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:*

- *The steps that are appropriate to promote the licensing objectives*
- *The representations (including supporting information) presented by all the parties*
- *This Guidance*
- *Its own statement of licensing policy "*

**Para 9.42**

*"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 9.43**

*"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 9.44**

*"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. Whilst 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 10.8**

*The licensing authority may not impose any conditions unless it's discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing that it is appropriate to impose conditions to promote one or more of the four licensing objectives.*

**Para 10.9**

*It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.*

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 14.20 to 14.41**

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

### **Para 14:30 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 grant a premises licence has been made in accordance with section 17 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:

- grant the licence subject to such conditions as are consistent with the operating schedule modified to such extent as the authority considers appropriate for the promotion of the licensing objectives and any mandatory conditions.

- exclude from the licence any of the licensable activities applied for.
- refuse to specify a person in the licence as the premises supervisor (if the application relates to the sale of alcohol).
- reject the application.

In discharging its duty in accordance with the above, the Committee may grant 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 grant 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. Equally appeal provisions apply against the exclusion of licensable activities and/or refusal to specify a person as a premises supervisor.

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

- a) that the licence ought not to have been granted, or
- b) that, on granting the licence, the Licensing Authority ought to have imposed different or additional conditions or excluded activities and/or the premises supervisor,

He may appeal against the decision.

## **8. APPENDICES**

- A. Copy of the application form
- B. Copy of plan
- C. Copy of representations
- D. E mail from applicant's agent amending the original application.

**THE COMMITTEE IS REQUESTED TO DETERMINE THE APPLICATION**



For Licensing Manager  
And on Behalf of Head of Service