

REPORT TO: LICENSING SUB-COMMITTEE

20th June 2017

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: MR DEREK STONE

**Licensing Act 2003 – Application for grant of a premises licence
South Parade Pier, South Parade, Southsea. PO4 0SW.**

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 a representation from a responsible authority and also several representations from local residents.

2. THE APPLICATION

The application to grant the premises licence has been submitted by Mr Jon Wallsgrove solicitor on behalf of the applicant South Parade Pier Limited.

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

- Provision of plays Monday to Thursday 11:00 to 02:00 Friday and Saturday 11:00 to 03:00 and Sunday 12:00 to 00:30
- Provision of films Monday to Thursday 11:00 to 02:00 Friday and Saturday 11:00 to 03:00 and Sunday 12:00 to 00:30
- Provision of indoor sporting events Monday to Thursday 11:00 to 02:00 Friday and Saturday 11:00 to 03:00 and Sunday 12:00 to 00:30
- Provision of boxing or wrestling entertainments Monday to Thursday 11:00 to 02:00 Friday and Saturday 11:00 to 03:00 and Sunday 12:00 to 00:30
- Provision of live music Monday to Thursday 11:00 to 02:00 Friday and Saturday 11:00 to 03:00 and Sunday 12:00 to 00:30
- Provision of recorded music Monday to Thursday 11:00 to 02:00 Friday and Saturday 11:00 to 03:00 and Sunday 12:00 to 00:30
- Provision of performances of dance Monday to Thursday 11:00 to 02:00 Friday and Saturday 11:00 to 03:00 and Sunday 12:00 to 00:30
- Provision of anything of a similar description to live or recorded music or performances of dance Monday to Thursday 11:00 to 02:00 Friday and Saturday 11:00 to 03:00 and Sunday 12:00 to 00:30
- Provision of Late Night Refreshment from 23:00 to 02:00 Monday to Thursday Friday and Saturday 23:00 to 03:00 and Sunday 23:00 to 00:30
- Provision of alcohol retail sales for consumption both on and off the premises Monday to Saturday 11:00 to 02:00 and on Sunday 12:00 to 00:30
- Premises open to the public Monday to Sunday 06:00 to 04:00

An amendment to the above times has since been received changing the application as follows:

Live Music until 23:00 each day
All other regulated entertainment until 02:00 each day
Opening hours until 02:30 each day

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.

South Parade Pier was first opened to the public in 1879 initially as a steamer jetty for Isle of Wight passengers. The pier has suffered three serious fires in 1904, 1966 and lastly in 1974 during the filming of 'Tommy'. In November 2013 the pier was closed after Portsmouth City Council served a formal closure notice on the pier to protect the public from immediate danger. In December 2013 the premises licence for the Pier was surrendered. This licence permitted the sale of alcohol from 11:00 until 02:00 Monday to Saturday and from 12:00 until 00:30 on Sunday. The licence included other licensable activities for example live music, playing of recorded music, performance of dance etc up until 03:00 on Friday and Saturdays. In July 2014 a consortium of local business men, brought the pier, and have since that time set about refurbishing the pier to a position where it can now reopen to the public.

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 which is attached at **appendix A** together with supporting documents.

Attached at **appendix B** is the plan

5. RELEVANT REPRESENTATIONS BY RESPONSIBLE AUTHORITIES

Richard Lee the Regulatory Service Manager for Environmental Health has made a formal representation regarding noise concerns that this venue would generate and can provide the committee with relevant information concerning previous issues at this location which is attached at **appendix C**

6. RELEVANT REPRESENTATIONS BY OTHER PERSONS

There are a number of representations from local residents. These representations are attached at **appendix D**

Officer note: There are a few representations where addresses have not been disclosed despite requests to these people to supply their address details.

The main objection from the vast majority of persons making representations is the

potential for noise that this application may generate together with anti-social behaviour and the potential for public nuisance caused by people attending the venue making their way home at the end of licensing hours impacting on the lives of residents in this locality.

Attached at **appendix E** are the agreed conditions between the applicant and the police

Attached at **appendix F** is a noise breakout report in relation to this venue commissioned by the applicant

Attached at **appendix G** is the response from Environmental Health in relation to the noise break out report (appendix F)

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; (revised April 2017) 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.

7.3 The Licensing Authority will not impose any conditions unless its discretion has been engaged following the receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It will then only impose conditions that are necessary to promote one or more of the four licensing objectives. Such conditions will need to be expressed in unequivocal and unambiguous terms to avoid legal dispute.

7.4 It is possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

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 9.15

"...It is also reasonable for licensing authorities to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority. For example, the police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each responsible authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other responsible authority."

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. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises. This provision also applies to minor variations"

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."

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.

At **appendix E** are the agreed conditions between the applicant and the police.

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:

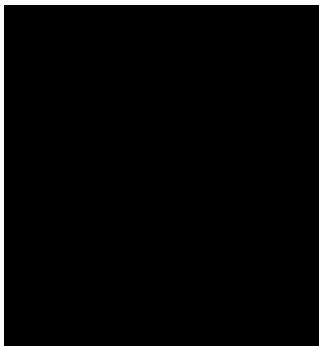
- a) that the licence ought not to have been granted, or
- b) that, on granting the licence, the Licensing Authority ought to have imposed different or additional conditions or excluded activities and/or the premises supervisor,

He may appeal against the decision.

8. APPENDICES

- A.** Copy of the application form
- B.** Copy of plan
- C.** Copy of the representations received (Responsible authorities)
- D.** Copy of representations received (Other)
- E.** Agreed conditions between applicant and police
- F.** Noise breakout acoustic testing report for venue
- G.** Response from Environmental health to report at appendix F

THE COMMITTEE IS REQUESTED TO DETERMINE THE APPLICATION



For Licensing Manager
And on Behalf of Head of Service