

REPORT TO: LICENSING SUB-COMMITTEE

27th June 2017

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: MR ROSS LEE

**Licensing Act 2003 – Application for variation of a premises licence
Pryzm, Former Connaught Drill Hall, Stanhope Road, Portsmouth.
PO1 1DE.**

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 the receipt of two representations from responsible authorities.

2. THE APPLICATION

The variation application has been submitted by Poppleston Allen Solicitors on behalf of the applicant the Deltic Group Limited for this venue which is within the special policy area.

This application is attached at **appendix A** and it seeks to extend the sale of alcohol until 03:00 daily (currently 02:00 Sunday to Thursday 03:00 Friday and Saturday) and increasing the time that the premises can stay open Sunday to Thursday until 03:30 (currently 03:00 Sunday to Thursday and 04:00 Friday and Saturday)

Attached at **appendix B** is the current premises licence.

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.

4. OPERATING SCHEDULE – PROMOTION OF LICENSING OBJECTIVES

The applicant has engaged with Hampshire Constabulary regarding this application and the premises already have a number of conditions on the premises licence to assist with promoting the licensing objectives.

5. RELEVANT REPRESENTATIONS BY RESPONSIBLE AUTHORITIES

There are two representations from responsible authorities, these are from the Chief Officer of Police Hampshire Constabulary, and from Portsmouth City Council's, Licensing Authority.

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 its 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 current premises licence
- C.** Copy of representations

THE COMMITTEE IS REQUESTED TO DETERMINE THE APPLICATION



For Licensing Manager
And on Behalf of Head of Service

In the matter of the Licensing Act 2003.

**In the matter of an application for a grant of a variation of a premises licence
"Pryzm", Former Connaught Drill Hall, Stanhope Road, Portsmouth, PO1 1DE**

The Committee has heard the representations of the applicant, the relevant Responsible Authorities and the advocate acting on behalf of the applicant in addition the Committee has considered all the papers put before them along with the annexes attached to each document.

The Committee is aware that the premises is located within an area of special policy. This committee is engaged by reason of referral to the committee by the relevant Responsible Authorities - Police and Licensing, all of whom make objection to the grant of a variation to the existing licence.

The licensing objectives that are not promoted within the area of special policy are: prevention of crime and disorder, public safety and the prevention of public nuisance along with the protection of children from harm. The Responsible Authorities all indicate that the applicant has failed to sufficiently engage in negating any increase to the cumulative impact by reason of having appropriate conditions or measures in place to overcome the legal burden placed upon by the applicant. Both the police and the licensing department ask that the application for variation be refused.

The Committee look to all the Responsible Authorities but mainly the Police for guidance and assistance in determining the effect of a licensing activity in terms of all the licensing objectives, but principally in terms of the Police, prevention of crime and disorder - the Committee should, but are not obliged to accept all reasonable and proportionate representations made by the Police. If the Committee depart from the advices as given they should set out their reasoning.

The Committee take a similar view with respect to the representations made by the Licensing Department of Portsmouth City Council.

The above stated the Committee have balanced within their consideration all representations made by the applicant through their advocate and by way of comments made by the applicant themselves. The Committee undertook a site visit and looked at the premise in detail.

In considering the application for a grant of variation, the Committee is mindful of the following facts as having been established upon a balance of probability and further that they have been specifically taken to the relevant parts of the Statutory Guidance under Section 182 of the Licensing Act 2003.

1. It is very clear that there has been a high level of engagement between all responsible authorities and the applicants. The committee has visited the premises and note the measures put in place to satisfy the primary obligation

8

with respect to the relevant licensing objectives being promoted.

2. The Committee is further satisfied that whilst the premises is within a CIZ zone, they could not find upon the basis of the evidence that the variation would add to the cumulative impact. The statistics show that whilst crime and disorder exist within the night time economy, what cannot be established beyond a balance of probabilities is an addition to the cumulative impact by reason of the variation as sought.
3. Whilst not obliged to do so, the efforts of the applicants could be potentially assisting of diminishing the level of the current cumulative impact, as such given the high level of conditions that exist and are offered cannot be said to do anything other than mitigate against any additional impact into the cumulative impact zone.
4. The Committee have paid due regard to the current policy and it has been given high consideration. This said and given the very professional basis of the application and having looked at the statutory guidance it would be appropriate in this case to consider this application upon its own specific facts.

On balance having heard the representations from the applicants and their advocate the committee is satisfied that the burden that rests with the applicant to shift in showing that the new proposed operating schedule in the current application will not have a negative cumulative impact has been shifted. In coming to this conclusion the Committee was of the view that the applicant had sufficiently assuaged the cumulative impact by reason of the full range of conditions as offered by the applicant in the current licence and also by reason of the highly competent fashion the premise is run and organised. The committee refer to its earlier reasoning.

The Licensing Committee is further aware that any Responsible Authority, indeed anyone can ask that the Committee review the licence currently held which would of course engage the Committee in being able to consider the full range of evidence including matters that are currently being considered. Subject to the conditions as offered, accepted and amended as attached the application is granted.

Conditions:

On any evening when the premises trade for the sale of alcohol after 02:00 then:

- 1) All members of the door team who are registered with the Security Industry Authority will wear a body camera, and will use it to record any incidents at the premises in which they are involved (every day);
- 2) A Personal Licence Holder will be on duty at all times that alcohol is being sold (every day);
- 3) A member of the door team will be positioned at the taxi rank on Station Road from 03:00 until 04:00 to assist in monitoring the taxi queue, to ensure that the queue is dispersed as quickly and as safely as possible, such member of door staff being in radio contact with the premises (Sunday to Thursday);
- 4) Two members of the door team will be positioned outside Catherine House from 03:00 until 04:00 to monitor the dispersal of customers, and to assist with any students who may be going into the flats and who may need any care and attention, such members of door staff being in radio contact with the premises (Sunday to Thursday);
- 5) Between 01:00 and 04:00 provide a SIA trained surveillance officer monitoring CCTV cameras and in radio contact with other camera operatives. No body cameras to be worn by the monitoring officer (every day).

Appendix C



HAMPSHIRE
CONSTABULARY

Licensing and Alcohol Harm Reduction
Core 5, Lower Ground Floor
Civic Offices
Portsmouth
Hampshire
PO1 2AL

Portsmouth City Council Licensing Service
Core 5, Lower Ground Floor
Civic Offices
Portsmouth
Hampshire
PO1 2AL

Telephone
101

Direct Dial

Fax

Text Relay

18001 101

Email Address

Our ref:
Your ref:

26th May 2017

Dear Sir/Madam

Re: Application for the Variation of a Premises Licence, Pryzm, Stanhope Road, Portsmouth

On Behalf of the Chief Officer of Police, I make representations in relation to the application for a variation of premises licence at Pryzm, Stanhope Road, Portsmouth

I make these representations under the grounds of:

- 1) The prevention of crime and disorder
- 2) Prevention of Public Nuisance
- 3) Public Safety
- 4) Protection of Children from Harm

Pryzm

Pryzm is a nightclub with a capacity of around 1900 persons in the Cumulative Impact Zone in Portsmouth. It has been operated under the banner of Liquid/Envy until very recently.

The premises currently has a premises licence which allows the sale of alcohol until 02:00 hours in the morning Sunday through till Thursday with opening until 03:00 hours. Friday and Saturday the licence allows the sale of alcohol until 03:00 hours.

The premises was previously in 2015 taken to Review following a large increase in disorder. The committee heard the evidence presented to it and imposed a large number of conditions onto the licence. No change was made to the hours or the management.

Following the review the incidents attributed to the premises reduced. A new Designated Premises Supervisor was installed and since his inception the current DPS has worked very hard with the Police in order to ensure that the premises is operated in a way which supports the licensing objectives. As a result the Police Licensing Team have a good, strong, positive working relationship with the premises at this moment in time.



www.hampshire.police.uk

Deaf? Non-emergency text: 07781 480999

For crime and community information www.hampshirealert.co.uk

**HAMPSHIRE
ALERT**



Pre meeting prior to submission of the application.

In late March/early April 2017 the applicant met with officers Hampshire Constabularies Police Licensing Team. In order to discuss the potential for an extension of the premises licence Monday through to Thursday.

During this meeting the Police raised the following concerns:

- Concerns around the CIZ and how the CIZ information shows that during all days of the week there is a higher portion of violent crime during the hours they would wish to open, compared with the rest of the week.
- Concerns that the premises opening later would contribute to further crime and disorder at the premises.

Following this meeting the Police received contact from the applicants solicitor regarding any potential application. A reply was provided detailing the concerns of the Police and is produced as Annex A in the Police bundle.

Again the Police raised the same concerns.

The Chief Officer of Police is satisfied that the applicant has engaged with the Police prior to submitting the application as per the Home Office guidance.

Application

Following the engagement the applicant has submitted an application for the variation of the Premises Licence.

The application wishes to keep the hours the same for Friday and Saturday night. However the applicant wishes to be able to sell alcohol for an extra hour until 03:00 hours Sunday through to Thursday.

The Chief Officer of Police has noted that the application makes no mention of the Cumulative Impact Zone.

The Chief Officer of Police has also noted that the applicant does not submit any new conditions to support the licensing objectives. The Chief Officer of Police agrees that this is because the premises licence is already heavily conditioned. This is as a direct result of the review in 2015 following an unacceptable number of violent incidents which seriously undermined the licensing objectives at the premises.

Cumulative Impact Zone

Set up in 2010 to combat the increase in violence in the NTE in the Guildhall Walk area which culminated in two tragic deaths as a direct result of violent incidents within licensed premises.

The Cumulative Impact Zone restricts the application for new licensed premises within the area and also restricts the application for an extension of hours for existing premises. It does this by putting the onus on the applicant to show that any application will not impact negatively on the



www.hampshire.police.uk

Deaf? Non-emergency text: 07781 480999

For crime and community information www.hampshirealert.co.uk



12

licensing objectives rather than the usual process of the onus being on the person who makes the representation.

Following a successful application by another premises in the immediate area to extend their opening hours, a decision was made to revisit the figures and continue with the CIZ. This was performed in 2014 and again more recently this year, 2017.

It is also important to note that over the next two years a number of student living accommodations are to be opened within walking distance of the premises. This will undoubtedly increase the foot fall to the CIZ and potentially as a result increase the likelihood of crime and disorder.

Violence Report Portsmouth NTE areas and CIZ

This details the violent crime statistics within the CIZ and within Portsmouth and can be found attached as **Annex B** of the Police bundle.

CIZ Figures

The main points for the most recent CIZ figures found in the report in **Annex B** are as follows:

- Distinct increase in violent crimes between the day time and night time economies within the CIZ, with the NTE showing higher levels of violence. Currently the NTE contributes a figure of 471 violence incidents over a recent 10 month period. This represents 71.36% of all violence in the CIZ. This indicates that there is very real issue with violence in the NTE within the CIZ which is completely disproportionate compared to that of the day time. It must also be noted that this trend appears to be on the rise a small amount for the second time in as many years.
- The amount of violence within the CIZ is disproportionate to the rest of similar NTE areas within Portsmouth. Violence incidents over a recent 10 month period within the CIZ represent 6.56% of all violence incidents within the Portsmouth district. Other NTE areas with a much larger area, a higher proportion and density of licensed premises, do not go above contributing 2.39% of violence incidents.
- Between 19:00 – 07:00 hours, the CIZ, on a Thursday, Friday and Saturday, accounts for 67-70% of all NTE area violence within Portsmouth.
- 55.69% of the NTE violence relates to Friday and Saturdays.
- 45% of the NTE violence relates to Sunday - Thursday.
- It has been identified that the peak times for violence incidents are between 20:00 – 05:00 hours.

It is the belief of the Chief Officer of Police that these facts show that there is a very real and prevalent issue with violence in the CIZ, particularly during the times the applicant wishes to operate and would strongly urge the committee to be minded of this information when forming their decision.



www.hampshire.police.uk

Deal? Non-emergency text: 07781 480999

For crime and community information www.hampshirealert.co.uk

**HAMPSHIRE
ALERT**



13

Summary

This application is one which the Chief Officer of Police has concerns with. These concerns are around the ability of the applicant to show that they will fully uphold the licensing objectives and not cause incidents of crime and disorder. They also refer to the Cumulative Impact of the granting of this licence. They are as follows:

Premises has been closed Sunday – Thursday majority of the time

It is the understanding of the Chief Officer of Police that the premises has been closed Sunday to Thursday for the majority of the last 18 months. This is with a few exceptions where special events have been held.

This has meant that there is not a clear picture around how the premises operates during these days which the applicant wishes to extend their hours. In fact when the premises have been open mid week for special events we have seen concerning incidents of crime and disorder where Police have been required to disperse large crowds of aggressive persons.

As such the Chief Officer of Police does not believe that the applicant can demonstrate that by granting an extra hour the premises will not undermine the licensing objectives and more importantly will not cause a negative cumulative impact on the area.

The CIZ

I have evidenced in **Annex A** evidence which shows that despite a long term reduction in violent crime in the CIZ there is still a higher, disproportionate to the day time, level of violent crime at night, in the area the applicant wishes to operate.

The current Portsmouth City Council, statement of licensing policy, relating to applications within a CIZ states:

"The Licensing Authority, therefore, will normally refuse the grant of new premises licences or club premises certificates or variations whenever it receives relevant representations about the cumulative impact on the licensing objectives which it concludes after hearing those representations should lead to refusal"

The Chief Officer of Police believes that the applicant has not demonstrated enough to show that they would not have a negative cumulative impact for the grant of the premises licence as it stands.

The granting of this application as it stands will lead to a negative cumulative impact and further crime and disorder at the premises and in the area.

Police Request to Refuse the Licence as it stands

Due to the above it is the belief of the Chief Officer of Police that the granting of the application as it stands will not only lead to a negative cumulative effect on the area but will also lead to incidents of crime and disorder at the premises itself.

As such the Chief Officer of Police requests that the **licence be refused and not be granted**.



www.hampshire.police.uk

Deaf? Non-emergency text: **07781 480999**

For crime and community information www.hampshirealert.co.uk

**HAMPSHIRE
ALERT**



14

Yours Sincerely

PC 21945 Rackham
Licensing and Alcohol Harm Reduction Team
Hampshire Constabulary



www.hampshire.police.uk

Deaf? Non-emergency text **07781 480999**

For crime and community information www.hampshirealert.co.uk

**HAMPSHIRE
ALERT**



15

Please identify those conditions currently imposed on the licence which you believe could be removed as a consequence of the proposed variation you are seeking
NONE

Please tick yes

- I have enclosed the premises licence ☒
- I have enclosed the relevant part of the premises licence ☐

If you have not ticked one of these boxes please fill in reasons for not including the licence, or part of it, below

Reasons why I have failed to enclose the premises licence or relevant part of premises licence

M Describe any additional steps you intend to take to promote the four licensing objectives as a result of the proposed variation:

a) General – all four licensing objectives (b,c,d,e) (please read guidance note 11)

The Premise Licence Holder has been in liaison with Hampshire Police over the variation and has discussed any conditions that may be appropriate. The Premise Licence Holder is already heavily conditionalised although there will be further discussions with Hampshire Police over what additional conditions would be appropriate should the variation be approved. The application is to extend the hours for the sale of alcohol during the week until the same time as the Premises can currently open and provide Regulated Entertainment.

b) The prevention of crime and disorder

See box a) above.

c) Public safety

See box a) above.

d) The prevention of public nuisance

See box a) above.

e) The protection of children from harm

See box a) above.

Please tick yes

- I have made or enclosed payment of the fee or ☒
- I have not made or enclosed payment of the fee because this application has been made in relation to the introduction of the late night levy ☐
- I have sent copies of this application and the plan to responsible authorities and others where applicable ☒
- I understand that I must now advertise my application ☒
- I have enclosed the premises licence or relevant part of it or explanation ☒