

REPORT TO: LICENSING SUB-COMMITTEE 14th DECEMBER 2015

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: MR DEREK STONE

**Licensing Act 2003 – Application for variation of a premises licence
Queens Hotel, Clarence Parade, Portsmouth. PO5 3LJ**

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 this application would create.

2. THE APPLICATION

The variation application has been made by Kim Thurston Managing Director of the Queens Hotel which is a large hotel located on the corner of Clarence Parade and Osborne Road, having occupied that site since 1861. Originally built as a large private house in the late 18th century it became a hotel and yacht club. In December 1891 the premises was destroyed by fire and was rebuilt in 1903 into the splendid building that stands today.

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

- To allow the sale of alcohol and licensed activity within the enclosed garden area in addition to the areas already permitted in the existing licence.
- To permit the showing of plays from 10:00 to 02:00
- Late night refreshment to extend from 23:30 (current) until 02:00
- Sale by retail of alcohol from 07:30 until 02:00
- Hours open to the public 07:00 to 02:30

The performance of live music, recorded music and performance of dance are already authorised until 02:00 Monday to Sunday

The current premises licence is attached at **appendix A** and all other existing times and conditions will remain unchanged. The old conditions as highlighted in the licence will be removed as they are no longer enforceable or were converted conditions carried over from the public entertainment licensing regime.

A copy of the variation application is attached as **appendix B**.

A number of local residents have made representations which are attached at **appendix C**. These are from or on behalf of residents at Homeheights a retirement development to the east of the hotel built in 1988.

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 is a 70 room hotel also catering for weddings and various functions including a Sunday carvery. The venue has a large car park catering for most guests and visitors.

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.

5. RELEVANT REPRESENTATIONS BY RESPONSIBLE AUTHORITIES

There are no representations submitted by any of the statutory responsible authorities.

Officer note:

From records held by Environmental Health there were no recorded noise complaints at this venue during 2010, 2011, 2012 or 2013. In 2014 there must have been some intensification in how the hotel operated as five noise complaint cases were opened from five separate premises. This resulted in a number of calls to witness the noise, the installation of noise monitoring equipment and a formal meeting with the management of Queen's Hotel in September 2014. In 2015 one noise case was opened which resulted in three calls concerning the noise. No formal action has been taken by this department.

Environmental Health have spoken to the applicant who has agreed to the following condition, that regulated entertainment in the garden area will terminate at 23:00 and this will automatically be added to the premises licence if granted.

Environmental Health have not agreed with a termination time of 23:00 hours as such, because they are satisfied that the regulated entertainment in the garden until this hour will not cause significant disturbance. There is a risk that neighbours of the Queen's Hotel will suffer noise from the garden until 23:00 hours if the Hotel are not realistic about the kind of entertainment that is provided, but since the Live Music Act deregulated the provision of live music both inside and outside until 23:00 hours, there is little point in objecting to earlier than 23:00 hours.

6. RELEVANT REPRESENTATIONS BY OTHER PERSONS

Relevant representations have been received from a number of local residents

regarding the potential for noise if this variation is granted. There are also concerns regarding the early sale of alcohol to non-residents.

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 current premises licence
- B.** Copy of application to vary premises licence
- C.** Copies of representations received.

THE COMMITTEE IS REQUESTED TO DETERMINE THE APPLICATION

For Licensing Manager
And on Behalf of Head of Service