

REPORT TO: LICENSING SUB-COMMITTEE 1st NOVEMBER 2018

REPORT BY: LICENSING MANAGER

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**Licensing Act 2003 - Application for variation of a premises licence - Gisors, 106 Marmion Road, Southsea, PO5 2BB**

## 1. PURPOSE OF REPORT

The purpose of this report is for the committee to consider an application for the variation of a premises licence pursuant to section 35 of the Licensing Act 2003 ("the Act").

The matter has been referred to the committee for determination following receipt of relevant representation(s) from other persons, all residents close to the premises. Further detail about the representations received is shown at paragraph 4 below.

## 2. THE APPLICATION AND PROPOSED VARIED OPERATING SCHEDULE

The variation application has been submitted on behalf of Gisors Restaurants Limited and relates to premises known as Gisors and situated at 106 Marmion Road, Southsea, PO5 2BB.

The proposed changes to the current authorisation are for a range of hours increasing the sale of alcohol by retail and premises opening hours. Currently they are Sunday 10:00 until 18:00. Monday to Friday 09:00 until 20:00 and Saturday 09:00 until 21:00

This variation seeks to change these hours to Monday to Saturday 09:00 until 23:00 and Sunday 09:00 until 22:00

The applicant has detailed in the operating schedule the steps intended to support and promote the licensing objectives. These can be found in the redacted application form together with a plan attached as **appendix A**. The current licence is attached as **appendix B**.

The updated statutory guidance<sup>1</sup> gives general advice about the steps to promote the licensing objectives as follows:

**Paragraph 8.42** "Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate; any risk posed to the local area by the applicants' proposed licensable activities; and any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks."

**Paragraph 8.43** "Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example,

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<sup>1</sup> Revised Statutory Guidance issued by the Home Office

*a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy."*

**Paragraph 8.44** *"It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application."*

**Paragraph 8.47** *"Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises."*

**Paragraph 8.50** *"Where a premises licence holder wishes to amend the licence, the 2003 Act in most cases permits an application to vary to be made rather than requiring an application for a new premises licence. The process to be followed will depend on the nature of the variation and its potential impact on the licensing objectives. Applications to vary can be made electronically via GOV.UK or by means of the licensing authority's own electronic facility following the procedures set out in Chapter 8 above."*

### **3. BACKGROUND INFORMATION**

The provisions relating to the variation of a premises licence are contained within part 3 of the Licensing Act 2003 and associated statutory regulations.

Public notice has been given by way of press notice, a premises notice and local ward councillors have been notified of the application. There are no germane grounds for the committee to reject the application for non-compliance with the prescribed advertising requirements.

In July 2018 a complaint was received by Portsmouth City Council Licensing Services from a local resident, informing them that the premises had changed and was now operating as a bar without any consultation. There was also a noise complaint associated with these premises.

**Officer note: Your reporting officer attended the premises and found that the premises had substantially changed and several Premises Licence conditions were being breached, the main ones being that there was no CCTV at the premises and no personal licence holder present.**

The premises had recently been taken over by the current Premises Licence holder and Designated Premises Licence holder (DPS) Charles Tourres. Mr Tourres stated that he was responsible for the alterations to the premises and had taken over the running of the venue from his sister who was shown as the Premises Licence holder and DPS.

**Officer note: Following advice Charles Tourres submitted a premises transfer application and change of DPS application. Enforcement action followed regarding two breaches of the premises licence conditions that were breached on the 18<sup>th</sup> July 2018.**

#### 4. REPRESENTATIONS BY RESPONSIBLE AUTHORITIES AND OTHER PERSONS

Relevant representations must be confined to the subject matter of the variation and have been received from several local residents (Other persons) living in close proximity to the venue.

One representation has been received in support of this variation. The others object and their objections relate to various concerns regarding noise attributed to the operations of the venue since the changes have been made, public nuisance, the potential for anti-social behaviour and crime and disorder.

Copies of the redacted representations received are attached as **appendix C**.

Attached at **appendix D** is an agreed condition agreed between the applicant and Environmental Health that 'the external seating area (shown as "TERRACE" on the approved drawing) shall be closed to and vacated by users of the restaurant/café with the external doors between the main building and the external seating area to be kept closed between the hours of 17:00 hours and 10:00 hours the following day'

Attached at **appendix E** is an e mail from planning together with a letter dated 14<sup>th</sup> December 2016 regarding the approval of extended hours at the premises.

#### 5. POLICY AND STATUTORY CONSIDERATIONS

When determining the variation application, 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;
- The adopted Statement of Licensing Policy;
- Judgements of the High Court, (your legal adviser will give you guidance should this become necessary);
- The current statutory guidance<sup>2</sup> 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.

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<sup>2</sup> Revised statutory guidance issued by the Home Office

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 4.7 and 4.8 which are reproduced below:

- 4.7** *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.*
- 4.8** *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 7.5 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 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:

**Paragraph 2.15** *"The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter."*

**Paragraph 2.16** *"Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health"*

**Paragraph 2.17** *"Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues."*

**Paragraph 2.18** *"As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate"*

**Paragraph 2.19** *"Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave"*

**Paragraph 2.21** *"Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night "*

**Paragraph 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 club premises certificates and full variation applications, it is the responsibility of each responsible authority to determine when they have appropriate grounds to do so."*

**Paragraph 9.12** *"Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, 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 usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the*



crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing".

**Paragraph 9.37** " 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 representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits".

**Paragraph 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 representations made by the applicant or premises user as the case may be."

**Paragraph 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."

**Paragraph 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. 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."

**Paragraph 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 (unless all parties agree a hearing is not necessary) 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."*

**Paragraph 10.9** *"It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives."*

**Paragraph 10.13** *"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."*

**Paragraph 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 are reminded about the review provisions contained in chapter 11 of the guidance and, in particular:

**Paragraph 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."*

**Paragraph 11.2** *"At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any 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."*

## **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.

Members are reminded of their obligation to give reasons for any decision(s) reached by further reference from the statutory guidance as follows:

**Paragraph 13.10** *"It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act."*

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

## **6. APPEALS**

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,

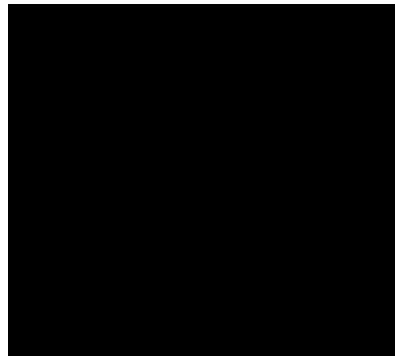
He may appeal against the decision.



## **7. APPENDICES**

- A.** Copy of the redacted application for the variation of the premises licence together with a plan
- B.** Copy of the current premises licence
- C.** Copies of the redacted relevant representations received
- D.** Agreed condition between applicant and Environmental Health
- E.** E mail from planning and letter dated 14/12/16 re change of hours

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



For Licensing Manager  
And on behalf of Head of Service