

REPORT TO: LICENSING SUB-COMMITTEE 6th July 2021

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: DEREK STONE

Licensing Act 2003 - Application for grant of a premises licence - By The Beach Southsea Cafe, 27 St Georges Road, Southsea, PO4 9QS

1. PURPOSE OF REPORT

The purpose of this report is for the committee to consider an application for the grant of a new premises licence pursuant to section 18 of the Licensing Act 2003 ("the Act").

The matter has been referred to the committee for determination following receipt of relevant representations from other persons both in support and against the application. Further detail about the representations received is shown at paragraph 4 below.

2. THE APPLICATION AND PROPOSED OPERATING SCHEDULE

The premises licence application has been submitted on behalf of By The Beach Southsea Limited and relates to premises known as By The Beach Southsea Cafe and situated at 27 St Georges Road, Southsea, PO4 9QS.

The following licensable activities have been requested:

Proposed Licensable Activity	Days and Times of Operation
Sale by retail of alcohol (Both On & Off sales)	Monday to Sunday 10:00 until 23:00

With the hours of opening and closing being:

Days of the Week	Open	Close
Monday to Sunday	07:00	24:00

Plus extended hours Christmas Eve and New Year's Eve

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 attached as **appendix A**.

A plan of the premises is attached as **appendix B** with an additional fire exit escape plan.

The updated statutory guidance¹ gives general advice about the steps to promote the licensing objectives as follows:

¹ Revised Statutory Guidance issued by the Home Office

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, 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."

3. BACKGROUND INFORMATION

The provisions relating to the grant 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 December 2020, the applicants Lee and Lindsay, purchased 27 St Georges Road which consists of the existing retail premises on the ground floor and a 4 bedroom maisonette (private accommodation) covering the first and second floor. To the North side of the retail unit is a covered car port allowing private access from the front to a private enclosed walled garden area at the rear. The rear garden is not intended to be used as part of this business by the applicant.

Whilst the premises are in a residential area, it must be stressed that this is not a new commercial business. The ground floor was used as a Café trading from 1945 to 1996. Carl, the son of the owners, worked in this café helping his parents. This led onto Carl attending Highbury College and obtaining a City & Guilds qualification in hotel and catering. In 1996 the café closed but Carl opened Carl Christian cakes in January 1997 which traded until December 2020.

The café will only allow for up to 30 covers comfortably with toilets and a food preparation area to the rear of the building.

The Designated Premises Supervisor (DPS) has 25 years experience in the licence trade. The applicant Lee is in the process of securing his personal licence. Once he has applied for his personal licence through Portsmouth City Council, Lee will assume the role of DPS for the business so will not only be the holder of the Premises Licence but the resident in occupation of the premises.

4. REPRESENTATIONS BY RESPONSIBLE AUTHORITIES AND OTHER PERSONS

There are no representations from any of the responsible authorities.

Members you will know that Paragraph 9.12 of the revised Guidance issued under section 182 of the Licensing Act 2003 states '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.'

Relevant representations have been received, both in support and against this application. There are 9 representations in support with a further support letter received after the closing date for representations (not included). Two representations have been completely withdrawn following an explanation by the applicants (not included). There are 42 objections, citing various concerns regarding noise, crime and anti- social behaviour. Many of these representations have been generated as a result of two unsigned 'flyers' that were posted through residents letter boxes which has resulted in raising the fears and concerns of residents living nearby.

All representations are attached at **appendix C**

One representation has helpfully guided you to the guidance around public nuisance paragraphs 2.15 to 2.18 but for completeness, I have added paragraphs 2.19 and 2.21 below.

2.19 Where application have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods eg unreasonably loud music at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. 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.

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 to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.

On receipt of representations, the applicant was informed in order to address the concerns being raised. The applicant produced a letter of explanation and conducted a letter drop in the immediate vicinity in an attempt to allay people's fears. One of the main concerns was noise in the rear garden that might affect houses that back on to premises, however this garden, as previously stated, is the private garden of the applicants and will not be used as part of this business.

Attached at **appendix D** is the letter of explanation to residents.

Attached at **appendix E** are the two unsigned anonymous 'flyers' posted around the neighbourhood

Attached at **appendix F** are a number of photographs showing the external and internal areas of the premises and an aerial view

Officer note: The CCTV fitted at the front of the building does not give any view of neighbouring premises

5. POLICY AND STATUTORY CONSIDERATIONS

When determining the 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;
- Judgments of the High Court, (your legal adviser will give you guidance should this become necessary);
- The current statutory guidance² issued by the Home Secretary in accordance with section 182 of the Act;
- The representations, including supporting information, presented by all the parties; and

² Revised statutory guidance issued by the Home Office

- The human rights of all the parties concerned to ensure both a fair and balanced hearing and to consider any public sector equality duty requiring public bodies to have due regard to the need to:
- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- Advance equality of opportunity between people who share protected characteristic and people who do not share it; and
- Foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are as follows:
- I) age, ii) disability, iii) gender reassignment, iv) pregnancy and maternity v) race - this includes ethnic or national origins, colour or nationality, vi) religion or belief - this includes lack of belief, vii) sex and viii) sexual orientation.

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 4.7 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 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."*

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 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.

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 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.

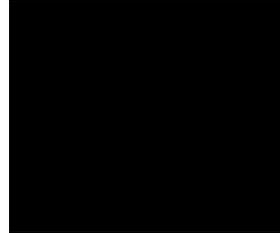
7. APPENDICES

- A.** Copy of the redacted application for the grant of a premises licence together with any supporting document(s)
- B.** Plan of premises x 2 including emergency evacuation route
- C.** Copies of the redacted relevant representations received
- D.** Letter of explanation from applicants

E. Unsigned anonymous Flyers posted around neighbourhood

F. Photographs of interior and exterior

THE COMMITTEE IS REQUESTED TO DETERMINE THE APPLICATION



For Licensing Manager
And on behalf of Head of Service