

REPORT TO: LICENSING SUB-COMMITTEE

9th OCTOBER 2023

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: DEREK STONE

Licensing Act 2003 - Application for variation of a premises licence - Southsea Brunch Klub, 119 Elm Grove, Southsea, PO5 1LH

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 representations from a number of local residents. 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 Elm Grove Enterprises Ltd and relates to premises known as Southsea Brunch Klub and situated at 119 Elm Grove, Southsea, PO5 1LH. There are no changes to the licensable activities or times of operation.

The application follows a premises licence inspection at the premises, where it was noted that the premises had changed from what was recorded by the local authority regarding the deposited plan. A small bar had been introduced in the basement area and the available seating area was considerably less than that recorded on the premises licence. An earlier visit by public protection officers following up a noise complaint, had recommended the installation of an inner lobby at the front of the premises to prevent the outbreak of noise.

The proposed changes to the current authorisation are as follows: The submission of a new plan to incorporate the inner lobby at the front of the premises and a small bar in the basement. There are several proposed changes to some conditions on the existing premises licence as detailed in the application, these include the removal of a police station address that is now closed, The updating of the CCTV condition. The re-wording of a condition to remove alcohol sales only to persons taking table meals to 'substantial meals shall be available until 90 minutes before premise close' and reduce from 110 covers to 70 covers.

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**.

The current licence is attached as **appendix B**.

This variation process *cannot be used* to extend a time limited licence or to vary substantially the premises to which it relates. Equally, there are separate and distinct provisions in the Act for minor variations, a change to the name or address of the licence holder and to specify and/or remove the Designated Premises Supervisor.

The updated statutory guidance¹ 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, 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.

¹ Revised Statutory Guidance issued by the Home Office

In November 1975, 119 Elm Grove, was granted a Justices Licence under the name of Hoagy's which later changed to Touchdown. A variation to the premises licence was submitted in August 2005, to extend the hours for opening and alcohol sales on Sundays to Thursdays until 02:00 and on Friday and Saturdays to 04:00. The Police made representations against this application as did 14 local residents. On the 29th September 2005, a Licensing Sub-Committee was held to determine the application and during this hearing, the applicant amended their application.

The premises has traded under various names eg, Bangkok Spize, Eucadi and in 2009 it became Big Ernie's an American Diner. In 2013 it traded as Jags @ 119 then in 2021 as Three Cuts Burger and Tap becoming SBK in 2022.

The premises are located on the corner of Elm Grove and St Peters Grove close to residential properties.

4. REPRESENTATIONS BY RESPONSIBLE AUTHORITIES AND OTHER PERSONS

There have been no representations received from responsible authorities after the submission and amendment of conditions requested by the police with regard to the wording of the CCTV conditions.

Twelve representations have been received from local residents who have raised concerns regarding how the premises are managed and operate and how noise and anti-social behaviour which they attribute to the clientele frequenting the venue, have created noise, crime and disorder and anti-social behaviour.

Attached at **appendix C** are the redacted representations.

Attached for reference at **appendix D** is the Notice of Decision from the 2005 Licensing Sub-Committee hearing.

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;
- 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
- 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. (3)*

[3] NB In *Luminar Leisure Ltd v Wakefield Magistrates' Court* [\[2008\] EWHC 1002 \(Admin\)](#) it was established that crime and disorder away from the premises and beyond the control of the

² Revised statutory guidance issued by the Home Office

premises can be taken into consideration if reasonable to conclude that the premises would give rise to such problems and undermine the licensing objectives

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."*

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 schedule of proposed changes to the licence conditions and new plan
- B.** Copy of the current premises licence
- C.** Copies of the redacted relevant representations received
- D.** Notification of Decision from the 29th September 2005 variation hearing.

THE COMMITTEE IS REQUESTED TO DETERMINE THE VARIATION APPLICATION

For Licensing Manager
And on behalf of Head of Service