Licensing Act 2003 – Application for variation of a premises licence
HUIS, 62 Elm Grove, Portsmouth PO5 1JG

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 the extension to hours would create.

2. THE APPLICATION

The variation application has been made by Mr Simon Docker owner of Travelling Flem Ltd who is also the designated premises supervisor (DPS) for the premises situated in Elm Grove.

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

- To vary the playing of recorded music on a Friday and Saturday night to increase it by one hour from 01:00 currently to 02:00 (03:00 New Year’s Eve)
- To vary the Late Night Refreshment provision by extending it from 01:00 currently to 02:00 on a Friday and Saturday night (03:00 New Year’s Eve)
- To extend the supply of alcohol sales from 01:00 currently to 02:00 on Friday and Saturday (03:00 New Year’s Eve) and to be granted permission for these sales to be both on and off sales.
- To extend the hours the premises are open to the public from 01:00 currently to 02:00 on a Friday and Saturday (03:00 New Year’s Eve)

The current premises licence is attached at appendix A and all other existing times and conditions will remain unchanged

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

Six local residents have made representations which are attached at appendix C

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 small bar/restaurant located on the south side of Elm Grove on the corner of Woodpath Southsea. The premises was granted a licence following an application made on the 30th July 2014. The original application received 4 representations from local residents who had concerns regarding noise and rubbish. On receipt of these representations the applicant Simon Docker spoke to those who had raised concerns and subsequently three withdrew their representations. One representation remained and on the 22nd September 2014 a licensing sub-committee was held to determine the application. The sub-committee granted the premises licence and a copy of the minutes of this meeting are attached at appendix D.

The immediate area is dominated by shops along Elm Grove with flats above and residential properties in Woodpath. Limited on street parking is available.

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.

The conditions previously imposed would also apply should the variation be approved.

5. RELEVANT REPRESENTATIONS BY RESPONSIBLE AUTHORITIES

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

Environmental Health have spoken to the applicant who has agreed to the following condition to be added to the premises licence should this application be approved.

"All doors are to remain closed (other than for access or egress) whilst regulated entertainment is being provided."

Officer Advice:

Since the 30th May the venue has operated on eight different Friday and Saturday evenings on Temporary Event Notices. This has allowed the venue to operate and extend their alcohol sales from 01:00 to 02:00. Environmental Health were aware that this was happening and have closely monitored the venue and have received no complaints with regard to noise nuisance.

6. RELEVANT REPRESENTATIONS BY OTHER PERSONS

Relevant representations have been received from 6 local persons which can be summarised as follows:

- Noise
- Increased traffic both pedestrian and vehicular
- Anti-social behaviour with litter and people vomiting in neighbouring gardens
- Lack of parking
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
D. Copy of minutes of Sub Committee hearing 22\textsuperscript{nd} September 2014

THE COMMITTEE IS REQUESTED TO DETERMINE THE APPLICATION

For Licensing Manager
And on Behalf of Head of Service