

Application to vary a Premises Licence – Licensing Act 2003

REPORT OF: Tom Clark, Head of Regulatory Services

Contact Officer: Jon Bryant, Senior Licensing Officer
Email: jon.bryant@midsussex.gov.uk Tel: 01444 477428

Wards Affected: Hurstpierpoint and Downs

Key Decision No

Report To: Liquor Licensing Panel

Purpose of Report

- 1 To provide information in order that the Committee can determine an application to vary a Premises Licence.

Summary

- 2 An application, pursuant to Section 34 Licensing Act 2003, has been made by Flint Bishop Solicitors on behalf of Poynings Property Limited to vary a Premises Licence at The Royal Oak, The Street, Poynings, BN45 7AQ. Representations against the application have been made by six Interested Parties on the grounds of a Prevention of Public Nuisance.
 - 3 The substance of the variation application is to vary the plan to operate an outside bar in the existing outside drinking area which is part of the current licensed area and to amend the additional conditions currently attached to the licence.
 - 4 The Committee is asked to determine the application in accordance with the Licensing Act 2003, MSDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations.
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Background

- 5 Poynings Property Limited are the holder of a Premises Licence for the Royal Oak Inn, The Street, Poynings, West Sussex BN45 7AQ. This is issued under Licence number PWA0304. The Pub has held a Premises Licence since the introduction of the Licensing Act 2003 and previously under the previous Act, the Licensing Act 1964. The 1964 Act Licence was transferred to the existing licensing regime.
- 6 The Royal Oak is currently licensed for the following licensable activities;

| Licensable Activity | Timings |
|---------------------------|----------------------------------|
| Sale by retail of alcohol | Sunday 12:00 - 22:30 |
| | Monday to Saturday 11:00 - 00:00 |
| | Christmas Eve 11:00 - 00:00 |
| | Boxing Day 11:00 - 00:00 |
| | New Year's Day 11:00 - 00:00 |

Non Standard Timings –

Sale Of Alcohol

Christmas Eve)
Boxing Day) 11:00 to 00:00 hours
New Year's Day)

New Year's Eve - From start of Licensing Hours New Year's Eve to end of
Licensing Hours New Year's Day

Sundays Of Bank Holiday Weekends – 12:00 to 00:00 hours

7 The current opening hours of the premises are:

Monday to Saturday 09:00 - 00:30
Sunday 09:00 - 23:00

Non Standard Timings - Premises Opening Hours

Christmas Eve)
Boxing Day) 09:00 to 00:30 hours
New Year's Day)

New Year's Eve - From start of Licensing Hours New Year's Eve to end of
Licensing Hours New Year's Day

Sundays Of Bank Holiday Weekends – 09:00 to 00:30 hours

8 The additional Conditions that are currently attached to this licence in addition
to the Mandatory Conditions are

No drinks in open containers (e.g. glasses) and opened bottles are to be
taken from the premises including the garden.

Prominent signs shall be displayed at exits asking customers to leave quietly.

No regulated entertainment of any type shall take place on the premises.

Any person who appears under the age of 18 and who is attempting to buy
alcohol shall be required to produce 'Proof of Age' before such a sale is
made.

9 It should be noted that the applicant submitted a previous application to vary
the Premises licence in April 2022. This prior application was withdrawn and
therefore the Committee should disregard references to the withdrawn
application as it is not under consideration.

10 The application before the Committee is to amend the current plan of the
licensed premises to incorporate the addition of sale of alcohol from an
external bar. It is requested that the sale of alcohol from the outside bar is
permitted daily until 22:00 hours. The amended plan is attached to the report
at Appendix 2.

- 11 It is requested that the following existing conditions be removed:

No drinks in open containers (e.g. glasses) and opened bottles are to be taken from the premises including the garden.

To be replaced by

Customers will not be permitted to remove from the premises any drinks supplied by the premises (alcoholic or otherwise) in open containers unless to an external area set aside for consumption.

Any person who appears under the age of 18 and who is attempting to buy alcohol shall be required to produce 'Proof of Age' before such a sale is made.

To be removed as this condition is already included in the Mandatory Conditions attached to the licence

- 12 No representations have been received from any of the Responsible Authorities
- 13 Six representations have been received from members of the public, referred to as 'Interested Parties' within the Act. The main points raised in the representations that are relevant relate to the licensing objective of the Prevention of a Public Nuisance. These representations have not been resolved.
- 14 The application was correctly advertised at the site between 20th July 2022 to 16th August 2022 and in the Mid Sussex Times on 28th July 2022.

Representations

- 15 Interested Parties Representations.

The representations in full are appended to the report. There are a number of issues raised within the representations that are not considered by the Licensing Team as relevant to this application for example concerning odour, parking etc. The Committee acting as the Licensing Authority will disregard comments that are considered by the Committee as not relevant.

Tim Sebley

Mr Sebley makes his representations on the grounds of a public nuisance and in essence concerns the potential for increased public nuisance through the intensified use of the outside area. He raises other issues concerning odour and traffic.

Mr Sebley does suggest a compromise that the outside bar should only be open between 11am – 6pm Saturday and Sundays and closed on weekdays. His representations are attached at appendix 6

John Comber

Mr Comber makes extensive representations on various grounds. His full representations are attached. He has disputed that some of his

representations are considered not to be relevant. The Committee are best placed to determine which parts of his representations are relevant to this application.

His representations are attached at appendix 7

Jan Nichols

Jan Nichols has made representations on the Grounds of the Prevention of a Public Nuisance and the content of the representation is that they consider the application will lead to an intensification of the use of the outside area and as a result will cause increased public nuisance through noise.

Her representations are attached at Appendix 8

Adrian Salanson

Adrian Salanson has made representations on the grounds of prevention of a public nuisance and is in relation to the potential intensified usage of the Royal Oak beer garden.

His representations are attached at Appendix 9

Peter Holy and Justine Johnstone

Peter Holy and Justine Johnstone have made representations on the grounds of prevention of a public nuisance. They concern the potential for public nuisance being caused through the potential increased usage of the outside area.

Their representations are attached at Appendix 10

Erica and Lloyd Hampshire

Erica and Lloyd Hampshire have made representations on the grounds of prevention of a public nuisance. Again these concern the potential for public nuisance being caused through the potential increased usage of the outside area.

Their representations are attached at Appendix 11

Policy Context

16 Determination of Application for the Variation of a Premises Licence

The Committee must determine the application in accordance with the Licensing Act 2003 (LA03), MSDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations.

17 Section 34 of the LA03 deals with applications for the variation of a premises licence.

Section 34 Application to vary premises licence

- (1) The holder of a premises licence may apply to the relevant licensing authority for variation of the licence.
- (2) Subsection (1) is subject to regulations under—
 - (a) section 54 (form etc. of applications etc.);
 - (b) section 55 (fees to accompany applications etc.).
- (3) An application under this section must also be accompanied by the premises licence (or the appropriate part of that licence) or, if that is not practicable, by a statement of the reasons for the failure to provide the licence (or part).
- (4) This section does not apply to an application within section 37(1) (application to vary licence to specify individual as premises supervisor).

18 Section 35 LA03 deals with the determination of the application:

- (1) This section applies where the relevant licensing authority—
 - (a) receives an application, made in accordance with section 34, to vary a premises licence, and
 - (b) is satisfied that the applicant has complied with any requirement imposed on him under subsection (5) of that section.
- (2) Subject to subsection (3) and section 36(6) the authority must grant the application.
- (3) Where relevant representations are made, the authority must—
 - (a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
 - (b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.
- (4) The steps are—
 - (a) to modify the conditions of the licence;
 - (b) 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.
- (5) In this section, “relevant representations” means representations which—
 - (a) are about the likely effect of the grant of the application on the promotion of the licensing objectives and

(b) meet the requirements of subsection (6),

(6) The requirements of are—

(a) that the representations were made by a responsible authority or other person within the period prescribed under section 17(5)(c) by virtue of Section 34(5)

(b) that they have not been withdrawn, and

(c) in the case of representations made by a person who is not a responsible authority, that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

19 Supplementary Provisions about determinations under Section 35

Supplementary provision about determinations under section 35

(1) Where an application (or any part of an application) is granted under section 35, the relevant licensing authority must forthwith give a notice to that effect to—

(a) the applicant,

(b) any person who made relevant representations in respect of the application, and

(c) the chief officer of police for the police area (or each police area) in which the premises are situated.

(2) Where relevant representations were made in respect of the application, the notice under subsection (1) must state the authority's reasons for its decision as to the steps (if any) to take under section 35(3)(b).

(3) The notice under subsection (1) must specify the time when the variation in question takes effect.

That time is the time specified in the application or, if that time is before the applicant is given that notice, such later time as the relevant licensing authority specifies in the notice.

(4) Where an application (or any part of an application) is rejected under section 35, the relevant licensing authority must forthwith give a notice to that effect stating its reasons for rejecting the application to—

(a) the applicant,

(b) any person who made relevant representations in respect of the application, and

(c) the chief officer of police for the police area (or each police area) in which the premises are situated.

(5) Where the relevant licensing authority determines for the purposes of section 35(6)(c) that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for that determination.

(6) A licence may not be varied under section 35 so as—

(a) to extend the period for which the licence has effect, or

(b) to vary substantially the premises to which it relates.

(7) In discharging its duty under subsection (2) or (3)(b) of that section, a licensing authority may vary a premises licence so that it has effect subject to different conditions in respect of—

(a) different parts of the premises concerned;

(b) different licensable activities.

(8) In this section “relevant representations” has the meaning given in section 35(5).

20 Relevant Representations

The Licensing Act 2003 requires representations to address the four licensing Objectives which are

1. Prevention of Crime and Disorder
2. Promotion of Public Safety
3. Prevention of Public Nuisance
4. Prevention of Harm to children and young persons

21 A representation is a ‘relevant representation’ if it is about the likely effect of the grant of the licence on the promotion of the licensing objectives. The objector must establish that such a consequence is a *likely* effect of a grant - (ie more probable than not)

22 Guidance Issued Under Section 182 of the Licensing Act 2003

9.3

Where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating schedule and it is relevant (see paragraphs 9.4 to 9.10 below), the licensing authority’s discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious (see paragraphs 9.4 to 9.10 below). Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.

9.4

A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the

local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives.

For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

9.5

It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

9.9

It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.

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.

9.38

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- Guidance issued under Section 182 Licensing Act 2003;
- its own statement of licensing policy.

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.

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.

Other Options Considered

- 23 In order to lawfully provide licensable activities as applied for, they must be conducted under the authority of a Premises Licence.

Financial Implications

- 24 The final decision made by the Committee in this matter is subject to appeal in the Magistrates Court by any party to the proceedings.

Other Material Implications

- 25 Section 136 Licensing Act 2003 – A person commits an offence if he carries on or attempts to carry a licensable activity on or from any premises otherwise than under and in accordance with an authorisation or he knowingly allows a licensable activity to be so carried on.
- 26 A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine or both.

Sustainability Implications

- 27 None

Background Papers

Appendix 1 – Application Form and plan of premises
Appendix 2 – Current Premises Licence Plan
Appendix 3 – Proposed new Premises licence Plan
Appendix 4 – Area Map
Appendix 5 – Photos of Location

Representations

Appendix 6 – Tim Sebley
Appendix 7 – John Comber
Appendix 8 – Jan Nichols
Appendix 9 – Adrian Salanson
Appendix 10 – Peter Holy and Justine Johnstone
Appendix 11- Erica and Lloyd Hampshire

Appendix 12 – Applicants offered conditions
Appendix 13 – Extract of Agreed Hearings Procedure