

## LICENSING SUB COMMITTEE – 17 JUNE 2019

### APPLICATION TO VARY A PREMISES LICENCE – THE SAIL INN, QUEEN STREET, LYMINGTON.

#### 1. INTRODUCTION

- 1.1 The purpose of this report is to provide members with information at the hearing to determine an application to vary a premises licence under section 34 of the Licensing Act 2003. The premises is The Sail Inn, Queen Street Lymington, SO41 9NG.

#### 2. BACKGROUND INFORMATION

- 2.1 The Sail Inn is situated at a busy junction to the eastern end of Lymington, near to the Waitrose store and opposite the Thomas Tripp Public House. A location plan of the premises is provided at **Appendix 1**. The premises are positioned on a busy main road, however, to the rear of the premises are a large number of residential houses and apartments situated in a quiet residential area.

- 2.2 The premises have held alcohol and entertainment licences for a number of years under the Licensing Act 2003 although more recently, it has been previously known both as The Fusion Inn and The Black Cat.

- 2.3 In summary, the current premises licence permits the following:-  
**Sale of alcohol**- from 10:00hrs to midnight Sunday to Thursday and 10:00hrs to 02:00hrs on Friday and Saturday.  
**Recorded music**- from 20:00hrs to 00:45hrs on Saturday.  
**Live Music**-Monday to Sunday 20:00hrs to 23:00hrs.  
**Late Night Refreshment**- until 01:30hrs Friday and Saturday.  
**Opening hours of premises**-08:00hrs to 00:30hrs Sunday to Thursday, 08:00hrs to 02:30hrs Friday and Saturday.

The licence also contains some restrictions, seasonal variations and non standard timings, the full details of which can be seen in the current premises licence (with conditions) as provided as **Appendix 2**.

- 2.4 As members can see from the current licence, a large number of conditions were placed on the licence following a hearing on 10 August 2015. The hearing took place to determine a variation application to extend the hours for the sale of alcohol on Fridays and Saturdays from 01:00hrs to 02:00hrs with the closure hours extending from 01:30hrs to 02:30hrs and the introduction of late night refreshment on Fridays and Saturdays until 01:30hrs. As representations were received from members of the public to this proposal, a Licensing Sub-Committee determined the application. The decision of the Licensing Sub-Committee can be viewed here: <http://modern:9070/mgAi.aspx?ID=1126> .
- 2.5 Photographs of the property, front and rear, are provided for members as **Appendix 3**. These photographs also reference the properties next to and above the premises.

The photographs are described as follows-

- Photo 1- Front of premises, including private side access path designated for smoking
- Photo 2- Front of premises and Thomas Tripp pub opposite
- Photo 3- Small area to the front right of the premises
- Photo 4- View up Queen Street including Kebab shop
- Photo 5- Back of the premises, access road to the right, next to bakery
- Photo 6- Back of premises and residence to the left
- Photo 7- Back garden area and residence at Roundhouse Mews

Photo 8- Rear garden area

Photo 9- Grassed area to the rear of the premises on St Thomas Park

Photo 10- St Thomas Park, view toward car park

### 3. THE APPLICATION

3.1 On 9 April 2019 New Forest District Council received a variation application from Flint Bishop Solicitors on behalf of the Premises Licence Holder – Star Pubs and Bars Limited. The application is attached as **Appendix 4** (blank pages removed).

3.2 The variation application seeks the **following**:-

- **Plans**-Amend the licensing plan in accordance with drawing number 7482-08 revision B dated 31 May 2017 which accompanies the application.
- **Live Music**-Extend the daily start time to 10:00hrs, remove the twice weekly restriction and extend the terminal hour to midnight on Friday and Saturday.
- **Recorded music**-extend to allow an earlier start time of 10:00hrs on Saturdays, remove the current restriction of every other Saturday and add recorded music from 10:00hrs to 23:00hrs Sunday to Thursday and from 10:00hrs to midnight on Friday.
- **Late Night Refreshment**-Extend the hours to 02:30hrs on Friday and Saturday and until 00.30hrs Sunday to Thursday.
- **Films**-Add this provision to the premises licence 08.00hrs to 00:30hrs Sunday to Thursday and 08:00hrs to 02:30hrs on Friday and Saturday.
- **Non-standard timings**-Remove all existing non-standard timings and add new timings.
- **Non mandatory Conditions**-Remove all current licence conditions in Annex 3 and replace with updated conditions attached in the variation application.

3.3 However, the application does not seek to increase the hours permitted for the sale of alcohol or the opening/closing times of the premises. It is intended that these would remain as set out at Paragraph 2.3 of this report apart from the change to non-standard timings.

3.4 Further information about the variation application and the plans for the venue has been provided in section M (a) of the application form. As members can see proposals include refurbishments (internal and external), new Designated Premises Supervisor (DPS) and a “strong focus on the local community with it being family friendly and providing home cooked food”..

3.5 Public consultation as required by the Licensing Act 2003 has been correctly carried out and the application has been advertised both on the premises and in the local newspaper.

### 4. REQUIREMENTS FOR A HEARING

4.1 The Licensing Authority must hold a hearing to determine the application where relevant representations are made regarding the likely effect of the grant of the application to vary the licence on the promotion of the licensing objectives. These being:

- 1) The prevention of Crime and Disorder;
- 2) Public safety;
- 3) The prevention of public nuisance;
- 4) The protection of children from harm.

- 4.2 Members are referred to the statutory guidance issued by the Home Office under section 182 of the Licensing Act 2003 dated April 2018, in particular the sections on the licensing objectives and variations.

<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

- 4.3 In determining the application the Licensing Sub-Committee must give appropriate weight to:
- 1) The steps that are appropriate to promote the licensing objectives;
  - 2) The relevant representations presented by all the parties;
  - 3) The Home Office guidance;
  - 4) The Council's own Statement of Licensing Policy.

## 5. REPRESENTATIONS RECEIVED

- 5.1 Following receipt of the application a meeting was arranged on-site by Mr Arran Harmer, the Council's Environmental Health Officer. The meeting had been arranged to address concerns with the application and the proposed removal of the current conditions, many of which were placed on the licence to address complaints about noise from the premises. The meeting took place at the premises on 15 April 2019. The Council's Licensing Manager, Licensing Compliance Officer and Mr Harmer were all present. Mr Taylor from Star Pubs and Bars also attended the meeting but unfortunately the proposed Designated Premises Supervisor, responsible for the management of the new venture, was unable to attend.
- 5.2 At this meeting, concerns with regard to the application and the proposal to remove key conditions together with the extension of some licensable activities were raised by Council Officers. Following the meeting, a response from the Premises Licence Holder had been expected, however, this was not received by the end of the representation period. The Environmental Health Officer submitted a formal response and representation which is presented as **Appendix 5**. This representation documentation also proposes further conditions in addition to the later conditions the applicant's solicitor has proposed in the email dated 13 May.
- 5.3 Concerns have been raised with regard to the proposal to remove conditions on a premises licence that permit the late terminal hour and the impact on the crime and disorder licensing objective. These have resulted in a representation also being received from the Police Licensing Officer. This is provided in **Appendix 5**. The representation outlines the history of police involvement at the premises, concerns with previous turnover and management and the impact of being the latest venue in the town together with the removal of key conditions proposed in the variation application. The Police Licensing Officer has also suggested which conditions would be appropriate to keep on the licence in order to promote the licensing objectives.
- 5.4 In addition, during the 28 day representation period, the Licensing Authority received 46 representations from other persons, in the main, these being residents of neighbouring properties and those living in the area close to the premises. Representations were also received from a landlord of multiple properties in the area, the proprietor of a guest house near the premises and the owner of a Pilates studio. These are attached as **Appendix 6**.
- 5.5 The representations highlight concerns that the variation of the premises licence and removal/amendment to the licence conditions will undermine the licensing objectives. A summary of issues that have been raised in the representations are:-

- Increase in Anti-social behaviour (ASB) caused by alcohol,
- Noise issues and disturbance to neighbours in a residential area,
- Noise/ASB in the rear garden of the premises by those drinking and/or smoking,
- Increase in music related disturbance,
- Fears that the venue will become more popular and therefore increase the risk of further disturbances and incidents for nearby residents,
- The addition of live music until the early hours will appeal to a younger clientele, leading to increases in problems,
- Additional crime and disorder for a reduced Police presence to deal with,
- Increased numbers attending the premises, queuing up at the entrance to the premises and also numbers of patrons “loitering” at the end of the night waiting for transport home.

5.6 There is no Cumulative Impact Policy for the town and the consideration of “need” for additional or varied licensed premises cannot be taken into account. However, as mentioned in some representations there are a number of licensed premises in the area. For members information **Appendix 7** provides the location of similar licensed premises in the area together with the hours provided by their licences.

#### **Further Information from the Applicant**

5.7 The applicant has provided additional information about the site, the refurbishment and the development of the business at the premises and this is provided at **Appendix 8**. The additional information also includes some email exchanges between a local resident and the Applicant’s solicitors regarding the premises when they were unoccupied and plans to lease the premises to the Applicant. The applicant has also provided additional conditions, further to those proposed in the application. The additional conditions are included in **Appendix 8**.

## **6. LEGAL IMPLICATIONS**

- 6.1 This hearing is governed by the Licensing Act 2003 (Hearings) Regulations 2005. These provide that hearings should be held in public unless the Licensing Authority considers that the public interest in excluding the public outweighs the public interest in the hearing taking place in public.
- 6.2 The Applicant and those parties making representations have been invited to this hearing and have been provided with this report and the procedure to be followed at the hearing.
- 6.3 The Applicant and those who have made relevant representations are entitled to address the Sub Committee and to ask questions of the other party as set out in the procedure.

## **7. RIGHT OF APPEAL**

- 7.1 It should be noted that the Applicant and those who have made relevant representations may appeal the decision made by the Licensing Sub Committee to the Magistrates’ Court. The appeal must be lodged with the Magistrates’ Court within 21 days of the notification of the decision.
- 7.2 In the event of an appeal being lodged, the decision made by the Licensing Sub Committee remains valid until any appeal is heard and any decision made by the Magistrates’ Court.

7.3 A Responsible Authority or any person may apply to the Licensing Authority for a Review of a Premises Licence. Whether or not a Review Hearing takes place is in the discretion of the Licensing Authority, but, if requested by a person other than a Responsible Authority will not normally be granted within the first 12 months except for the most compelling circumstances.

## **8. CONCLUSION**

8.1 The Licensing Sub-Committee must, having regard to the application and any relevant representations take such steps as it considers appropriate for the promotion of the licensing objectives. Members may:

- 1) Modify the conditions of the licence or
- 2) 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).

## **9. RECOMMENDATION**

9.1 That the Licensing Sub-Committee determines the application to vary the premises licence.

## **10. APPENDICES**

Appendix 1 Location plan  
Appendix 2 Current premises licence  
Appendix 3 Photographs of the building  
Appendix 4 Application form and plan  
Appendix 5 Representations from Police 5A and Environmental Protection 5B  
Appendix 6 Representations from other persons  
Appendix 7 Location of other premises in area and opening times  
Appendix 8 Information received from the Premises Licence Holder to illustrate the vision and proposals for the premises, email exchange with local resident and proposed additional conditions.

### **Further information:**

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