

## REVIEW OF PREMISES LICENCE – LICENSING ACT 2003

### Premises: Smuggler's Den, Ferry Road, Hullbridge

#### 1 SUMMARY

- 1.1 This report introduces an application for Review of a Premises Licence made under section 51 of the Licensing Act 2003.
- 1.2 The application must be determined within 5 working days of the conclusion of the hearing, in accordance with paragraph 26 of the Licensing Act 2003 (Hearings) Regulations 2005.

#### 2 BACKGROUND

- 2.1 The application was given to the Licensing Authority by Mr Peter Darling of Wharf House, 313 Ferry Road, Hullbridge and refers to premises known as Smuggler's Den, 315 Ferry Road, Hullbridge.
- 2.2 The grounds for the application are based upon the licensing objectives prescribed under section 4 of the Licensing Act 2003 of: -
  - (a) The prevention of crime and disorder
  - (b) The prevention of public nuisance.
- 2.3 Appendix A consists of a copy of the original application form.

##### Description of Premises

- 2.4 The premises to which the application relates is a brick built building that trades as a licensed club.
- 2.5 The premises is situated in a residential area. It has an extensive car park and an external area, outside of the licensed area, which is used for the consumption of alcohol.
- 2.6 Appendix B consists of a copy of the plan of the premises, a map of the area in which the premises is situated and an aerial photograph of the area.

##### Licensing History

- 2.7 On 5 July 2005 an application was made by Mr Roger Powell to convert the existing Justice's licence and certificates into a premises licence under the transitional provisions of schedule 8, part 2, paragraph 16 of the Licensing Act 2003.
- 2.8 The premises licence was granted on 4 August 2005 and an application to vary that licence was heard before a Licensing Sub-Committee on 30 August 2005.

- 2.9 The application was granted permitting the licensable activities within the times and days shown below: -

Activity	Time/s	Days
Sale of alcohol for consumption both on and off the premises.	(a) 0800 – midnight (b) 0800 – 0100 hours the following day	(a) Sunday – Tuesday (b) Wednesday – Saturday
Regulated entertainment indoors only consisting of: - Indoor sporting events; live music; recorded music including, karaoke, provision of facilities for making music and for dancing.	(a) 1000 – midnight (b) 1000 – 0100 hours the following day	(a) Sunday – Tuesday (b) Wednesday - Saturday
Late night refreshment to be consumed on the premises only.	(a) 2300 – midnight (b) 2300 – 0100 hours the following day	(a) Sunday – Tuesday (b) Wednesday – Saturday
Hours of opening	(a) 0800 – 0030 hours the following day (b) 0800 – 0130 hours the following day (c) 0800 – 2330 hours	(a) Monday – Tuesday (b) Wednesday – Saturday (c) Sunday
The hours above are extended: - (a) from the terminal hour of licensable activity on New Year's Eve to the commencement hour for licensable activity on New Year's Day; (b) until 0100 hours the following day on Christmas Eve, Boxing Day and all Sundays prior to a Bank Holiday.		

- 2.10 The licence was granted subject to a number of conditions, one of which states: -

'The licensee shall ensure that all external windows and doors are kept closed during hours of business.'

- 2.11 The licence was transferred from Mr Powell to the current holders, Smuggler's Den Limited, 21 Durham Way, Rayleigh on 20 June 2007.

- 2.12 To date no further application has been made since.

- 2.13 Appendix C consists of a copy of the premises licence.

**Premises History**

- 2.14 There have been a number of issues brought to the attention of the Licensing Unit by the applicant since 30 August 2005 concerning alleged breaches of the condition mentioned above and noise disturbance. It has been suggested by the applicant that the noise disturbance has arisen due to breach of the condition.
- 2.15 There have been 5 complaints of noise disturbance and breach of condition received in 2007: -
- (a) On 15 March concerning the afternoon of 12 March 2007.
  - (b) On 6 August concerning the afternoon of 3 August 2007 and the evening of 4 August 2007.
  - (c) On 20 August concerning the dates 17, 18 and 19 August during which the applicant made a tape recording of noise disturbance.
  - (d) On 6 September concerning 2 September 2007 during which the applicant made a tape recording of noise disturbance.
  - (e) Since the making of the application, concerning the night of 22 September 2007 during which the applicant made a tape recording of noise nuisance.

**3 APPLICATION**

- 3.1 The application is made in accordance with section 51 of the Licensing Act 2003.
- 3.2 The applicant seeks to introduce the tape recordings mentioned at paragraph 2.16 above and a letter from a neighbour in support of his application for the Sub-Committee's consideration. A copy of the letter is contained in Appendix D.

**4 REPRESENTATIONS**

- 4.1 Three representations have been received from Responsible Authorities. Essex Police have submitted a representation in respect of the licensing objective concerning the prevention of crime and disorder; Environmental Protection Unit and Commercial Regulation Unit have submitted representations in respect of the licensing objective concerning prevention of public nuisance. These indicate that the licensee is not complying with the condition referred to in paragraph 2.10
- 4.2 There have been 3 representations from Interested Parties in support of the application on the grounds of the licensing objectives relating to prevention of crime and disorder and public nuisance. The bona fides of all parties have been confirmed by officers.

4.3 One of the Interested Parties has requested anonymity in the proceedings on the grounds of fear of reprisals and the personal details have been removed from their representation.

4.4 Appendix D consists of copies of the representations received.

## **5 NOTICES**

5.1 Notices advertising the application were placed by the Licensing Authority at or near the premises, at the Council's offices in Rayleigh and Rochford and on the Council's website, as required by paragraph 38 of The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005.

5.2 All parties involved have been served with the relevant notices and documentation required by paragraphs 6 and 7 of The Licensing Act 2003 (Hearings) Regulations 2005 and included an explanation of the rights of persons to attend hearings and to be represented, to give evidence and to call witnesses, the consequences of not attending, the procedure to be followed at a hearing, and, for applicants only, a copy of all relevant representations made.

5.3 Paragraphs 8 and 9 of those regulations require that parties notify the Licensing Authority, no later than 5 working days before the hearing, of those matters mentioned in paragraph 5.2 above. A pro-forma and pre-paid envelope was included for that purpose with the notices and documentation mentioned in paragraph 5.2 above.

5.4 At the time of drafting this report, only one response had been received from any of the parties.

5.5 It is anticipated that Mr David Hook of Hook & Partners, Solicitors, will represent the applicant. The licence holders have also indicated that a solicitor will represent them.

## **6 POLICY CONSIDERATIONS**

### **Legal Provisions**

6.1 The provisions of The Licensing Act 2003, The Licensing Act 2003 (Hearings) Regulations 2005, Guidance issued under Section 182 Licensing Act 2003 and the Statement of Licensing Policy, approved by Full Council for the period 7 January 2005 – 6 January 2008 need to be considered by the Licensing Sub-Committee in determining the application.

6.2 Section 10, paragraph 10.11 onwards of the Guidance is of particular relevance to Licensing Sub-Committees where consideration is given to imposing conditions to the grant of an application.

- 6.3 Section 11, paragraphs 11.15 – 11.27 of the Guidance provides advice in relation to the powers of a Licensing Authority in determining a review of a premises licence.

## **7 OPTIONS**

- 7.1 The following options are available to Members: -

- (a) To modify the conditions of the licence;
- (b) To exclude a licensable activity from the scope of the licence;
- (c) To remove the Designated Premises Supervisor;
- (d) To suspend the licence for a period not exceeding 3 months;
- (e) To revoke the licence.
- (f) Subject to paragraphs 11 - 13 of the Licensing Act 2003 (Hearings) Regulations 2005, adjourn the hearing to a specified date or arrange for a hearing to be held on specified additional dates, where Members consider this to be necessary for their consideration of any representations or notice made by a party.

## **8 RECOMMENDATION**

- 8.1 It is proposed that the Sub-Committee **RESOLVES**

To determine the application, having considered all representations made at the hearing.

Richard Evans

Head of Environmental Services

---

### **Background Papers: -**

None.

For further information please contact Kevin Doyland on: -

Tel: - 01702 318036

E-mail: - [licensing@rochford.gov.uk](mailto:licensing@rochford.gov.uk)

If you would like this report in large print, braille or another language please contact 01702 546366.