

**Meeting of:** LICENSING ACT SUB-COMMITTEE

**Date:** 20TH JANUARY 2014

**Report of:** LICENSING MANAGER

**Reference:** WP

**Title:** ROYAL HOTEL, MAIN STREET, HEYSHAM, LA3 2RN  
APPLICATION FOR VARIATION OF LICENCE

**Members of the Sub-Committee have the following documents attached to this report:**

- 1. Application form (pages 8 to 29)**
- 2. Copy of representations (x20) from Other Persons (pages 30 to 60)**
- 3. Copy of current Premises Licence (pages 61 to 69)**
- 4. Notice of Hearing (pages 70 to 73)**

#### **Details of Application**

Mitchells of Lancaster (Brewers) Ltd. have submitted an application under Section 34 of the Licensing Act 2003 to vary the premises licence for the Royal Hotel, Main Street, Heysham.

The application was initially before the Sub-Committee on 15<sup>th</sup> August 2013. However, at that meeting, the Chairman declared an interest, which she had not been aware of before the meeting, but which meant that she would not be able to take part in the hearing.

The meeting was adjourned for a period of 10 minutes to allow officers to consider contacting members of the Licensing Act Committee who might be able to attend at short notice in place of the Chairman, but that did not prove possible. With the consent of the applicant, the hearing was not immediately rescheduled, as steps were being taken to seek to resolve the matter by discussion and negotiation. However, as the representations have not been withdrawn, a hearing is now required.

The current premises licence permits the following: -

Live Music	Monday to Saturday	12.00 to 00.00
	Sunday	12.00 to 23.30
Playing of recoded music:	Monday to Saturday	12:00 to 00:00
	Sunday	12.00 to 23.30
Late Night Refreshment	Monday to Saturday	23.00 to 00.30
	Sunday	23.00 to 00.00
Sale by retail of alcohol:	Monday to Saturday	10:00 to 00:00
	Sunday	10:00 to 23.30

The current variation application is to facilitate:-

The sale by retail of alcohol from a temporary bar located in the Beer Garden from 12:00 to 23:00 Monday to Sunday

To provide recorded music outside from 12.00 to 23:00 Monday to Sunday

To remove all sections of the Children's Certificate from existing embedded conditions

To amend Offered Condition No.3 to Challenge 25

Details of the application to vary the premises licence are set out in the application form, which is Document 1 attached to this report.

### **Representations**

Under Section 35(3) of the Act, it is necessary for a hearing to be held to consider the application as numerous representations have been received from Other Persons primarily on the grounds of public nuisance but also protection of children from harm.

Copies of the representations are at Document 2.

### **Notice of Hearing**

In accordance with the relevant Regulations, the parties have been given notice of the hearing. It was not felt necessary to request any clarification from the parties. The parties have been required in accordance with the Regulations to indicate at least five working days before the hearing whether they intend to attend and/or be represented at the hearing and if they wish any witness to appear at the hearing. Any responses and any further documentation submitted by any of the parties after the circulation of this agenda will be circulated to Members in advance of the meeting. Members are reminded that documentary or other information submitted on the day of the hearing may only be taken into account with the consent of the Sub-Committee and all the parties.

### **Matter for Decision**

The Sub-Committee is requested to consider the application and the representation.

This is in accordance with Section 35(3) and (4) of the Act which provide as follows:

- (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 necessary 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

Members are reminded that the licensing objectives are:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance and
- the protection of children from harm

### **Government Guidance under Section 182 of the Licensing Act 2003**

Members may wish to note that paragraph 2.33 of the Guidance issued by the Government under Section 182 of the Licensing Act 2003 states that public nuisance is “not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community”.

### **Relevant Parts of the Council’s Statement of Licensing Policy**

With regard to the prevention of public nuisance, the Policy provides as follows:

#### **8 Prevention of public nuisance**

- 8.1 The most obvious aspect of public nuisance is noise. The primary source of noise is amplified music, either uncontained outdoors or emanating from premises, which do not have sufficient measures in place to contain the sound. Late at night or in the early hours of the morning, individuals shouting in the street or groups of people talking in an animated fashion generate a substantial level of noise and in some cases this is aggravated by offensive language.
- 8.2 As customers leave licensed premises, the sound of their conversation can disturb residents. Potentially greater problems arise when customers congregate or accumulate outside the licensed premises. However, it is clear that the person in control of the premises has a responsibility to ensure that disturbance to residents and businesses is kept to a minimum.
- 8.3 In considering licence applications where relevant representations are received, the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for nuisance and disorder having regard to all the circumstances of the application. When addressing public nuisance, the applicant should identify any particular issues which are likely to adversely affect the promotion of the objective to prevent public nuisance, taking account of the location, size and likely clientele of the premises, and the type of entertainment (if any) to be provided. Such steps as are required to deal with these issues should be included within the applicant’s operating schedule, and may include:
  - The steps the applicant has taken or proposes to prevent noise and vibration escaping from the premises, including music, noise from ventilation equipment and human voices. Such measures may include the installation of soundproofing, air conditioning, noise limitation devices and keeping windows closed during specified hours.
  - The steps taken to ensure that all staff involved in the management of the premises have the capability, responsibility and training to supervise other staff

and to ensure that the premises are operated in such a manner as to prevent public nuisance

- The steps the applicant has taken or proposes to prevent disturbance by patrons arriving at or leaving the premises, for example warning signs at exits, and warning announcements within the premises, and the use of door supervisors to pass on the message
- The steps the applicant has taken or proposes to prevent queuing, or if queuing is inevitable, to divert queues away from neighbouring premises, or otherwise manage and monitor the queue to prevent disturbance of obstruction, and to prevent patrons congregating outside the premises.
- The implementation of a last admission time, and how the last admission time relates to the closing time of the premises
- The steps the applicant has taken or proposes to take to manage queues so that patrons who will not gain admission before any last admission time are advised accordingly
- The steps the applicant has taken to reduce queuing outside the premises and to minimise the length of time people have to queue at the premises
- The steps the applicant has taken to advise patrons that they will not be admitted if they are causing a disturbance, and the steps taken to implement a procedure for banning patrons who continually leave or arrive at the premises in a manner which causes a public nuisance or disturbance.
- The arrangements made or proposed for parking by patrons and the effect of parking on local residents.
- The arrangements the applicant has made or proposes to make for security lighting at the premises, and the steps the applicant has taken or proposes to take to ensure that lighting will not cause a nuisance to residents.
- Whether there is sufficient provision for public transport for patrons, for example the provision of a free phone taxi service or other arrangements with taxi companies, and whether information is provided to patrons about the most appropriate routes to the nearest transport facilities.
- Whether taxis and private hire vehicles serving the premises or traffic flow from the premises are likely to disturb local residents.
- Whether routes to and from the premises pass residential premises.
- Whether other appropriate measures to prevent nuisance have been taken, such as the use of CCTV or the employment of an adequate number of licensed door supervisors.
- The measures proposed to prevent the consumption or supply of illegal drugs, including any search and disposal procedures.
- The procedures in place for ensuring that no customer leaves with bottles or glasses
- If the applicant has previously held a licence within the area of the Council, the history of any enforcement action arising from those premises.
- Whether the premises would result in increased refuse storage or disposal problems, or additional litter in the vicinity of the premises.
- The steps the applicant has taken or proposes to take in order to ensure that standards of public decency are maintained in any entertainment provided at the premises.
- If appropriate, whether music is played at a lower level towards the end of the evening in a "wind down period".
- The applicant's proposals for the length of time between the last sales of alcohol, and the closing of the premises
- The steps the applicant has taken to prevent noise and other public nuisance from occurring in any open air parts of the premises, beer gardens, smoking

shelters or areas that are used on an ad-hoc basis by patrons with the management consent for smoking

The above list is not intended to be exhaustive, and the applicant should consider all aspects of the operation that may affect public nuisance.

## **12.0 Protection of Children**

12.1 The Licensing Authority recognises the great variety of premises for which licences may be sought. These will include theatres, cinemas, restaurants, pubs, nightclubs, cafes, take-aways, community halls and schools. Access by children to all types of premises will not be limited in any way unless it is considered necessary to do so in order to protect them from physical, moral or psychological harm. Equally, no premises will be obliged to allow access by children.

12.2 If relevant representations are received in relation to limiting access to children, the Licensing Authority will judge each application on its own individual merits. Examples which may give rise to concern in respect of children would include premises:-

- where entertainment of an adult or sexual nature is provided
- where there is a strong element of gambling taking place (but not, for example, the simple presence of a small number of cash prize gaming machines)
- with a known association with drug taking or dealing
- where there have been convictions of current members of staff for serving alcohol to those under 18
- with a reputation for under age drinking

12.3 In the case of premises which are used for film exhibitions, conditions will be imposed restricting access only to those who meet the required age limit in line with any certificate granted by the British Board of Film Classification or, in specific cases, a certificate given to the film by the Licensing Authority itself.

12.4 The options available for limiting access by children would include:-

- a limit on the hours when children may be present
- a limitation or exclusion when certain activities are taking place
- the requirement to be accompanied by an adult
- access may be limited to parts of the premises but not the whole
- an age limitation (for under 18s)

12.5 The Licensing Authority will not impose any condition which specifically requires access for children to be provided at any premises. Where no restriction or limitation is imposed the issue of access will remain a matter for the discretion of the individual licensee or club.

12.6 Under the Act, certain “responsible authorities” must be notified of and are entitled to make representations about applications for premises licences or club premises certificates or major variations of such licences or certificates, or to ask the licensing authority to review a licence or certificate. Applicants for premises licences and club premises certificates are required to send details of their applications to these bodies. In matters concerning the protection of children from harm, the Licensing Authority regards the Lancashire Safeguarding Children Board as the ‘responsible authority’ within the terms of Section 13 (4).f of the Licensing Act.

- 12.7 Where a large number of children are likely to be present on any licensed premises, for example a children's show or disco, the applicant may wish to consider including in the operating schedule arrangements for the presence of an appropriate number of adult staff to ensure public safety and the protection of the children from harm. The applicant should also consider whether employees working at the premises for such events and having unsupervised contact with children should have an enhanced Criminal Records Bureau check.
- 12.8 Children may also be present at an event as entertainers, and where they are not accompanied by a parent or guardian, the applicant may wish to consider nominating an adult responsible for such child performers at such performances. The applicant should also consider whether a nominated adult should have had an enhanced CRB check.
- 12.9 Applicants may wish to include in their operating schedules arrangements to ensure that children will be restricted from viewing age-restricted films classified according to the recommendations of the British Board of Film Classification or the Licensing Authority itself. The Act provides that it is mandatory for a condition to be included in all premises licences and club premises certificates authorising the exhibition of films for the admission of children to the exhibition of any film to be restricted in accordance with the recommendations given to films either by the British Board of Film Classification or by the licensing authority itself.
- 12.10 The following matters will also be considered in relation to the protection of children from harm:
- Whether access of children to cigarette machines is restricted
  - Whether access of children to any gaming machines is restricted
  - Where appropriate, the procedures for ensuring that any customer coming onto the premises is over the age of 18
  - The steps taken to ensure that, where appropriate, all staff involved in the management of the premises have the capability, responsibility and training to supervise other staff and to ensure that the premises are operated in such a manner as to protect children from harm

The Licensing Authority considers preventing children from obtaining alcohol from licensed premises to be of great importance in protecting them from harm. Applicants must, therefore, be able to demonstrate that they have in place, satisfactory arrangements to prevent sales of alcohol to children including a recognised or appropriate proof-of-age scheme. The Licensing Authority would be supportive of arrangements, which include incorporating any of the following:

- Passport.
- Photo Card driving licence issued in the European Union
- Proof of Age Standards Scheme Card (PASS)
- 'New type' driving licences with photographs.
- Official ID card issued by the HM Forces or by a European Union country bearing a photo and date of birth of holder

Staff should have received suitable training in relation to the proof of age scheme to be applied upon the premises and records evidencing this should be kept.

- 12.11 Applicants may wish to indicate in the operating schedule how the protection of children from harm will be addressed. The above items are not intended to be exhaustive, and the applicant should have considered all relevant aspects of the protection of children from harm applicable to the particular premises.
- 12.12 It is the view of the Licensing Authority that children should not be exposed to entertainments of a sexual nature or to strong language at a too early an age. Conditions may be imposed, if representations are received, aimed at preventing such exposure either intentionally or accidentally. In some premises entertainment of an adult nature may be occasional or restricted to certain times of the day. In these cases, any restrictive conditions to protect children will apply only at these times. When submitting an application, if no reference is made to the provision of adult entertainment or services within an operating schedule at "Box N", then the Authority will interpret this to mean that such entertainment will not be provided and a condition to this effect will be applied to the licence.

### **Natural Justice and Human Rights**

Members are reminded that they must follow the rules of natural justice, and must also consider human rights implications.

In particular, in accordance with Article 6, all parties are entitled to a fair hearing.

Consideration also needs to be given to the right to respect for private and family life and home, contained within Article 8, although this is a qualified right, and interference is permitted where this is in accordance with the law, or is necessary in a democratic society in the interests of public safety or the prevention of crime and disorder, or for the protection of the rights and freedoms of others. Article 1 of the First Protocol provides that every person is entitled to the peaceful enjoyment of his possessions, although again this right is qualified in the public interest.

### **Conclusion**

Members should consider whether to grant the application for variation, modify any conditions of the licence or to reject the whole or part of the application. Members are reminded that they should state the reasons for their decision.