

## Agenda Item

**REPORT OF** LEAD LICENSING OFFICER

**To:** LICENSING SUB-COMMITTEE

**Subject:** LICENSING ACT 2003 (s.17) – APPLICATION FOR PREMISES LICENCE  
THE BAR, 32 NELSON ROAD, WESTWARD HO!

**Date:** 9<sup>th</sup> JULY 2019

**Reference:** LAPRE1/00327/19

### **PURPOSE OF REPORT:**

To provide the sub-Committee with information relating to an application for a premises licence for The Bar, 32 Nelson Road, Westward Ho! to enable the sub-Committee to determine the application.

### **1. INTRODUCTION**

An application for a premises licence for the above premises has been made to Torridge District Council under s.17 of the Licensing Act 2003 by Henrietta Bright. The Licensing Authority has received relevant representations about the application and, in accordance with s.35(3) of the Act, the application must now be determined by a sub-Committee of the Council's Licensing Committee at a licensing hearing.

### **2. BACKGROUND**

The premises has not previously held a premises licence. The premises has been converted from a deli/café to a cocktail bar. The premises is located in Nelson Road at Westward Ho! within a mix of commercial and residential premises.

A map of the premises location will be provided to the Sub-Committee.

### **3. THE APPLICATION**

The applicant is seeking to licence the following activities:

#### **Supply of alcohol for consumption ON and OFF the premises**

Monday to Sunday 11:00 - 00:00 (midnight)

#### **Non-Standard Timings**

New Years Eve 11:00 – 02:00

#### **Late Night Refreshment (indoors)**

Monday to Sunday 11:00 - 00:00 (midnight)

#### **Non-Standard Timings**

New Years Eve 11:00 – 02:00

#### **Opening Hours**

Monday to Sunday 11:00 – 01:00

### **Non-Standard Timings**

New Years Eve            11:00 – 02:00

Licence conditions volunteered by the applicant are included in Appendix A.

## **4. REPRESENTATIONS**

### **4.1 Responsible Authorities**

Representations have been received from the following responsible authorities:

Environmental Health  
Planning

Both representations raise concerns relating to the “Prevention of Public Nuisance” objective.

The representations are provided in Appendix B.

### **4.2 Other Persons**

No representations have been received from members of the public.

## **5. POLICY ISSUES**

**5.1** The Authority has a duty under s.4 of the Licensing Act 2003 to carry out its licensing functions with the aim of promoting the four licensing objectives. The objectives are:

- The prevention of crime and disorder
- Public Safety
- The prevention of public nuisance
- The protection of children from harm

**5.2** The representations relate to the licensing objective of prevention of public nuisance. They raise concerns relating to noise and disturbance to the neighbouring residential amenity and in particular for the potential of noise nuisance from customers entering and leaving the premises and congregating to smoke outside of the premises.

**5.3** With regard to noise nuisance, paragraph 5.3.3 of the Authority’s Statement of Licensing Policy (“the Policy”) states that the Authority, when determining applications, will have regard to wider considerations affecting the residential population, businesses and the amenity of the area.

**5.4** The Policy states that the Authority will expect applicants to have particular regard to noise issues and to include in their operating schedule *adequate and effective steps to control noise and disturbance from their premises*” (paragraph 5.3.4).

**5.5** The Policy provides guidance on licensing hours (paragraph 6) and states “when issuing a licence with hours beyond 23:00 hours, higher standards of control and supervision will be expected in order to promote the licensing objectives – especially for premises situated in or near residential areas.

**5.6** Paragraph 6.3 states “Licensed hours will normally be approved where the applicant can show that the proposal would not adversely affect the licensing objectives. The Licensing Authority may, however, set an earlier terminal hour where it considers this appropriate to the nature of the activities and the amenity of the area.”

- 5.7** It should be noted that, if a licence is granted, residents have the protection of the 'review' process. At any time after the grant of a licence, a person may apply for a review of the premises licence if there are problems at the premises which undermine the licensing objectives. This is a valuable safeguard for local residents.
- 5.8** When considering this matter, the sub-Committee must have regard to government guidance. This makes it clear that the four licensing objectives should be '*paramount at all times*'. (Home Office Guidance 1.4). Where there are objections to an application, the sub-Committee must have regard to these and to the 'likely effect' on the licensing objectives of granting the application.
- 5.9** It is a fundamental principle of the Licensing Act that each application must be considered on its own merits. (Guidance 1.17; Policy 5.3.1).
- 5.10** If the sub-Committee, having considered the application, believes that extra measures are required in order to promote the licensing objectives, it may attach additional conditions to the licence provided that these are appropriate, reasonable and proportionate (Policy 7.2) or it may alter or amend any existing conditions. The sub-Committee must not impose conditions which would be beyond the control of the licence holder. (Guidance 1.16; Policy 7.6). The sub-Committee should also avoid imposing any conditions which would duplicate other statutory regulations (e.g. Health & Safety legislation, fire regulations).
- 5.11** The sub-Committee is advised to take the above matters into consideration when reaching their decision. Members are reminded that they should not consider any irrelevant matters and must confine their deliberations solely to the issues identified in the representations. The sub-Committee may depart from Policy guidelines if there are sound and justifiable reasons for doing so. Any departure from Policy should be fully explained to the parties at the hearing. (Guidance 1.12)

## **6. CONCLUSIONS**

- 6.1** When deciding whether this application should be granted, the sub-Committee should bear in mind that it is essentially making a judgement about risk. If, having regard to all the evidence, the sub-Committee believes that there is no or minimal risk to the promotion of the licensing objectives, then the application should be granted on the terms applied for. If the sub-Committee believes that there are risks which will undermine the objectives, then it should seek to mitigate those risks – either by modifying the application or – in the case of serious and significant risk - by outright refusal of the application.
- 6.2** Under s.35(4) of the Act, when determining this application, the sub-Committee must – having regard to the representations received - take such steps as it considers appropriate to promote the licensing objectives. The options are:
- To grant the application as submitted,
  - To modify timings and/or the conditions of the licence to the extent necessary to promote the licensing objectives,
  - To reject all or part of the application.
- 6.3** In determining the application, the sub-Committee must give appropriate weight to:
- evidence presented at the hearing,
  - Guidance issued by the Home Office under s.182 of the Act,
  - the Council's Statement of Licensing Policy
  - any advice given by the Council's Legal Advisor during the hearing.

**6.4** Any party to the hearing may appeal to the Magistrates' Court against the decision of the Licensing sub-Committee. The appeal must be made within 21 days of the date of notification of the sub-Committee's decision.

## **7. RECOMMENDATION**

It is recommended that:

The Licensing sub-Committee determine the application for a premises licence for The Bar, Westward Ho! having regard to the information provided in this report, guidance issued by the Home Office under s.182 of the Act, the Council's Statement of Licensing Policy and the evidence presented during the hearing.