

Agenda Item

REPORT OF LEAD LICENSING OFFICER

To: LICENSING SUB-COMMITTEE

Subject: LICENSING ACT 2003 – APPLICATION FOR REVIEW OF PREMISES LICENCE
– THE ANCHOR, BIDEFORD

Date: 16th December 2022

Reference: TDPR0227

PURPOSE OF REPORT:

To provide the sub-Committee with information relating to an application for a review of the premises licence for The Anchor, 11 Honestone Street, Bideford to enable the sub-Committee to determine the application.

1. INTRODUCTION

1.1 An application for review of a premises licence under section 51 of the Licensing Act 2003 was made by Torridge District Council in its capacity as a Responsible Authority on 24th October 2022 on the grounds that the premises are undermining the following licensing objectives.

- the prevention of crime and disorder
- the prevention of public nuisance

2. BACKGROUND

2.1 The relevant premises, The Anchor, 11 Honestone Street, Bideford, was first licenced by the Authority in 2005 under the Licensing Act 2003 following the conversion of the licence under grandfather rights from the justices to Local Authorities.

2.2 The current licence holder is Mrs Maria Da Silva who is also the designated premises supervisor.

2.3 The premises is a public house which is situated in Honestone Street within Bideford town centre with a mixture of residential and commercial properties in close proximity.

2.4 A copy of the current premises licence is provided in Appendix A.

3. APPLICATION FOR REVIEW

3.1 The Licensing Team, in conjunction with the Police Licensing Officer, has attempted to work with the Licence Holder to resolve problems identified at the premises in relation to noise and anti-social behaviour.

3.2 In accordance with our graduated approach to enforcement, we have advised the licence holder on several occasions of our concerns about problems identified and the need for improvement. We have provided advice and guidance to the licence holder of the steps they need to take to address those concerns.

- 3.3 In February 2022 it was agreed with the licence holder to include additional conditions to the licence via the minor variation process. It was suggested by the Police to include a requirement for SIA licensed door supervisors on Friday and Saturdays nights. Following discussion with the licence holder's solicitor this was amended to make the requirement for SIA door supervisors to be subject to risk assessment. The licence also included amended conditions relating to noise levels from music.
- 3.4 However, we have continued to receive complaints about the premises and have obtained evidence of breaches to licence conditions in relation to the following licensing objectives
- The prevention of crime and disorder
 - The prevention of public nuisance
- 3.5 Specific conditions that the licence holder has not complied with are as follows:

An incident log shall be kept and maintained at the premises which will include a log of the following, including pertinent details of:

1. Any incidents of disorder or of a violent or anti-social nature
2. All crimes reported to the venue, or by the venue to the police
3. All ejections of patrons
4. Any complaints received
5. Seizures of drugs or offensive weapons
6. Any faults in the CCTV system
7. Any visits by a responsible authority (under the Licensing Act 2003) or emergency service.

Records must be completed within 24 hours of any incident, and will contain the time and date, the nature of the incident, the people involved, the action taken and details of the person responsible for the management of the premises at the time of the incident.

The designated premises supervisor shall carry out a risk assessment to determine if there is likely to be a need for SIA licensed door supervisors at the entrance to the premises on Friday and Saturday nights (Also on Sunday's when a Bank Holiday precedes) and on Christmas Eve and New Years Eve. The risk assessment log shall be kept and maintained at the premises and will take into account the following factors:

1. The likely number of people at the premises that night;
2. Whether an event is taking place at the premises;
3. Whether there is a greater than usual risk of a potential breach of the licensing objectives should a door supervisor not be present on the door;
4. The weather conditions and time of year; and
5. Whether there are other events taking place in the vicinity.

A minimum of one (1) SIA licensed door supervisor shall be on duty at the entrance of the premises on Friday's and Saturday's (Also Sundays when a Bank Holiday proceeds) and on Christmas Eve and New Years Eve from 1900 Hours (7.00pm) until the premises have closed and all customers have left the immediate vicinity unless the prior risk assessment determines that the risk of a breach of the licensing objectives is low.

Noise (including vibration) from the premises shall not exceed the following:

Commencement until 23.00 hours LAeq (5 minutes) 45 dBA

23.00 hours until termination LAeq (5 minutes) 40 dBA

(when measured at the neighbouring domestic properties)

Whilst live music, karaoke or DJ's playing recorded music is taking place noise levels will be monitored at the front of the nearest domestic properties on at least hourly intervals. If the monitoring reveals noise breakout at a level likely to cause disturbance to the occupants of properties in the vicinity then the volume of music shall be reduced to a level that does not cause disturbance.

A record shall be kept of any monitoring, including:

- the date, time and location of the monitoring
- the name of the person monitoring
- any action taken

3.6 The Licensing Authority, therefore, decided to escalate the enforcement process and applied for a review of the premises licence.

3.7 A copy of the application for review is provided in Appendix B.

3.8 The follow documents have been provided in order to support the application for review.

- Details of complaints received from nearby residents over the period May 2021 – September 2022 (Appendix C)
- Details of sound recordings undertaken using the Council's calibrated noise monitoring equipment over the periods 13/14 August 2022 and 16/19 September 2022 which identify non-compliance with licence conditions (Appendix D)
- Police report detailing incidents relating to the premises which have been reported to the police and visits made by officers (Appendix E)
- Letters sent to the licence holder from the Licensing Authority (Appendix F)

4. OTHER REPRESENTATIONS

4.1 Responsible Authorities

No representations have been received from the other responsible authorities.

4.2 Other Persons

No representations have been received from other persons.

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 Sub-Committee is entitled to draw upon any of the considerations outlined in the Council's Licensing Policy document. However, the most significant policy considerations appear to be the following:

- Paragraphs 3.2 to 3.2.2 (Crime and Disorder).
- Paragraphs 3.4 to 3.4.4 (Prevention of Public Nuisance).
- Paragraphs 9.2 to 9.2.7 (Reviews).

5.3 The Sub-Committee is entitled to draw upon any of the considerations outlined in the Statutory Guidance issued under section 182 of the Licensing Act 2003 and published by the Home Office, April 2018. However, the most significant statutory guidance appears to be in the following:

- Paragraphs 2.1 to 2.6 (Crime and Disorder).
- Paragraphs 2.15 to 2.19 (Prevention of Public Nuisance).
- Paragraphs 11.1 to 11.28 (Reviews).

5.4 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 relating to the licensing objectives.

5.5 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 what action to take, 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 no action should be taken. If the sub-Committee believes that there are risks which will undermine the objectives, then it should seek to mitigate those risks.

6.2 Under s.52(4) of the Act, when determining this application, the sub-Committee must – having regard to the application and any representations received - take such steps as it considers appropriate to promote the licensing objectives. The options are:

- No action
- Modify the conditions attached to the licence
- Exclude a licensable activity
- Remove the Designated Premises Supervisor
- Suspend the Licence for a period not exceeding 3 months
- Revoke the licence

6.3 In determining the application, the sub-Committee must give appropriate weight to:

- Written and oral 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 The conditions of the licence, with the exception of mandatory conditions in annex 1 of the licence, may be modified to alter or omit any of them or to add any new condition, including restricting the times at which licensable activities authorised by the licence can take place.
- 6.5 Where the Licensing Sub Committee is minded to modify the conditions of the licence, it may do so either permanently or for a period not exceeding three months.
- 6.6 The licensing authority may decide that no action is appropriate if it finds that the review does not require it to take any steps that are appropriate to promote the licensing objectives.
- 6.7 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

7.1 It is recommended that:

The Licensing sub-Committee determine the application for review of the premises licence for The Anchor 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 written and oral evidence presented during the hearing.

8. BACKGROUND PAPERS

- Licensing Act 2003.
- Amended guidance issued under section 182 of the Licensing Act 2003 (Home Office, April 2018).
- Licensing Act (Hearings) regulations 2005.
- Torridge District Council Licensing Act 2003 Statement of Licensing Policy.

9. APPENDICES

- Appendix A – Current Premises Licence
- Appendix B – Application for review
- Appendix C – Details of complaints received from nearby residents
- Appendix D – Details of sound recordings undertaken
- Appendix E – Devon and Cornwall Police report (Restricted Part 2 item)
- Appendix F – Letters sent to licence holder by Licensing Team