

Somerset West and Taunton Council

Licensing Sub-Committee – 13 August 2021

Application for the varying of a Premises Licence under the Licensing Act 2003

This matter is the responsibility of Cllr Andrew Sully

Report Author: Brad Fear – Licensing Officer

1 Executive Summary / Purpose of the Report

- 1.1 Members are asked to consider an application to vary a Premises Licence under the Licensing Act 2003 for the Windmill Inn, West Quantoxhead, Taunton TA4 4DS.

2 Recommendations

- 2.1 As relevant representations have been received by the licensing authority, the sub-committee must take such steps as it considers appropriate for the promotion of the four licensing objectives, being:

- The prevention of crime and disorder;
- The prevention of public nuisance;
- Public safety;
- The protection of children from harm.

- 2.2 The steps the sub-committee may take are to:

- Grant the proposed variations subject to the conditions identified in the applicant's operating schedule (modified to such extent as the authority considers appropriate for the promotion of the licensing objectives) and any appropriate mandatory conditions.
- Exclude from the scope of the licence any of the licensable activities to which the application relates, or to propose additional conditions relevant to the four licensing objectives.
- Reject the application.

3 Risk Assessment (if appropriate)

- 3.1 The matters to which this report relates does not impact on any of the issues identified within the Corporate and Function Risk Registers.

4 Background and Full details of the Report

- 4.1 The Windmill Inn is a bar, restaurant and B&B located in West Quantoxhead, overlooking the picturesque St. Audries Church and Bay.
- 4.2 The premises is currently licensed and a copy of the existing licence can be found as **Appendix A**.
- 4.3 An application was received from TLT Solicitors, on behalf of St Austell Brewery (the licence holders), on 24th June 2021 to vary the Premises License for the Windmill Inn. This application was circulated to relevant responsible authorities on the same date, to commence a period of 28 days for consultation. Public notices were also placed up at the premises by the applicant for this consultation period and the application information was posted to the Somerset West and Taunton Council 'list of current licence applications' on the Council's website. A copy of the public notice was also printed in the 1st July 2021 edition of the Somerset County Gazette.
- 4.4 The application has been submitted to vary the layout and design of the premises in accordance with the plan submitted to the local authority. The application and plan can be viewed under **Appendix B**. These changes would allow for the use of an external bar at the rear of the premises. In addition, this is an application to extend the permitted hours for sale of alcohol (on and off the premises) from 11pm until midnight every day (thereby removing the existing nonstandard timings which are no longer required) and to add conditions in order to update the operating schedule of the premises licence. The application includes the proposal of three conditions offered up by the applicant, to apply directly to the external bar area (these can be found under 'Part 3- Variation' of the application attached under Appendix B).
- 4.5 In addition to the three proposed conditions corresponding to the external bar serverly area, the applicant has identified steps they intend to take to promote the licensing objectives, and this is often referred to as being part of the 'operating schedule'. The licensing authority routinely modifies the content of this part of the application in order to form conditions of the licence; conditions which, if breached, result in an offence being committed. Additionally, during the 28 day consultation period the applicant and Avon & Somerset Police were able to come to an agreed position regarding the preferred wording of certain conditions. The operating schedule as it currently stands, therefore—as agreed between the applicant, Licensing Authority and Avon and Somerset Police—can be viewed under **Appendix C**.

Representations

- 4.6 Representations against the application have been received from interested parties within the 28-day consultation period. These are shown in **Appendix D**. The main areas of concern are the possibility of public nuisance/disturbance to local residents/neighbours if the Licencing hours are extended until later in the night. In particular, references are made to the use of external areas for live events and the potential impact this may have in the way of noise disturbance. There have also been some concerns flagged around public safety, as the pub is situated alongside a busy main road.

Representations from Responsible Authorities

- 4.7 No formal objections/representations were raised by responsible authorities during

the 28 day consultation period.

4.8 Mediation

A mediation meeting was held on Tuesday 3rd August via Zoom between the applicants and a number of residents/objecting parties, and was mediated by the Licensing Officer. The applicant was keen to assure attendees that they did not intend to make the proposed changes to the licence with the intention of running regular live events, but rather to accommodate private functions and dining arrangements. Contact had already been made between Craig Holmes (the designated premises supervisor) and a number of residents before the mediation and the applicant expressed a desire to work with the community/residents and maintain a good relationship. The applicant also pointed out that the existing licence (as per **Appendix A**) makes allowances for late night regulated entertainment already, though this has not been utilised/ abused in the past. Residents present reiterated the concerns raised in their representations; in particular, the worries they had that the allowance of later hours for alcohol sales may encourage noisier and more disruptive behaviour later into the night. They also noted that while the applicant would not be looking to hold regular live events in the near future, the amended licence would still allow for such disruptive live events further down the line—either by the current premises supervisor or by anyone taking on the licence after him. There were a number of concerns raised about possible parking related problems should events attract larger numbers of late night customers, but it was noted that this was an issue to be discussed outside of the mediation (i.e. this does not fall under the four licensing objectives). On the subject of potential public nuisance, however, a proposal was put forward by one resident—that the applicant might consider a licence that limits the number of events (i.e. dates on which the licensable hours might be extended) to a set number (a total of nine events was proposed as an example). While a compromise could not be reached during the mediation meeting itself, the applicant was happy to take away the proposal and consider concerns raised after the mediation meeting.

After considering the issues raised during mediation, the applicant submitted to the Licensing Authority their current position (see **Appendix E**). While the applicant regrettably could not agree to the proposal to limit the number of yearly events/extensions to licensable hours, they were happy to further amend their licence to reduce the existing regulated entertainment timings (i.e. live and recorded music) to fall in line with the proposed alcohol hours—meaning that this would also be licensed only until midnight, seven days a week. This proposal was circulated to the objecting residents for their consideration. At the time of writing this report, however, the Licensing Authority has not received any withdrawals of objection from residents.

Responses to notice of hearing

- 4.9 Notices of hearing were sent out by e-mail on Wednesday 28th July 2021 to the applicant and objecting parties. The applicant’s response to the notice of hearing is included within Appendix E, while responses from residents/objecting parties are shown as **Appendix F** (Please note: these are responses received as of the time of posting this report. Further relevant responses will be circulated for the sub-committee’s consideration, should these be received).

Relevant Licensing Policy considerations

- 4.10 Section 1.2 of the Authority’s Licensing Policy states: “The Act requires the Licensing Authority to carry out its various licensing functions so as to promote the four licensing objectives”. “These four objectives will be the paramount considerations

when determining a course of action in relation to the Licensing Authority's licensing functions. Each objective will be given equal importance". The four objectives are: the prevention of crime and disorder, public safety, prevention of children from harm and prevention of public nuisance.

Conditions

- 4.11 Section 1.5.2 of the Policy states "The Licensing Authority may only impose conditions on a premises licence if they are consistent with the operating schedule or after receiving relevant representations. Any conditions attached to the licence must relate to the promotion of the Licensing Objectives".
- 4.12 The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned.
- 4.13 The guidance issued under Section 182 of the Licensing Act 2003 states: "(9.38) *All licensing determinations should be considered on a case by case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be. (9.39) The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. (9.40) Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters.*"

5 Links to Corporate Aims / Priorities

- 5.1 The granting of this application would support an existing business within the district, creating additional sources of income. However, considerations must also be made, where necessary, to the Corporate Strategy's commitment to – where the granting of varying of any premises licence is concerned – 'reduce anti-social behaviour, through working with residents'.

6 Finance / Resource Implications

- 6.1 None.

7 Legal Implications

- 7.1 The Licensing Sub Committee, when determining this application, must comply with the Licensing Act 2003. It should also have due regard to the Home Office Guidance and the Council's Licensing Policy.
- 7.2 In determining an application relating to a Premises Licence, any Responsible Authority or other party can make representations in relation to the application.
- 7.3 The Licensing Act 2003 created four licensing objectives and in determining this application, only factors that relate to the licensing objectives can be taken into account. Any representation must relate to the licensing objectives and any

conditions added by the Licensing Sub Committee must relate to the promotion of the licensing objectives.

Human Rights Act 1998

- 7.4 The sub-committee must also have regard to the provisions of the Human Rights Act 1998 when determining this application. The 1998 Act made the European Convention of Human Rights directly enforceable in British courts. The relevant provisions are Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 11 (freedom of association) and Article 1 of the First Protocol (right to peaceful enjoyment of one's possessions). These provisions require the sub-committee to identify correctly the competing interests, give each appropriate weight in the circumstances of the case, and balance them against each other in order to arrive at a fair and reasonable decision.

Appeals

- 7.5 If the sub-committee modifies conditions or rejects the application, the applicant may appeal within 21 days of notification of the decision to the Magistrates' Court. Those making relevant representations may appeal if they believe that the licence should not have been granted, or that, when granting the licence, the Licensing Authority ought to have imposed different or additional conditions or excluded a licensable activity. The Magistrates' Court may dismiss the appeal, or substitute its own decision, or send back the case to the Licensing Authority with directions as to how the case is to be dealt with. The Magistrates' Court may make any costs order it thinks fit.

8 Environmental Impact Implications (if any)

- 8.1 None identified

9 Safeguarding and/or Community Safety Implications (if any)

- 9.1 None identified.

10 Equality and Diversity Implications (if any)

- 10.1 None identified.

11 Social Value Implications (if any)

- 12 No social value implications were identified.

13 Partnership Implications (if any)

- 14 No partnership implications were identified.

15 Health and Wellbeing Implications (if any)

- 15.1 Through effective regulation, confidence in licensed premises and activities can be maintained, helping communities to thrive.

16 Asset Management Implications (if any)

- 16.1 No asset management implications have been identified.

17 Consultation Implications (if any)

17.1 None identified.

18 Scrutiny Comments / Recommendation(s) (if any)

18.1 Not applicable.

Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Cabinet/Executive – No**
- **Full Council – No**

Reporting Frequency : X Once only

List of Appendices

Appendix A	Copy of existing licence for the Windmill Inn
Appendix B	Application to vary the premises licence and attached plan
Appendix C	Operating schedule agreed between applicant, Licensing, and Avon and Somerset Constabulary.
Appendix D	Objections/representations received from members of the public.
Appendix E	Applicant position following mediation meeting
Appendix F	Responses to Notice of Hearing

Contact Officers

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