

# Somerset West and Taunton Council

## Licensing sub-committee – Wednesday 17<sup>th</sup> of August 2022

### Application for the grant 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 grant a Premises Licence under the Licensing Act 2003 for Porlock Bay Oysters/the Oyster Shed, Ship Stables, Porlock Weir, Minehead TA24 8PB.

#### 2 Recommendations

- 2.1 As a relevant representation has 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 a premises licence subject to conditions identified in the applicant's operating schedule/agreed position (modified to such extent as the authority considers appropriate for the promotion of the licensing objectives) and any appropriate mandatory conditions.
- Grant a premises licence subject to variations to the licensable activities and or timings proposed in the application, 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 premises consists of a converted stable block surrounding (on three sides) a court yard area. The stables consist of 4 units. Unit A has been converted into a kitchen area, unit B into a packing/storage area and unit C into a storage area. Unit D is the depuration unit for the oysters. Also connected to the courtyard is an old garage which has been converted into a retail space, specialising in oysters and gift boxes. The courtyard area includes a number of picnic tables for customers to sit.
- 4.2 A completed application and associated paperwork were received from applicant George Pendarves for the granting of a premises licence for Porlock Bay Oysters and this was circulated to relevant responsible authorities on 22<sup>nd</sup> June 2022. A period of 28 days consultation commenced from this date. 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 Somerset County Gazette in the 30<sup>th</sup> June 2022 edition.
- 4.3 A copy of the application can be found attached as **Appendix A**. The applicants are looking to be licensed to sell alcohol both for consumption on the premises and off the premises, between the hours 11:00-23:00 Monday to Sunday. This is to allow for the sale of alcohol with oyster gift boxes, but also to allow purchased alcohol to be consumed with food in the outdoor seating area. As per their application, the applicant notes that the Oyster Shed is intended to be open seasonally from Easter through to Autumn and also over Christmas. They intend to be closed during the winter months when there are less visitors to Porlock Weir, but would continue whole sale and off site/delivery sales through the website all-year round.
- 4.4 Following a visit to the site by the Avon & Somerset Constabulary Area Licensing Practitioner, a number of conditions were proposed to form the basis of an operating schedule/agreed position. The conditions proposed are attached as **Appendix B**.

### Representations

- 4.5 A representation against the application has been received from an interested local party within the 28-day consultation period. The content of their objection is shown in **Appendix C**. The main areas of concern are the possibility of public nuisance/disturbance to local residents/neighbours should a licence to sell alcohol for evening events be granted. This includes concerns of nuisance in the form of noise, light and smell late into the night.

### Representations from Responsible Authorities

- 4.6 No formal objections/representations were raised by responsible authorities during the 28 day consultation period.

### 4.7 Mediation

The Licensing Authority made contact with the objecting party following receipt of their representation and also made contact with the applicant to confirm the nature of the concerns raised. This gave us the opportunity to forward on assurances and measures proposed by the applicant to concerned parties, as well as inviting objecting parties to make their own suggestions on amendments to the proposed activities or propose conditions which might address their concerns.

A mediation meeting between the applicant, objecting party and Licensing Officer took place at the premises on Wednesday 27<sup>th</sup> July, with the intention of discerning if any compromise could be reached that might fully alleviate the concerns addressed.

During this mediation, the concerns of the objecting party regarding the impact of noise from the premises' outdoor seating area on the adjacent hotel were voiced and discussed at length. During these discussions, a proposal was made to potentially set a 'terminal hour' for the use of the outdoor seating area, which is directly adjacent to the Locanda on the Weir hotel. However, during the mediation meeting agreement could not be reached on what this terminal hour should be. As such, both the applicant and objecting party were invited to consider this further following the mediation and to submit proposed terminal hours to the Licensing Officer by e-mail; in the hope that a compromise might be reached on this. A copy of the e-mail sent out following the mediation (which also includes potential wording for this proposed condition) is attached as Appendix D.

At the time of writing this report, the applicant has suggested a terminal hour for licensable activities of 21:30 for the outdoor area, while the objecting party has proposed a terminal hour of 18:00 instead. As such, a compromise has not currently been reached on this matter. The objecting party has also proposed amending the licence to limit the applicant's use of the courtyard area for licensable activities to once a week, which the applicant (at the time of writing/submitting this report) has not agreed to.

#### Responses to notice of hearing

- 4.8 Notices of hearing were sent out by e-mail on 28<sup>th</sup> July 2022 to the applicant and objecting party. At the time of writing/submitting this report, mediation discussions via e-mail are still ongoing and responses to the notice of hearing regarding attendance are yet to be received from either the applicant or the objecting party. As such, any responses to the notice of hearing received between the time of writing this report and the date of hearing will be submitted separately, for members' consideration.

#### Relevant Licensing Policy considerations

- 4.9 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

- 4.10 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".
- 4.11 The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned.
- 4.12 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 Under the Licensing Act 2003, the licensing authority has a statutory requirement to ensure that licences are granted with consideration given to the four licensing objectives (public safety, protection of children from harm, prevention of crime and disorder, prevention of public nuisance).

## **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 :  Once only    Ad-hoc    Quarterly  
 Twice-yearly    Annually

### List of Appendices

Appendix A	Application to grant a premises licence for Porlock Bay Oysters
Appendix B	Agreed position/operating schedule agreed between applicant and Avon & Somerset Constabulary
Appendix C	Objection/representation received from member of the public
Appendix D	Mediation meeting follow-up e-mail and proposed condition

### Contact Officers

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