

Licensing Act 2003 – Application for a Variation to a Premises Licence

**Macmillan's Bar (formerly Stacey's Dive Bar)
3 Union Place
Worthing
BN11 1LG**

Report by the Director for Sustainability & Resources

1. Recommendation

- 1.1 That a Sub Committee of the Licensing & Control Committee considers and determines the application made on behalf of:

Mr Sam Cosgrove

for a Variation to Premises Licence [REDACTED] which authorises the Sale of Alcohol, Provision of Regulated Entertainment and Sale of Late Night Refreshment at the above venue.

2. Reasons for Hearing

- 2.1 The application has been the subject of formal representation by a responsible authority and it therefore falls to this sub-committee to determine.

3. Background

- 3.1 An application was made on behalf of Mr Cosgrove to the Licensing Authority, Worthing Borough Council, on 29 January 2024 for the grant of a variation to his premises licence at the above cafe bar.
- 3.2 Macmillan's Bar is a two storey detached building situated at 3 Union Place. It is an old domestic dwelling that had been initially converted for use as offices. It was further converted into a licensed bar & restaurant approximately 30 years ago. Situated on the northern side of Union Place it has a small raised front terrace and a small courtyard garden to the rear.

3.3 The road is a busy mixed commercial & residential street running from High Street, to the east, to Chapel Road, to the west, in Worthing town centre. The residential dwellings are limited to the Amelia House retirement complex located directly next door. Opposite is the site of the demolished old Worthing Police station. Union Place also contains a large surface car park, the old main Post Office, the Connaught Theatre and offices in Haverstock House. There are a number of commercial units, including bars and restaurants, in the wider vicinity.

3.4 Mr Sam Cosgrove became the licence holder at 3 Union Place in October 2019 though the premises has been run by members of his family since 2002.

3.5 Premises licence [REDACTED] is attached at **Appendix C**. It currently authorises the sale of alcohol for consumption on & off the premises; the provision of regulated entertainment and the sale of late night refreshment:

- Sale of Alcohol:
 - 10:00 hrs to 00:00 hrs (midnight) Sunday - Thursday
 - 10:00 hrs to 01:00 hrs (of the following morning) Friday & Saturday
- Provision of Live Music:
 - 19:00 hrs to 23:00 hrs Sunday - Saturday
- Provision of Recorded Music
 - 12:00 hrs to 00:00 hrs (midnight) Sunday
 - 10:00 hrs to 00:00 hrs (midnight) Monday - Thursday
 - 10:00 hrs to 01:00 hrs (of the following morning) Friday & Saturday
- Late Night Refreshment
 - 23:00 hrs to 00:00 hrs (midnight) Sunday - Thursday
 - 23:00 hrs to 01:00 hrs (of the following morning) Friday & Saturday
- Opening to the Public:
 - 10:00 hrs to 00:30 hrs (of the following morning) Sunday - Wednesday
 - 10:00 hrs to 01:30 hrs (of the following morning) Thursday, Friday & Saturday

3.6 Attached to the report are:

- A map & photos of the area (Appendix A)
- A plan of the venue (Appendix B)
- The current premises licence (Appendix C)
- The variation application (Appendix D)
- The representations made by a Responsible Authority (Appendix E)

4. The Application

4.1 The Application is attached at **Appendix D**. However, in summary, the application is seeking a variation to the licence to authorise:

Amendment of the existing licence to extend the following hours for licensable activity to:

- Sale of alcohol:

- 10:00 hrs to 01:00 hrs (of the following morning) Thursday
- 10:00 hrs to 02:00 hrs (of the following morning) Friday & Saturday
- 10:00 hrs to 03:00 hrs (of the following morning) Christmas Eve
- Live music:
 - 10:00 hrs to 00:30 hrs (midnight) Sunday - Wednesday
 - 10:00 hrs to 01:30 hrs (of the following morning) Thursday
 - 10:00 hrs to 02:30 hrs (of the following morning) Friday & Saturday
- Recorded music:
 - 10:00 hrs to 00:30 hrs (midnight) Sunday - Wednesday
 - 10:00 hrs to 01:30 hrs (of the following morning) Thursday
 - 10:00 hrs to 02:30 hrs (of the following morning) Friday & Saturday
 - 10:00 hrs to 03:00 hrs (of the following morning) Christmas Eve
- Late night refreshment:
 - 23:00 hrs to 01:00 hrs (of the following morning) Thursday
 - 23:00 hrs to 02:00 hrs (of the following morning) Friday & Saturday
 - 23:00 hrs to 03:00 hrs (of the following morning) Christmas Eve
- Opening to the public:
 - 10:00 hrs to 01:30 hrs (of the following morning) Thursday
 - 10:00 hrs to 02:30 hrs (of the following morning) Friday & Saturday
 - 10:00 hrs to 03:30 hrs (of the following morning) Christmas Eve

No other changes to the original timings are proposed by the application.

The application also seeks to remove the current condition of licence that states:

- Admittance of customers to be restricted to before 23:00 hrs every night

And replace with:

- No admittance after 00:00 hrs (midnight) Sunday - Wednesday
- No admittance after 01:00 hrs (of the following morning) Thursday
- No admittance after 02:00 hrs (of the following morning) Friday & Saturday
- No admittance after 02:30 hrs (of the following morning) Christmas Eve
- No admittance after 04:00 hrs (of the following morning) New Year's Eve

No other changes were proposed by the application.

- 4.2 There is a comprehensive set of conditions on the licence. The licence holder considers these to have been successful in promoting all the licensing objectives and no application is made to amend or remove any of these current conditions with the exception of those listed above.

5. Promotion of the Licensing Objectives

5.1 The Licensing Act 2003 and regulations require that the Council, as local licensing authority, carries out its functions with a view to promoting the four licensing objectives:

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

5.2 In carrying out its licensing functions, the licensing authority must also have regard to the Guidance issued by the Secretary of State and its own Statement of Licensing Policy. Members are advised that the following sections of the Worthing Borough Council's Policy may be particularly relevant to consideration of this matter, though of course the Policy in its entirety must be considered. Sections indicated relate to paragraph numbers in the Policy itself:

Prevention of Crime & Disorder

- 4.8 *The Council places huge importance on the prevention of crime and disorder. A high standard of control is, therefore, expected to be exercised over licensed premises.*
- 4.10 *In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications and this is re-emphasised by the Licensing Act 2003 itself, the Guidance issued under section 182 to the Act and this policy. The Council will give "due regard" to all possible implications and its Licensing & Control Committee will always consider all the information available and relevant representations made, including those from interested parties and the responsible authorities, particularly the Police.*
- 4.11 *In their role as a responsible authority, Sussex Police are an essential source of advice and information on the impact and potential impact of licensable activities in the borough, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and usually have good working relationships with those operating in the local area. The council recognises that Sussex Police are the licensing authority's main source of advice on matters relating to the promotion of crime and disorder, but may also be able to make relevant representations with regards to the other licensing objectives if they have evidence to support such representations. The Council will accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.*
- 4.16 *The Licensing Authority recognises that the Licensing Act is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from licensed premises. Nonetheless, it is a key aspect of such control and licensing law will always be part of a holistic approach to the management of the evening and night time economy in town centres.*

Public Safety

- 4.18 *The 2003 Act covers a wide range of premises that require licensing, including cinemas, concert halls, theatres, nightclubs, public houses, hotels, cafes/restaurants, shops and fast food outlets/takeaways.*
- 4.19 *Each of these types of premises present a mixture of risks, with many common to most premises and others unique to specific operations. It is essential that premises are constructed or adapted and operated so as to acknowledge and safeguard occupants against these risks.*
- 4.20 *The Licensing Authority also recognises that the provision of live music, discos and dancing within a premise can lead to potential flashpoints for violence and disorder. The Licensing Authority would expect all entertainment to be properly risk assessed in the Operating Schedule to ensure public safety.*
- 4.21 *Where an applicant identifies an issue in regard to public safety (including fire safety) which is not covered by existing legislation, the applicant should identify in their Operating Schedule and Fire Risk Assessment the steps, which will be taken to ensure public safety.*
- 4.22 *The Licensing Authority will expect Operating Schedules and Fire Risk Assessments to satisfactorily address these issues and new applicants are advised to seek advice, where necessary, from Council Licensing Officers and the West Sussex Fire & Rescue Service before preparing their plans and Schedules.*
- 4.23 *The Licensing Authority will consider attaching conditions to licences and permissions to promote public safety. In attaching conditions the authority will seek to avoid duplication with the requirements of other regulatory regimes, for example legislation covering health and safety at work and fire safety.*

Protection of Children from Harm

- 4.32 *While the 2003 Act does not prohibit children from having free access to any licensed premises, the Licensing Authority recognises that limitations may have to be considered where it appears necessary to protect children from harm. In particular the following are examples of situations that will raise concern where:*
- *there have been previous convictions for serving alcohol to minors or*
 - *with a reputation for underage drinking*
 - *there is a known association with drug taking or dealing*
 - *there is a strong element of gambling on the premises*
 - *entertainment of an adult or sexual nature is commonly provided*
 - *the supply of alcohol for consumption on the premises is the exclusive*
 - *or primary purpose of the services provided at the premises.*
- 4.33 *Following relevant representations the Licensing Authority will consider any of the following options when dealing with a licence application where limiting the access of children is considered necessary to prevent harm to children:*
- *Limitations on the hours when children may be present*
 - *Age limitations (below 18)*
 - *Limitations or exclusion for all or part of the premises when certain activities are taking place*
 - *Requirements for an accompanying adult*
 - *Full exclusion of people under 18 from the premises when particular licensable activities are taking place*

4.36 *Licence holders are required to consider carefully ways to ensure that the sale of alcohol is restricted to those over the age of 18. Popular schemes include the 'Challenge 25 scheme' whereby if the individual looks under 25; they are required to prove that they are over the age of 18 when buying alcohol or tobacco. Acceptable forms of proof are: a photo card driver's licence, passport or PASS. PASS is the national guarantee scheme for proof-of-age, which is fully supported by the Home Office. Applicants are encouraged to introduce such schemes and detail them in operating schedules. The council may impose conditions requiring such schemes if relevant representation is received. Special care should be exercised and the licensed trade should be alert to counterfeit IDs and their fraudulent use.*

6. Consultation

6.1 The application has been subject to the statutory consultation and statutory public advertisement arrangements in accordance with the provisions of the Act, in respect of which relevant representations were received from the following:

- Responsible Authorities
 - Sussex Police
- Other Persons
 - No representations were received from the public.

7. Relevant Representations

7.1 Detail of the relevant representation received is reproduced at **Appendix E**. It is considered to relate to the statutory licensing objectives as follows:

- Prevention of Crime & Disorder
- Public Safety
- Protection of Children from Harm

7.2 Sussex Police have made a detailed representation expressing a number of comments and concerns and have suggested a new set of licence conditions they see as appropriate to the grant of the later hours the application proposes. If the committee is of a mind to grant the application Sussex Police suggested a complete overhaul of the conditions of licence particularly regarding the provision of SIA security staff to ensure the venue promotes the licensing objectives.

7.3 The applicant and the responsible authority have been formally notified of this hearing and invited to attend.

8. Mediation

8.1 The Licensing Act 2003 encourages mediation.

8.2 The applicant was invited to mediate with Sussex Police.

8.3 The applicant and Sussex Police have been in mediation but have failed to reach agreement.

9. Consideration

- 9.1 Members must take into consideration the following when determining this application:
- The four statutory licensing objectives
 - Worthing Borough Council's Statement of Licensing Policy
 - Guidance issued by the Home Secretary
 - The relevant representations from all parties and any mediated agreements reached.
- 9.2 These are the only matters to be addressed by the authority when considering this application. The statutory Licensing Objectives are the only grounds on which representations can be made, and the only grounds on which an authority will be able to refuse an application or impose conditions in addition to statutory conditions and those proposed by the applicant in the Operating Schedule.
- 9.3 When considering this application for a variation, pursuant to s 35 of the Act the following options available to the Sub-Committee:
- A. To grant the variation, as requested,
 - B. To grant the variation as requested but with additional conditions appropriate to the promotion of the specific licensing objectives on which relevant representations have been received.
 - C. Reject the whole or part of the application.
- 9.4 Members are required to give reasons for their decision.

10. Legal Implications

- 10.1 Under Section 181 and Schedule 5 of the Act, the following rights of appeal to the Magistrates' Court in respect of applications for a premises licence includes:
- A. The applicant may appeal against any decision to modify the conditions of the licence.
 - B. The applicant may appeal against a rejection in whole or part of an application.
 - C. A person who has made relevant representations may appeal against a licence being granted, or against the modification or lack of modification of any conditions.
- 10.2 The Act allows for the local licensing authority to undertake a review following the grant of a premises licence, when requested to do so by a responsible authority, such as the police or the fire authority, or any other party, such as a resident living in the vicinity of the premises. The government's guidance states:

"The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with licensing objectives are occurring after the grant or variation of a premises licence.

At any stage, following the grant of a premises licence, a responsible authority, or any other person, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.

- 10.3 In determining this application, the principles of the Human Rights Act 1998 must be taken into consideration and the convention rights of both individuals and businesses will be given due weight.
- 10.4 Members must consider each application on its own merits, and in accordance with the principles of natural justice, as well as the provisions of the Licensing Act 2003. All relevant factors must be taken into account, and all irrelevant factors must be disregarded.
- 10.5 All applications, before the Committee, must be considered against the backdrop of anti-discriminatory legislation, such as the Equality Act 2010 and also in accordance with the Council's stated policy on Equal Opportunities.
- 10.6 In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications and this is re-emphasised by the Licensing Act 2003 itself. In giving "due regard" to these possible implications members will consider and weigh up all the information available and representations made, including those from interested parties and the responsible authorities particularly the Police.

11. Other Implications

- 11.1 Any decision taken will have regard for the local environment and, in particular, any conditions attached for the purposes of preventing public nuisance will take this principle into account. There are no significant direct race relations or equal opportunity implications that have been identified.

12. Recommendation

- 12.1 Members are requested to determine the application for a Variation to the Premises Licence at the 'Macmillan's Bar' situated at 3 Union Place, Worthing made on behalf of Mr Sam Cosgrove and give reasons for that determination.**

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Background Papers:

- Licensing Act 2003
 - <https://www.legislation.gov.uk/ukpga/2003/17/contents>
- Guidance issued under section 182 of the Licensing Act 2003
 - https://assets.publishing.service.gov.uk/media/65a8f578ed27ca00d27b1f9/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_-_December_2023.pdf
- Worthing Borough Council's Statement of Licensing Policy
 - <https://www.adur-worthing.gov.uk/licensing-and-permits/consultations-policy-forum/policy-and-forum/#policy>

Appendices:

- Appendix A - Map & photos of the area.
- Appendix B - Plan of the building.
- Appendix C - Current Premises Licence
- Appendix D - The Variation Application Form.
- Appendix E - Representations received from the Responsible Authorities

Town Hall, Worthing

Ref: SJ/LicU/LA03/VAR – Macmillan's Bar

Date: 01 March 2024