

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

**Number 24
24-25 Marine Parade, Worthing, BN11 3PT**

Report by the Interim Director for Communities

1. Recommendation

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

Moocari Ltd.

for a Variation to Premises Licence LN/100001343 which authorises the sale of Alcohol at the above venue.

2. Reasons for Hearing

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

3. Background

- 3.1 An application was made on behalf of Moocari Ltd. to the Licensing Authority, Worthing Borough Council, on 20 July 2021 for the grant of a variation to the premises licence.
- 3.2 Number 24 is a café with forecourt occupying a corner terrace unit situated on Worthing’s main seafront road, Marine Parade, in central Worthing. The unit has been operated as a cafe for over 60 years and was formerly known as Macari’s.
- 3.3 This part of Marine Parade contains a parade of businesses running along the north side of the road with the promenade on the south side. The area is considered a mixed commercial & residential because there are flats above many of the businesses.

3.4 Situated in this parade of businesses are a number of licensed bars & cafes, various stores, restaurants, the entrance to the main bus depot, the Chatsworth Hotel and the Dome Cinema. As stated some of these commercial units have residential accommodation above and some benefit from having open air forecourts or a deep pavement to the front of the building to place tables & chairs for customer use.

3.5 Attached to the report are:

- A plan & photos of the area (Appendix A)
- A plan of the bar (Appendix B)
- The current premises licence (Appendix C)
- The application (Appendix D)
- Representations made by the Responsible Authorities (Appendix E)
- Details of the mediation conducted (Appendix F)

3.6 The current Premises Licence is attached at **Appendix C** and allows the:

- Sale of alcohol for consumption on & off the premises between the hours of:
 - 12:00hrs to 22:30hrs Sunday
 - 10:00hrs to 23:00hrs Monday - Saturday
- Opening hours
 - Undefined as this is a converted Justices' Liquor Licence.

3.7 The application is for a variation to the Premises Licence to extend the hours of operation and authorise the provision of late night refreshment.

4. **The Application**

4.1 The Application is attached at **Appendix D**. However, in summary, the application is seeking authorisation to:

- Extend the hours for:
 - Sale of Alcohol for consumption on & off the premises to:
 - 10:00hrs to 00:00hrs (midnight) Mon – Sun incl.
 - Opening to the Public:
 - 10:00hrs to 00:30hrs (of the following morning) Mon – Sun incl.
- Authorise the provision of late night refreshment:
 - 23:00hrs to 00:00hrs (midnight) Mon – Sun incl.

4.2 Being a converted Justices' licence there are only a few conditions present on the current licence in addition to the Mandatory Conditions placed on all licences. The licence holders consider 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. In addition, to bring the licence up to date a number of additional conditions have been proposed by the licence holder covering refusal logs and an age verification policy.

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.*

Prevention of Public Nuisance

- 4.24 *Licensed premises, especially those operating late at night and in the early hours of the morning, can cause a range of disturbances impacting upon people living, working or sleeping in the vicinity of the premises or wider afield.*
- 4.25 *Noise disturbance can arise from entertainment or activities held within licensed premises and also from people or motor vehicles outside licensed premises. The Council will expect Operating Schedules to address these issues. Advice and guidance can be obtained from Licensing Officers or the Council's Environmental Protection Team. If representations are received the Council may utilise appropriate conditions to control noise disturbance and the use of such conditions will depend upon the activities/entertainment/hours of operation proposed; the nature of the locality; and existing background noise levels and ambient noise levels. Noise control conditions may include the satisfactory sound insulation of licensed premises; compliance with maximum noise levels; and limiting hours of operation.*
- 4.26 *When addressing public nuisance the applicant should initially identify any particular issues (having regard to their particular type/construction of their premises, proposed activities and nature of locality) which are likely to adversely affect the promotion of the objective to prevent public nuisance. Such steps as are required to deal with these identified issues should be included within the applicant's Operating Schedule.*
- 4.27 *Anti-social behaviour such as excessive noise from access and egress or patrons littering should also be addressed in the Operating Schedule.*

DEMAND, SATURATION & HOURS

- 6.4 *Consideration will be given to imposing stricter conditions in respect of noise control where premises are situated in mainly residential areas. This will particularly apply in circumstances where, having regard to the location, size and nature of the licensed premises, it is likely that disturbance will be caused to residents in the vicinity of the premises, or its environs, by concentrations of people either present or leaving during normal night-time sleeping periods (23.00hrs to 07.00hrs).*

SPECIFIC CONSIDERATIONS

Alcohol – On & Off Sales

- 7.1 *It is now a mandatory condition that all licence holders selling alcohol put in place an age verification policy for the premises. In some circumstances the Licensing Authority will impose, where necessary to promote the Licensing Objectives, implicit conditions on the checking of the age of those who appear under 21 or 25 to ensure that alcohol is not sold to those under 18 years of age.*
- 7.2 *Licence holders need to have sufficient day to day control of operations at their premises. They will be held responsible for breaches of the licence and ensuring there is adequate staffing and training. The authorities will continue to use young people for the 'test purchasing' of alcohol and CCTV evidence, which has proved its usefulness in prosecutions for unlawful sales of alcohol. The likely consequences of a Review of licence for underage sales include the imposition of additional conditions such as the attendance of a personal licence holder, licence suspensions and in some cases revocation to act as deterrence.*

Alcohol

Public Houses and Bars – On Sales

- 7.14 *Worthing contains a wide variety of pubs and bars that contribute to the town's appeal and its character. They provide food and refreshment for residents and for people working in and visiting the borough. They also provide venues for live music which, aside from its cultural benefits and its enjoyment by customers, often has a positive effect on licensing objectives. However, premises that primarily serve alcohol, with or without the provision of any ancillary playing of music, can give rise to public nuisance for residents and other businesses, particularly where there is a concentration of such premises. This is principally due to noise from the premises and from patrons when they leave. In addition pubs and bars present opportunities for crime and they can also give rise to disorder.*
- 7.15 *The Licensing Act 2003 details a number of mandatory conditions where a licence authorises the supply of alcohol: these cover: a Designated Premises Supervisor for the premises who holds a Personal Licence whenever alcohol is sold, sales of alcohol to be authorised by a personal licence holder, no irresponsible alcoholic drink promotions, free tap water to be available, set measures for the sale of alcohol and age verification measures.*
- 7.16 *The Licensing Authority regards these as the minimum required and will expect applicants to have regard to additional measures appropriate for their premise, area and character of business to demonstrate his/her promotion of the Licensing Objectives. If the proposals are inadequate and representation has been received the council may impose conditions as it deems appropriate or even refuse an application.*

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 - 2 X Representations
 - Sussex Police
 - A&W Environmental Protection Team
 - Other Persons
 - None

7. Relevant Representations

- 7.1 Detail of the relevant representations received are reproduced at **Appendix E**. They are considered to relate to the statutory licensing objectives as follows:
- Prevention of Crime & Disorder
 - Prevention of Public Nuisance
 - The Protection of Children from Harm
- 7.2 Sussex Police made a number of comments and listed a number of conditions that they consider required to enable this premise to meet the licensing objectives if members were of a mind to grant the variation.

- 7.3 Adur & Worthing Councils' Environmental Protection Team expressed some concerns regarding the application as made.
- 7.4 The applicant and the responsible authorities have been formally notified of this hearing and invited to attend.

8. Mediation

- 8.1 The Licensing Act 2003 encourages mediation.
- 8.2 Sussex Police sought some conditions to address the licensing objectives and these have now been successfully mediated with the applicant. The Licence holders agreeing that if the variation were granted the following conditions would be placed on the licence as enforceable conditions of licence in addition to those included in his operating schedule:

- *Digital CCTV and appropriate recording equipment to be installed in accordance with Home Office Guidelines relating to UK Police Requirements for Digital CCTV System (PSDB Publication Number 09/05), operated and maintained throughout the premises internally and externally to cover all public areas including the entrance to the premises and the licensed area/outside patio tables and chairs area. The system shall be on and recording at all times the premises licence is in operation.*
 - *The CCTV cameras and recording equipment must be of sufficient quality to work in all lighting levels inside and outside the premises at all times.*
 - *CCTV footage will be stored for a minimum of 31 days.*
 - *The management will give full and immediate cooperation and technical assistance to the Police in the event that CCTV footage is required for the prevention and detection of suspected or alleged crime.*
 - *The CCTV images will record and display dates and times, and these times will be checked regularly to ensure their accuracy.*
 - *Subject to GDPR guidance and legislation, the management of the premises will ensure that key staff are fully trained in the operation of the CCTV, and will be able to download selected footage onto a disk (or other electronic portable device acceptable to Sussex Police) for the police without difficulty or delay and without charge to Sussex Police.*
 - *Any breakdown or system failure will be notified to the police immediately & remedied as soon as practicable.*
 - *In the event of the CCTV system hard drive being seized as evidence as part of a criminal investigation by Sussex Police or for any other reason, the premises will be expected to install a replacement hard drive or a temporary replacement drive as soon as practicable.*
- *An incident log will be maintained by the premises showing a detailed note of incidents that occur in the premises and any refusals of alcohol. The incident log will be inspected and signed off by the DPS (or a person with delegated authority) at least once a month. The log book should be kept on the premises and be available for inspection at all times the premises are open by*

officers of any responsible authority. An incident will be defined as being one which involves an allegation of a criminal offence.

- *Patrons will not be permitted to take drinks in open containers to consume outside on the pavement/public highway beyond the licensed outside tables and chairs area of the premises whilst smoking or otherwise congregating outside of the premises.*
- *All off sales will be made in sealed containers.*
- *SIA door staff and risk assessment:*
 - *Security Industry Authority (SIA) door supervisors must be deployed at the premises at any time when the licence holder identifies by way of a suitable and sufficient written risk assessment that SIA door supervisors and other security measures are necessary. It must also consider busy periods such as Bank Holidays, Christmas and New Year, Seasonal Variations and other Town Centre Events along with any special events at the premises such as live music, discos, screening of sporting events and other similar functions or entertainment. The risk assessment will also cover any requirement for polycarbonate drinking vessels, ticket only events, entry restrictions and last entry times.*
 - *The written risk assessment must be available on the premises for inspection by police and authorised officers of the Licensing Authority. This written risk assessment is to be reviewed and updated as necessary and at least annually and must take into account information or guidance offered by the police and the licensing authority.*
 - *Whenever SIA door supervisors are on duty, they must be provided in accordance with the following:*
 - *At a ratio of 1 per 100 customers or part thereof, although at all times with a minimum of two;*
 - *On duty until the premises has closed to the public, licensable activities has ceased and the venue is completely clear of patrons and all customers have dispersed from the immediate area;*
 - *Must wear clearly marked reflective jacket or tabard in order that they can be readily identifiable;*
 - *Must be equipped with clickers or other device(s) in order that they can accurately measure and ensure that the maximum capacity of the premises is complied with a written record being kept; and*
 - *Must monitor/supervise any queue of customers waiting to gain access to the premises and ensure that so long as social distancing requirements are in place, that these are complied with both inside and outside the premises.*
 - *SIA door supervisors shall complete incident logs prior to the end of their shift. Records shall be maintained at the premises containing the full name, date of birth, and SIA badge number of every Door Supervisor. The record shall include all dates and times when a Door Supervisor is employed. If Staff are employed through an agency the name and address of the agency must be included. The Door*

Supervisor records will be kept at the premises and made immediately available to officers of any responsible authority upon request.

- *Those performing the role of door supervisor shall not perform any other role when engaged for the purpose of door supervision activities.*
- *Door supervisors shall be fully briefed prior to work with clear written instructions regarding their specific duties including an awareness of persons banned from the premises. These records shall be made available to the local licensing authority and/or Sussex Police upon request.*
- *A member of the SIA door staff will monitor the outside smoking area whilst the premises licence is in operation or until the area has been emptied of patrons at closing time.*
- *All SIA registered door supervisors shall wear and operate body worn video cameras with a recording facility. The body worn cameras will be recording all the time the door supervisors are on duty. All recordings shall be stored for a minimum period of 31 days, with date and timestamping. Viewing of recordings shall be made available upon the request of police, or authorised local authority officers, throughout the entire 31 days period. The premises will ensure there are sufficient spare batteries fully charged for the body worn cameras so there is no issue with cameras not recording due to flat batteries.*
- *The premises will operate a “Challenge 25” policy whereby any person attempting to buy alcohol who appears to be under 25 will be asked for photographic ID to prove their age. The recommended forms of ID that will be accepted are passports, driving licenses with a photograph, photographic military ID or proof of age cards bearing the “PASS” mark hologram.*
- *Suitable and sufficient signage advertising the “Challenge 25” policy will be displayed in prominent locations in the premises.*
- *The Premises Licence Holder shall ensure that all staff members engaged, or to be engaged, in selling alcohol at the premises shall receive the following induction training. This training will take place prior to the selling of such products:*
 - *The lawful selling of age restricted products*
 - *Refusing the sale of alcohol to a person who is drunk*
- *Further verbal reinforcement/refresher training covering the above will be carried out thereafter at intervals not to exceed three months, with the date and time of the verbal reinforcement/refresher training documented.*
- *All such training undertaken by staff members shall be fully documented and recorded and signed and dated by both the employee and the DPS. All training records shall be kept on the premises and made available to officers of any responsible authority upon request.*
- *Conditions for alcohol delivery service:*
 - *Alcohol deliveries will only be made to a residential or business address and not to a public place.*
 - *The age verification policy (including challenge 25) shall clearly be advertised at each stage of the order and on all advertising. All forms of advertising and promotional literature detailing the delivery service (including internet sites and flyers/leaflets) will clearly state that alcohol should only be purchased for delivery to intended recipients*

(or persons who will accept delivery on behalf of the named recipient) who are aged over 18. Customers will be reminded that it is a criminal offence for a person under 18 to purchase or attempt to purchase alcohol and that it is also an offence to purchase alcohol on behalf of a person aged under 18.

- *At the time the order is placed a declaration will be required from the person placing the order that that person is aged over 18 years of age, and that the intended recipient is over 18 years of age. This process will be documented, (tick box before proceeding, record of verbal acknowledgement or similar). These records must be retained for no less than twelve months and produced on request to an officer of a Responsible Authority.*
- *For deliveries where the alcohol is delivered by a third party, the alcohol is concealed in a secure sealed package, and the DPS has no direct supervision or control over the delivery (such as an independent courier or Royal Mail), there cannot be an age verification challenge on delivery, but the above conditions will be followed.*
- *For deliveries made directly by the DPS or their employees, staff or agent or persons instructed by the DPS/PLH, the person accepting the delivery must be aged 18 years or over. Where the person accepting delivery appears to be under 25, a recognised photographic ID must be produced prior to delivery. No ID, no delivery.*
- *Where the premises contracts a third party to deliver alcohol on their behalf and the person collecting the alcohol from the premises delivers it directly to the customer within a short timescale (such as Deliveroo, Just Eats), the premises will ensure that the third party:*
 - *only employs delivery employees or agents aged 18 or over;*
 - *is aware that alcohol is included in the delivery;*
 - *that the delivery person actively engages with the person receiving delivery and operates a challenge 25 policy rather than just handing the delivery over;*
 - *that in the event that the recipient of the alcohol is challenged for ID and does not provide appropriate and valid ID, the delivery person will retain the alcohol and return it to the premises.*

As a result Sussex Police have withdrawn their objections.

- 8.3 The Environmental Protection Team expressed concern regarding the public nuisance implications of the changes sought.

As the application requests opening beyond 23:00 hours, when background noise is relatively low and residents would reasonably expect to sleep, the operating schedule for the prevention of public nuisance (Part M (d)) must robustly address the potential for noise from recorded music and patrons and more importantly provide adequate safeguards to ensure noise does not cause a public nuisance. I do not consider the proposed measures in the application to be clarified or sufficient for this purpose.

8.4 Mediation between the applicant and the Environmental Protection Team has been ongoing but to date no agreement has been reached. Members will be informed if there are any developments. **(Appendix F)**

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 agreement 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 ‘Number 24’ café situated at 24-25 Marine Parade, Worthing made by Moocari Ltd. and give reasons for that determination.**

Interim Director for Communities

Tina Favier

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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://www.gov.uk/government/publications/licensing-act-2003-amended-guidance-issued-under-section-182>
- Worthing Borough Council's Statement of Licensing Policy
 - <http://www.adur-worthing.gov.uk/licensing-and-permits/consultations-policy-forum/policy-and-forum/>

Appendices:

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

Portland House, Worthing

Ref: SJ/LicU/LA03/VAR – Number 24

Date: 25 August 2021