

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

**Manuka Bar & Kitchen  
9 Portland Square, Worthing, BN11 1QH**

**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 :

**Manuka Bar & Kitchen Ltd.**

for a Variation to Premises Licence LN/201700412 which authorises the sale of Alcohol & 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 members of the public and it therefore falls to this sub-committee to determine.

**3. Background**

- 3.1 An application was made on behalf of Manuka Bar & Kitchen Ltd. to the Licensing Authority, Worthing Borough Council, on 23 July 2021 for the grant of a variation to the premises licence.
- 3.2 The cafe - bar is situated on the corner of Portland Square and Portland Road near the junction of Portland Road and Shelley Road in a parade of shops on the edge of the town centre’s main commercial area but with some residential premises in the vicinity to the north in Shelley Road and to the south in Chandos Road. There are also some residential flats above some of the commercial properties in the southern section of Portland Road.

- 3.3 Portland Road is currently part of a comprehensive redevelopment programme that will ultimately mean the whole of the southern section south of Shelley Road will be pedestrianised.
- 3.4 Situated in this parade of businesses in the southern section of Portland Road are a number of licensed bars, restaurants, cafes, coffee shops and various stores.
- 3.5 The venue is located on the first floor with an exterior staircase and balcony area. The unit has been utilised as a licensed premises for many years in various guises - public house, restaurant and licensed café. It has been operated by the current licence holders as Manuka Bar & Kitchen since October 2017.
- 3.6 Since July 2020 the Premises has benefitted from a temporary permission to use a section of the pavement in Portland Square to place table & chairs for the use of their customers to consume food & drink. This temporary permission was sought and approved through the Minor Variation process and allowed this business to operate viably during the Covid restrictions.
- 3.7 The current premises licence does not authorise regulated entertainment but the premises has been able to provide recorded music and live music within the venue as a result of the Deregulation Act 2012 which allows premises licensed for the sale of alcohol, for consumption on the premises, to provide both between 08:00hrs and 23:00hrs.
- 3.8 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)
  - The Representation made by the Responsible Authority (Appendix E)
  - Details of the mediation conducted (Appendix F)
  - The representations received from the public (Appendix G)
- 3.9 The current Premises Licence is attached at **Appendix C** and authorises:
- Sale of alcohol for consumption on & off the premises:
    - 10:00hrs to 00:00hrs (midnight) Sunday - Thursday
    - 10:00hrs to 01:00hrs (of the following morning) Friday & Saturday
  - The provision of late night refreshment:
    - 23:00hrs to 00:00hrs (midnight) Sunday - Thursday
    - 23:00hrs to 01:00hrs (of the following morning) Friday & Saturday
  - Opening hours:
    - 07:00hrs to 00:30hrs (midnight) Sunday - Thursday
    - 07:00hrs to 01:30hrs (of the following morning) Friday & Saturday

#### 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:

- An extension of the hours for:
  - Sale of Alcohol for consumption on & off the premises to:
    - 10:00hrs to 01:30hrs (of the following morning) Mon – Sun incl.
  - Late Night Refreshment:
    - 23:00hrs to 01:30hrs (of the following morning) Mon – Sun incl.
  - Opening to the Public:
    - 10:00hrs to 02:00hrs (of the following morning) Mon – Sun incl.
  - Christmas Eve & New Year’s Eve
    - Extend the terminal hour for all licensable activity until 02:00hrs (of the following morning).
- Authorise the provision of recorded music indoors:
  - 12:00hrs to 01:30hrs (of the following morning) Sun - Thurs.
  - 12:00hrs to 01:40hrs (of the following morning) Fri & Sat.
- Amend the condition of licence that temporarily allowed the premises to place tables & chairs in a designated area of the pavement into a permanent permission and extend the closing time of that area from 22:30hrs to 23:00hrs Monday - Sunday incl.

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 except to:

- Amend the condition of licence that temporarily allowed the premises to place tables and chairs in a designated area of pavement into a permanent permission and extend the closing time of the area from 22:30hrs to 23:00hrs.
- Amend the condition that limits last entry to the premises from 00:00hrs (midnight) to 01:00hrs of the following morning.

## 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 - 1 X Representations
  - A&W Environmental Protection Team
- Other Persons
  - 10 letters of representation received from the public.

## 7. Relevant Representations

7.1 Detail of the relevant representations received are reproduced at **Appendix E & G**. They are considered to relate to the statutory licensing objectives as follows:

- Prevention of Crime & Disorder
- Prevention of Public Nuisance

7.2 Adur & Worthing Councils' Environmental Protection Team 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 Ten representations were received from the public which have expressed concerns regarding possible crime & disorder, anti-social behaviour and public nuisance implications that can be associated with alcohol sales and entertainment. Some of the information included in some of the representations is regarded as not relevant to a licensing application and consequently should not be considered. However, the representations have been reproduced in their entirety and it is for members to carefully decide how much weight, if any, should be attached to some of the information included.

7.4 The applicant, the responsible authority and members of the public that made representation have been formally notified of this hearing and invited to attend.

## 8. Mediation

8.1 The Licensing Act 2003 encourages mediation.

8.2 The A&W Environmental Protection Team 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 already in place on the licence:

1. *The use shall not commence unless and until a noise assessment is undertaken and a scheme for controlling noise emissions from the proposed extension of use on surrounding residential dwellings has been completed and submitted to the Public Health and Regulation Department. The scheme shall be designed to achieve a noise rating curve of NR15 within bedrooms. A*

*test to demonstrate compliance with the scheme shall be undertaken prior to the use commencing.*

2. *Prior to the use commencing a Noise Management Plan shall be submitted to and approved in writing with the Public Health and Regulation Team detailing the main sources of noise and methods of controlling them. It should include agreed recommendations drawn from the Noise Assessment and shall set appropriate maximum noise levels inside the building. Thereafter, the premises shall only be occupied in accordance with the approved Plan. The Noise Management Plan should also include:
  - a. *Monitoring of all noise sources with intervention when necessary*
  - b. *A general incident log is to be kept which should include noise.*
  - c. *Any noise complaints should be investigated and the Management Plan reviewed and updated if necessary.*
  - d. *Bottles and waste to be disposed of between 09:00 and 20:00 on any day.*
  - e. *Deliveries shall only be made between the hours of 09.00 and 20.00 on any day.**
3. *All external seating is either brought into the unit or made inaccessible to the public after 23:00hrs.*
4. *No drinks permitted to be taken outside after 23:00hrs*
5. *All doors and windows to be closed from 20:00hrs.*
6. *The balcony doors to be closed from 20:00 hrs each evening and an auto-shut door system fitted (and maintained) to make sure the doors remain closed during the evenings.*
7. *There will be no smoking on the balcony at any time and it will be locked and the public will have no access after 23:00hrs.*

As a result the Environmental Protection Team has withdrawn its objections.

#### **(Appendix F)**

- 8.4 No information regarding mediation between the applicant and the members of the public that made representation has been provided to date. Members will be informed if there are any developments.

### **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 the 'Manuka Bar & Kitchen' café-bar situated at 9 Portland Square, Worthing made by Manuka Bar & Kitchen Ltd. and give reasons for that determination.**

**Interim Director for Communities**

**Tina Favier**

### **Principal Author and Contact Officer:**

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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
- Appendix G - Representations received from the public

Portland House, Worthing

Ref: SJ/LicU/LA03/VAR – Manuka

Date: 2 Sept. 2021