



Agenda

Meeting: **Licensing Sub-Committee**
Date: **10 September 2018**
Time: **10.00 am**
Place: **Council Chamber - Civic Centre Folkestone**

To: **To all members of the Licensing Sub Committee – Councillors Lyons, Tillson and Ms Govett**

The sub-committee will consider the matters listed below at the date, time and place shown above. The meeting will be open to the press and public.

Members of the sub-committee who wish to have information on any matter arising on the Agenda which is not fully covered in these papers are requested to give notice prior to the meeting to the Chairman or appropriate officer.

This meeting will be webcast live to the council's website at <https://folkestone-hythe.public-i.tv/core/portal/home>. Although unlikely, no guarantee can be made that Members of the public in attendance will not appear in the webcast footage. It is therefore recommended that anyone with an objection to being filmed does not enter the council chamber.

1. **Election of Chairman for the meeting**
2. **Apologies of absence**
3. **Declarations of interest**

Members of the Council should declare any interests which fall under the following categories*:

- a) disclosable pecuniary interests (DPI)
- b) other significant interests (OSI)
- c) voluntary announcements of other interests

Queries about the agenda? Need a different format?

Contact Committee Services – Tel: 01303 853369/853267
Email: committee@folkestone-hythe.gov.uk or download from our
website
www.folkestone-hythe.gov.uk

4. Declarations of lobbying

Members should complete the enclosed yellow form and return it to the Committee Administrator at the meeting.

5. Reconsideration of a condition on the Premises Licence for The Swan Hotel, 59 High Street, Hythe, CT21 5AD (Pages 3 - 10)

Report DCL18/19 sets out the facts for the Licensing Committee to consider following a Review of a premise licence, at which conditions were added to the licence. The licensing committee is the Licensing Authority acting in a role previously taken by the Magistrates Court. It is, therefore, not appropriate for officers to make additional comments other than in the capacity as a Responsible Authority under the legislation of the Licensing Act 2003. Therefore there are no comments from Legal, Finance or other officers included in this report

6. Exclusion of the public

To exclude the public for the following item of business on the grounds that it is likely to disclose exempt information, as defined in paragraph 2 of Part 1 of Schedule 12A to the Local Government Act 1972 –

‘Information which is likely to reveal the identity of an individual.’

Part 2 – Exempt Information Item

7. Review of a Hackney Carriage Driver's Licence (Pages 11 - 18)

Report DCL/18/18 considers whether any action should be taken against a Hackney Carriage Driver's Licence.

*Explanations as to different levels of interest

(a) A member with a discloseable pecuniary interest (DPI) must declare the nature as well as the existence of any such interest and the agenda item(s) to which it relates must be stated. A member who declares a DPI in relation to any item must leave the meeting for that item (unless a relevant dispensation has been granted).

(b) A member with an other significant interest (OSI) under the local code of conduct relating to items on this agenda must declare the nature as well as the existence of any such interest and the agenda item(s) to which it relates must be stated. A member who declares an OSI in relation to any item will need to remove him/herself to the public gallery before the debate and not vote on that item (unless a relevant dispensation has been granted). However, prior to leaving, the member may address the meeting in the same way that a member of the public may do so.

(c) Members may make voluntary announcements of other interests which are not required to be disclosed under (a) and (b). These are announcements made for transparency reasons alone, such as:

- membership of outside bodies that have made representations on agenda items, or
- where a member knows a person involved, but does not have a close association with that person, or
- where an item would affect the well-being of a member, relative, close associate, employer, etc. but not his/her financial position.

Voluntary announcements do not prevent the member from participating or voting on the relevant item

This report will be made public on 31 August 2018



Report Number: **DCL/18/19**

To: Licensing Sub-Committee
Date: 10 September 2018
Status: Non-Executive Decision
Head of service: Andrew Rush

SUBJECT: Hearing to reconsider a condition on the Premises Licence for:
The Swan Hotel, 59 High Street, Hythe, CT21 5AD

SUMMARY: This report sets out the facts for the Licensing Committee to consider following a Review of a premise licence, at which conditions were added to the licence. The licensing committee is the Licensing Authority acting in a role previously taken by the Magistrates Court. It is, therefore, not appropriate for officers to make additional comments other than in the capacity as a Responsible Authority under the legislation of the Licensing Act 2003. Therefore there are no comments from Legal, Finance or other officers included in this report

REASONS FOR DETERMINATION:

The Committee is asked to reconsider the conditions on the Premise Licence as at a recent Review it was felt by the Licence Holder that one of the conditions was unreasonable and disproportionate. When considering the conditions the Committee must ensure they fully promote the licensing objectives. The Committee is obliged to have regard to the revised national section 182 guidance and the council's own licensing policy.

DETERMINATION:

The Licensing Sub-Committee is asked to:

- 1. Note the contents of Report DCL/18/19.**
- 2. Determine whether condition 13 set on the Premise Licence is proportionate and reasonable or whether it should be amended or removed.**

1. BACKGROUND

- 1.1 The Licensing Act 2003 provides that the sale or supply of alcohol on and off the premises and other licensable activities must be authorised by a premises licence.

A premises licence holder must comply with the four licensing objectives:

- The prevention of crime and disorder
 - Public Safety
 - The prevention of public nuisance
 - The protection of children from harm
- 1.2 The Swan Hotel is a premises situated in High Street, Hythe. The High Street is a mainly commercial area with a mix of public houses, retail premises and other commercial premises. There is a limited amount of residential use of the accommodation over the retail premises. The Swan Hotel is an established licensed premises operating as a public house, restaurant and hotel. Following a number of issues at the Swan Hotel a Review was called by Kent Police on 19th June 2018 and new conditions were added to the Premises Licence. The Notice of Determination from the Review, showing the conditions set, is shown in Appendix 1.

2. CURRENT SITUATION

- 2.1 Following the Review the Licence Holder, Mr Patel, expressed his concern that condition 13, regarding having an SIA member of door staff at the premises every day of the week from 6pm until closing, was disproportionate to the issues that the Police had highlighted and was not recommended by the Police as a necessary condition. Mr Patel explained that it would be extremely costly to hire a member of door staff every night of the week and it could negatively impact his business.

13. SIA accredited and qualified door staff to be employed from 6pm until closing every day.

- 2.2 Mr Patel subsequently lodged an Appeal with the Magistrates Court stating that he felt this condition was unreasonable. Mr Patel's solicitor said that they would be willing to discuss the condition further at a Hearing which Councillors agreed to.
- 2.3 Licensing Officers have visited The Swan Hotel on several occasions since the Review, at different times of day and night. On each occasion they found the premises to be well-managed, quiet and calm, a noticeable difference from before the Review. Mr Patel has changed some of the bar staff which appears to have had a positive effect on the premises, he has also worked hard to ensure the other conditions placed on the licence at the Review are being met. CCTV is in place and staff have been trained to use it, staff have been trained in responsible alcohol retailing and Challenge 25.

3. OPTIONS

- 3.1 The Licensing Sub-Committee has the following options:
- a) Leave condition 13 unchanged
 - b) Modify condition 13
 - c) Remove condition 13
- 3.2 The Committee must ensure that condition 13, if kept, promotes the 4 Licensing Objectives and is proportionate and reasonable.
- 3.3 Condition 13, if left or modified, made still be appealed by Mr Patel through the Magistrates Court.
- 3.4 The Premises Licence can be brought in front of the Committee again in the future if it is felt that the conditions are not being met, or if it is felt that Mr Patel is not managing the premises satisfactorily.

4. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting:

Briony Williamson, Senior Licensing Officer
Telephone: 01303 853475
Email: briony.williamson@folkestone-hythe.gov.uk

Background documents:

Current Licensing Policy is available here:

https://www.folkestone-hythe.gov.uk/media/4022/Licensing-Policy-Statement-2016-2021/pdf/Shepway_District_Council_-_Licensing_Policy_Statement_2016-2021.pdf

The Home Secretary has issued Guidance under Section 182 of the Licensing Act 2003. This is available at:

<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

The Committee members are advised to read the new guidance thoroughly. Your attention is drawn to paragraphs 9.42, 9.43 and 9.44 in respect of the determination of the application. Additionally members are advised to refer to section 10 about imposing conditions and section 11 about reviews. It is also good practice that if they propose to apply conditions they should be discussed with the applicant prior to the determination to ensure that they are proportionate.

5. APPENDICES

Appendix 1. Notice of Determination for the Review of The Swan Hotel held on 19 June 2018.

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**LICENSING ACT 2003
LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005**

NOTICE OF DETERMINATION

The Swan Hotel, 59 High Street, Hythe, CT21 5AD

Date(s) of Hearing:	19 June 2018
Date of Determination:	19 June 2018
Sub-Committee	Councillors Michael Lyons (Chair), Ms Susie Govett and Russell Tillson
Officers in attendance:	Arthur Atkins (Environmental Health and Licensing Manager), Lisa Farrell (Licensing and Compliance Officer), David Kelly (Legal Services Manager), Sue Lewis (Committee Services Officer) Briony Williamson (Licensing Officer and Olivia McDonagh (Support Assistant)

This was an application for a Review of a Premise Licence in respect of The Swan Hotel, 59 High Street, Hythe, CT21 5AD.

Reason for hearing: to determine the Review called by the Police as a Responsible Authority and to consider representations received from other interested parties.

The Licensing Sub-Committee heard evidence from PC Chris Stephens on behalf of the Police, Lisa Farrell, Licensing Officer, on behalf of the Licensing Authority and Mr Mihirbhai Patel, Licence Holder, responded.

Decision:

The Committee have agreed the following conditions to be added to the operating schedule -

1. The premises to close each day half an hour after the last time for the sale of alcohol, therefore 23.30hrs Monday to Saturday and 23.00hrs Sunday.
2. A Personal Licence Holder will be employed and will be present on the premises all hours that the premises are open for licensable activities.
3. (i) CCTV to be fitted to a standard agreed to by the Police that complies with the current CCTV Code of Practice produced by the Information Commissioners Office, with all public areas, including all access and egress points covered. This is also to include any exit doors, alleyways or any other areas used for ejection of customers.
(ii) The CCTV system will be maintained and serviced on a regular basis and records kept to that effect.
(iii) CCTV shall be operational at all times that members of the public and/or staff are on the premises.
(iv) Images will be retained for a period of at least one calendar month by whatever means the licence holder deems appropriate.
(v) The Police and Local Authority will have access to these images at any reasonable time.
(vi) The Police and Local Authority will be provided with a recording by way of USB, tape, CD Rom or any other means of the image, immediately upon request.
(vii) Staff will be fully trained in the CCTV system and there will be at least one member of staff on duty during all trading hours who is able to provide a recording of any incident at the request of police and the local authority.
4. All staff selling alcohol shall be trained to the BII Level 1 Award in Responsible Alcohol Retailing and shall show certification of successful completion of the training, which must be logged and provided not less than once every twelve months. The training log will be made available for inspection by the Police, Local Authority Licensing Officer and/or Trading Standards Officer.
5. The Challenge 25 proof of age scheme shall be operated at the premises. All customers who appear under the age of 25 will be challenged to prove that they are over 18 when attempting to purchase alcohol. Acceptable forms of ID include a photo driving licence, passport, or home office approved identity card bearing the holographic "PASS" mark. If the person seeking alcohol is unable to produce an acceptable form of identification, no sale or supply of alcohol shall be made to or for the person.
6. All staff at the premises will be trained in the Challenge 25 Policy.
7. The premises will display zero tolerance drug posters in both the male and female toilets.
8. Posters of A4 size shall be displayed conspicuously on the premises in customer facing areas:
 - a) "Challenge 25" to advise potential purchasers that suitable proof of age will be required for all purchasers who appear to be under 25.
 - b) "Proxy purchasing" intended to warn adults not to buy alcohol for those under 18 years of age.

9. The premises will complete and retain an incident book that will be made available to Police and the Local Authority upon request. This book will be a bound book with no loose leaves and detail time, date, location, a precis of the incident, details of police officers attending, known injuries, name (if known) or description of persons involved.
10. A refusals log must be kept at the premises, and made immediately available on request to the Police, Local Authority Licensing Officer and/or Trading Standards Officer. The refusals log is to be inspected on a monthly basis by the DPS and noted in the log and a record made in the log of any actions that appear to be needed to protect young people from harm. The log must record all refused sales of alcohol and include the following:
 - a) The identity of the member of staff who refused the sale
 - b) The date and time of the refusal
 - c) The alcohol requested and reason for refusal
 - d) Description of the person refused alcohol
11. No persons under the age of 16 will be allowed entry into the premises after 22.00 hours unless resident or attending a pre-booked function.
12. No alcohol to be taken outside of the premises at any time.
13. SIA accredited and qualified door staff to be employed from 6pm until closing every day.

Reason

The sub-committee considered all 4 licensing objectives in reaching its decision:

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

Date: 19 June 2018

Licensing Sub-Committee Cllr Michael Lyons (Chair)

You have the right to appeal against the decision of the Sub-Committee. Any appeal must be made to Folkestone Magistrates Court, The Law Courts Castle Hill Avenue Folkestone Kent CT20 2DH within 21 days of the date you were notified of the decision.

Additional Notes:

- This licence, like any other licence, is subject to review at the instigation of any Responsible Authority or Interested Person should there be any concerns regarding the operation of, and/or breach of the licence.
- Other Persons and Responsible Authorities are reminded that they may apply for a review of the licence "after a reasonable interval" pursuant to Section 51 of the Licensing Act 2003.
- Entitlement to appeal for parties aggrieved by the decision of the Licensing Authority is set out in Schedule 5 to the Licensing Act 2003.
- In the case of a Premise Licence, an appeal has to be commenced by the giving of a notice of appeal by the appellant to the justices' chief executive for the magistrates' court within a period of 21 days beginning on the day on which the appellant was notified by the Licensing Authority of the decision to be appealed against.

By virtue of paragraph(s) 2 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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Folkestone and Hythe District Council

**Licensing Sub-Committee
10 September 2018**

Declarations of Lobbying

Members of the Licensing Sub-Committee are asked to indicate if they have been lobbied or not, and if so, how they have been (i.e., letter, telephone call, etc.) in respect of the applications below:

Application No.	Type of lobbying

SIGNED:

When completed, please return this form to the Committee Administrator at the meeting.

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