

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.