

Report to:	Licensing Sub-Committee	Date of Meeting:	Friday 7 July 2023
Subject:	Licensing Act, 2003 – Application for the Grant of a Premises Licence - The Whitehouse, Southport Golf Links, Park Road West, Southport, PR9 0JN		
Report of:	Assistant Director of Place (Highways and Public Protection)	Wards Affected:	Cambridge;
Portfolio:	Regulatory, Compliance and Corporate Services		
Is this a Key Decision:	No	Included in Forward Plan:	No
Exempt / Confidential Report:	The Report is not exempt – however, parts of Annex 1 have been redacted by virtue of Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972. The Public Interest Test has been applied and favours the information being treated as exempt.		

Summary:

To give consideration to an application for the grant of a Premises Licence.

Recommendation:

The Sub-Committee's instructions are requested.

Reasons for the Recommendation(s):

Under the Scheme of Delegation Officers cannot determine applications which have received relevant representations.

Alternative Options Considered and Rejected: (including any Risk Implications)

N/A

What will it cost and how will it be financed?

(A) Revenue Costs

There are no financial costs associated with the proposals in this report

(B) Capital Costs

There are no financial costs associated with the proposals in this report

Implications of the Proposals:

<p>Resource Implications (Financial, IT, Staffing and Assets):</p> <p>There are no financial implications arising directly from this Report except in the event of any Appeal made against the Sub-Committee's eventual decision, the costs of which would depend upon the length of the Appeal process.</p>								
<p>Legal Implications:</p> <p>The Chief Legal and Democratic Officer will provide legal advice to the Licensing Sub Committee on the issues set out in this report.</p>								
<p>Equality Implications:</p> <p>There are no equality implications.</p>								
<p>Impact on Children and Young People: N</p>								
<p>Climate Emergency Implications:</p> <p>The recommendations within this report will</p> <table border="1"><tr><td>Have a positive impact</td><td>N</td></tr><tr><td>Have a neutral impact</td><td>Y</td></tr><tr><td>Have a negative impact</td><td>N</td></tr><tr><td>The Author has undertaken the Climate Emergency training for report authors</td><td>Y</td></tr></table>	Have a positive impact	N	Have a neutral impact	Y	Have a negative impact	N	The Author has undertaken the Climate Emergency training for report authors	Y
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Contribution to the Council's Core Purpose:

The Sub-Committee is acting in an administrative capacity under the Licensing Act 2003

Protect the most vulnerable:
Facilitate confident and resilient communities:
Commission, broker and provide core services: Yes
Place – leadership and influencer:

Drivers of change and reform:
Facilitate sustainable economic prosperity:
Greater income for social investment:
Cleaner Greener

What consultations have taken place on the proposals and when?

(A) Internal Consultations

Consultation has taken place as per the provisions of the Licensing Act 2003.

(B) External Consultations

Consultation has taken place as per the provisions of the Licensing Act 2003.

Implementation Date for the Decision

Immediately following the Committee meeting.

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Appendices:

Annex 1 – Objections received
Annex 2 - Map

Background Papers:

There are no background papers available for inspection.

1. Application details

Application: Grant of a Premises Licence

Premises: The Whitehouse,
Park Road West,
Southport
PR9 0JN

Applicants: Sefton Hospitality Operations Limited

Representative: Not yet known

Designated Premises Supervisor: Vicki Hanlon

Licensable activities applied for:

- The sale of alcohol by retail (on the premises);
- The provision of regulated entertainment - recorded music;

Days of Operation	Hours of Operation
Monday to Sunday	08.00 to 23.00

- The provision of regulated entertainment – live music

Days of Operation	Hours of Operation
Monday to Sunday	10.00 to 23.00

Hours premises to be open to public:

Days of Operation	Hours of Operation
Monday to Sunday	08.00 to 23.00

2. Details of proposed Operating Schedule

2.1 GENERAL

Nothing provided.

2.2 THE PREVENTION OF CRIME & DISORDER

- i) Any incidents of a criminal nature that may occur on the premises will be reported to the police. CCTV is installed at the property.
- ii) Full training will be given to all staff regarding the prevention of crime and disorder.

2.3 PUBLIC SAFETY

- i) Appropriate fire safety procedures will be in place including all appropriate fire fighting equipment. Emergency lighting will be tested regular and all fire exits kept free from obstruction.

2.4 THE PREVENTION OF PUBLIC NUISANCE

- i) All customers will be asked to leave quietly Notices will be in prominent areas to remind our customers to be quiet when leaving in respect of local residents.
- ii) Noise control will be in place for any entertainment and music.
- iii) The outdoor dining area will close at 10pm and customers will vacate that area.

2.5 PROTECTION OF CHILDREN FROM HARM

- i) All staff will ask anyone who appears to be under the age of 25 for photographic ID such as proof of age cards. All staff will be trained for underage sales prevention and a register of refused sales shall be kept and maintained on the premises.

2.6 ADDITIONAL CONDITIONS AGREED FOLLOWING REPRESENTATIONS

The applicants have also agreed to the below Conditions being inserted on the Licence. This being in response to representations received from Merseyside Police and subsequent negotiations; as a result of this agreement representations have been formally withdrawn.

MERSEYSIDE POLICE CONDITIONS

- i) CCTV coverage will be operational when the premises are open for trade with the system capable of providing good quality colour images in all reasonable lighting conditions.
- ii) Cameras will encompass the areas where alcohol is sold, supplied, and consumed and also include entrances and exits to the premises. Images to be retained for a minimum period of 31 days and be made available to Merseyside Police and any other authorised person upon request, in line with all relevant Data Protection Legislation.
- iii) Equipment shall be maintained in good working order.
- iv) It shall be ensured that the CCTV system is timed and dated correctly and that it records in real time.
- v) There will be sufficient trained staff available to be able to download requested images with the minimum of delay.
- vi) The names of those staff trained in the use of the CCTV system and in the downloading of any images is to be retained at the premises and be made available for inspection upon request by Merseyside Police or any other authorised person.
- vii) The recording equipment shall be kept in a secure environment under the control of the premises licence holder, designated premises supervisor or other named responsible individual(s).

- viii) An incident book will be in operation at the premises with any incidents of crime and disorder being recorded. Details inputted will include date, time, description of incident, actions taken, and staff members involved. These records to be made available to Merseyside Police and any other authorised persons upon request. These records are to be kept for at the premises for a minimum of 12 months.
- ix) Challenge 25 policy to be adopted, persons who look under the age of 25 years will be challenged for proof of ID, acceptable proof being a photo driving licence, passport, PASS accredited proof of age cards or any other nationally recognised proof of age cards.
- x) A Refusals Register (electronic or written) must be maintained and kept at the premises, and retained for a period of 12 months, and be made available for inspection to all authorised persons upon request.
- xi) All staff employed at the premises are to receive staff training before they commence the sale of alcohol. Staff training will include the timings and conditions of the premises licence.
- xii) Staff to be trained in the prevention of sales of alcohol to persons under 18 years and serving to drunks. Training to be recorded in a register, records to be kept for a minimum of 12 months and made available to Merseyside Police and other authorised officers upon request.
- xiii) All staff training will be refreshed at least every 12 months.

3. Objections/Representations received

3.1 Other person, business or body

Under the public nuisance & public safety objective Four local residents make representation.

A copy of their representation(s) are attached in Annex 1 to this Report.

4. Additional licensing information

4.1 Paragraph 1.17 of the Guidance issued under S.182 of the Act (“the Guidance”) states that each application *“must be considered on its own merits and in accordance with the licensing authority’s statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.”*

4.2 With regard to conditions, Paragraph 1.16 says that these are *“are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:*

- *must be appropriate for the promotion of the licensing objectives;*
- *must be precise and enforceable;*

- *must be unambiguous and clear in what they intend to achieve;*
- *should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;*
- *must be tailored to the individual type, location and characteristics of the premises and events concerned;*
- *should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;*
- *should not replicate offences set out in the 2003 Act or other legislation;*
- *should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);*
- *cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and*
- *should be written in a prescriptive format.”*

4.3 However paragraph 10.10, with respect to proportionality, underlines that the Act *“requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that evidence of a right to work check, either physical or digital (e.g. copy of any document checked or a clear copy of the online right to work check) is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.”*

4.4 In respect of Hearings, Paragraph 9.37 states that as *“As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.”* Paragraph 9.38 continues: *“in determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:*

- *the steps that are appropriate to promote the licensing objectives;*

- *the representations (including supporting information) presented by all the parties;*
- *this Guidance;*
- *its own statement of licensing policy.”*

- 4.5 Paragraph 9.39 states that the *“licensing authority should give its decision within five working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition that is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety. Any conditions added to the licence must be those imposed at the hearing or those agreed when a hearing has not been necessary.”* Paragraph 9.40 states that alternatively *“the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities. In the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that those involved have the most current information”.*
- 4.6 In addition to the above, Paragraph 9.42 states that *“Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be”* and further within Paragraph 9.43 that the *“authority’s determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.”*
- 4.7 Paragraph 9.44 indicates that determination *“of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business....The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.”*

4.8 SEFTON'S STATEMENT OF LICENSING POLICY

PUBLIC SAFETY

Paragraph 3.7 advises applicants when making licence applications, in providing evidence within the Operating Schedule that suitable and sufficient measures will be in place to address the Public Safety objective, to consider the following matters in particular:

- The safe occupancy capacity of the premises, in particular having regard to floor area and means of escape;
- The age, design and layout of the premises, including the means of escape;
- The nature of the licensable activities provided, in particular the sale of alcohol;
- Hours of operation;
- Customer profile (age, disability etc);
- The necessary Health and Safety and Fire risk assessments for the premises, and other measures to reduce risk to public safety;
- The number of people employed or engaged to secure the safety of all persons attending the premises or event;
- Where appropriate, noise exposure controls, for both staff and public, which have been detailed in accordance with the appropriate legislation;
- Arrangements to ensure that litter, generated by activities at the premises, does not present a fire hazard;
- Implementation of appropriate crowd management measures

PUBLIC NUISANCE

In relation to the prevention of public nuisance objective, paragraph 3.9 advises applicants to consider the following matters when making an application:

- The type of activity, its frequency and the number and nature of customers likely to attend;
- Measures taken, or proposed, to prevent noise and/or vibration escaping from the premises given its location and proximity to residential and other noise sensitive premises. This would include music, plant noise and human voice, whether amplified or not;
- Measures taken to prevent the transmission of sound and/or vibration to adjoining properties;
- Measures taken, or proposed, for management and supervision of the premises and open areas to minimise unreasonable disturbance by customers and staff arriving or leaving the premises, including the delivery of goods and services;
- The proposed hours of operation for all, or parts, of the premises;
- Measures taken to prevent cooking odours and other smells escaping from the premises;

- Means of access to and egress from the premises, including customer entrances and exits on principal pedestrian routes;
- Whether routes to and from the premises pass residential premises;
- Whether the premises would result in increased refuse storage, disposal problems or additional litter in the vicinity of the premises, including measures taken to ensure the collection and disposal of litter and waste outside the premises;
- Measures to be taken to reduce drunkenness on the premises, e.g. the “Drink Less Enjoy More” scheme;
- If appropriate, a ‘wind down’ period between the end of the licensable activities and closure of the premises;

Should the applicant, or a responsible authority, identify possible sound leakage from the premises paragraph 3.10 indicates that the Authority would expect this to be addressed in practical ways, such as:

- Keeping doors and windows closed and providing adequate mechanical ventilation, or if necessary, air conditioning;
- Reducing sound levels and installing a sound limiting device to prevent sound exceeding the appropriate level;
- Installing soundproofing measures to contain sound and vibration

In premises where customers leave late at night, or early in the morning paragraph 3.11 states that the Authority would expect the applicant to have included, in the Operating Schedule, such practical steps as:

- Erecting prominent notices at the exits to the premises asking customers to leave quietly and not to slam car doors;
- At appropriate time making loud speaker announcements to the same effect;
- Instructing door staff to ask customers leaving the premises to do so quietly;
- Reducing the volume of music towards the end of the evening and where appropriate playing quieter, more soothing music as the evening winds down;
- Improving availability of licensed taxis or private hire vehicles to take customers from the premises;
- Refusing entry to people known to regularly leave in a noisy manner;
- The supervision of any queues so as to keep noise and disturbance to a minimum

4.9 GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003

PUBLIC SAFETY

Paragraph 2.7 states that under the Act *“Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning.*

Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene."

Paragraph 2.8 underlines that a "number of matters should be considered in relation to public safety. These may include:

- *Fire safety;*
- *Ensuring appropriate access for emergency services such as ambulances;*
- *Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts;*
- *Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;*
- *Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);*
- *Ensuring appropriate and frequent waste disposal, particularly of glass bottles;*
- *Ensuring appropriate limits on the maximum capacity of the premises...; and*
- *Considering the use of CCTV in and around the premises."*

Paragraph 2.11 underlines that "Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be inappropriate for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if appropriate, checks on this equipment to be conducted at specified intervals and for evidence of these checks to be retained by the premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for licensing authorities, if they receive relevant representations from responsible authorities or any other persons, to attach conditions which require equipment of particular standards to be maintained on the premises. Responsible authorities – such as health and safety authorities – should therefore make their expectations clear in this respect to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules."

With regard to safe capacities Paragraph 2.12 states that they "should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate

in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.”

PUBLIC NUISANCE

Paragraph 2.15 states that the Act “*enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.*”

Public nuisance is given a statutory meaning in many pieces of legislation. Paragraph 2.16 states that it is “*however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.*”

Paragraph 2.17 states that Conditions “*relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable...Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.*”

Paragraph 2.18 continues that as with all conditions “*those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.*”

Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods, Paragraph 2.19 stating for example “*the most sensitive period for people being*

disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.”

Paragraph 2.20 states that measures to control light pollution should also require careful thought: *“Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.”*

Finally, Paragraph 2.21 underlines that beyond *“the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.”*