

Licensing Sub-Committee

21 January 2021

Variation for Strong Orchard, Waytown

For Decision

Portfolio Holder: Cllr J Haynes, Customer and Community Services

Local Councillor(s): Cllr A Alford

Executive Director: J Sellgren, Executive Director of Place

Report Author: Aileen Powell
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Report Status: Public

Recommendation: The Sub-Committee determines the application in the light of written and oral evidence and resolves to take such steps as it considers appropriate and proportionate for the promotion of the licensing objectives of;

- a) The prevention of crime and disorder
- b) The prevention of public nuisance
- c) Public safety
- d) The protection of children from harm

Reason for Recommendation: The Sub-Committee must take into account the oral representations and information given at the hearing.

1. Executive Summary

An application has been made to vary the licence for Strong Orchard in Waytown. The application has been out to public consultation and has attracted representations. A Licensing Sub-Committee must consider the application and representations at a public hearing.

2. Financial Implications

Any decision of the Sub-Committee could lead to an appeal by any of the parties involved that could incur costs.

3. Climate implications

None

4. Other Implications

Public Health and Community Safety

5. Risk Assessment

Having considered the risks associated with this decision, the level of risk has been identified as:

Current Risk: Low

Residual Risk: Low

6. Equalities Impact Assessment

Not Applicable

7. Appendices

Appendix 1 – Premises licence

Appendix 2 – Application for the variation

Appendix 3 – Representations

Appendix 4 – Response to Representations

8. Background Papers

[Licensing Act](#)

[Section 182 Guidance](#)

[LGA Councillors Handbook](#)

[EHRC - Guide to the Human Rights Act for Public Authorities](#)

9. Details

- 9.1. Penelope and Oliver Strong, trading as Dorset Nectar, are the holders of the premises licence for Strong Orchard, Pineapple Lane, Waytown, DT6 5HZ. The Licence currently allows the sale of alcohol on and off the premises: -

Every Day

10:00 to 20:00

The current licence is attached at appendix 1.

- 9.2. They have applied to vary the licence by
- a) adding regulated entertainment of plays, films, dance, live and recorded music
 - b) adding two further bars to the existing plan
 - c) increasing the hours for the sale of alcohol

9.3. The hours applied for are:

Supply of Alcohol (on and off the premises)

Every day 09:00 to 23:00

New Years Eve 09:00 to 02:00

Plays and Films (indoors and outdoors)

Thursday to Sunday 10.00 to 23:00

Live Music (indoors and outdoors)

Thursday to Sunday 10.00 to 23:00

New Years Eve 10:00 to 02:00

Recorded Music (indoors and outdoors)

Sunday to Thursday 09:00 to 23:00

Friday and Saturday 09:00 to midnight

New Years Eve 09:00 to 02:00

Performance of Dance (indoors and outdoors)

Thursday 09:00 to 23:00

Friday and Saturday 09:00 to midnight

Sunday 09:00 to 23:00

New Years Eve 09:00 to 02:00

Anything of a similar description to music or dance (indoors and outdoors)

Monday to Wednesday 09:00 to 18:00

Thursday 09:00 to 23:00

Friday and Saturday 09:00 to midnight

Sunday 09:00 to 23:00

New Years Eve 09:00 to 02:00

The full application is attached at appendix 2.

- 9.4. The reason for the variation, as stated on the application form, is to allow “the opportunity for educational and cultural activities and entertainment, such as Orchard Wassails, Blossom Festivals, theatrical and dance productions, live and recorded music.”

- 9.5. The application has been advertised on the premises, in a newspaper and the Councils web site.
- 9.6. Seven representations have been received from the Parish Council and six residents who live in the vicinity of the premises. The representations and the comments are included in full in the table in appendix 3.
- 9.7. For representations to be counted as relevant and taken into consideration they must relate to one of the four licensing objectives of:
 - a) the prevention of crime and disorder
 - b) the prevention of public nuisance
 - c) public safety
 - d) the protection of children from harm.

The representations relating to nuisance caused by outside entertainment must all be considered as relevant representations. However those parts of the representations relating to the highways and verges are not considered as relevant as this would be a matter for the planning permission for the site.

The licensing objective of public safety relates to the safety of people inside the building, paragraphs 2.7 of the section 182 Guidance states; -

“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.”

- 9.8. Mr and Mrs Strong have responded to the representations, which is attached in full at appendix 4.

10. Considerations

- 10.1. Paragraphs 9.42 to 9.44 of the Section 182 Guidance sets how the Authority should decide what actions are appropriate.

9.42 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.

9.43 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.

9.44 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. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. 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.

11. Recommendation

- 11.1. The Sub-Committee determines the application in the light of written and oral evidence and resolves to take such steps as it considers appropriate and proportionate for the promotion of the licensing objectives of;
- a) the prevention of crime and disorder
 - b) the prevention of public nuisance
 - c) public safety
 - d) the protection of children from harm.

- 11.2. The steps that the Sub-Committee may take are to:
- a) modify the conditions of the licence, or
 - b) reject the whole or part of the variation.

Footnote:

Issues relating to financial, legal, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.