

Licensing Sub-Committee

29 April 2024

Review of the Wine Bar (Rocky's), Queen Street, Gillingham

For Decision

Portfolio Holder: Cllr L Beddow, Culture and Communities

Local Councillor(s): Cllr B Ridout

Executive Director: Jan Britton, Executive Lead for Place

Report Author: Aileen Powell
Job Title: Licensing Team Leader
Tel: 01258 484022
Email: aileen.powell@dorsetcouncil.gov.uk

Report Status: Public

Brief Summary: An application has been made to review the premises licence for the bar currently known as Rocky's in Queen Street, Gillingham. The application has been out to public consultation and has attracted relevant representations. A Licensing Sub-Committee must consider the application and representations at a public hearing.

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 consider the oral representations and information given at the hearing before reaching a decision.

1. Details of Application

- 1.1 Section 51 of the Licensing Act 2003 (the Licensing Act) gives any person, the right to apply for a review of an existing premises licence. The “Revised Guidance issued under section 182 of the Licensing Act 2003” (the s182 Guidance) states at paragraph 11.1 that a review is the “key protection” if a licensed premises is causing problems.
- 1.2 On the 26 February the Ward Councillor, Cllr Belinda Ridout applied to review the premises licence of the Wine Bar, known as Rocky’s, on behalf of local residents.
- 1.3 The grounds for the review are set out in full in the application form at **Appendix 1** and relate to the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance, and the protection of children from harm. In summary the grounds relate to ant-social behaviour by patrons outside the premises at closing time and the in the garden area. Paragraphs 5.2 and 5.4 of this report include the descriptions of the licensing objectives from the s182 Guidance. One statement has been redacted from the application form as anonymous statements cannot be accepted.
- 1.4 On the 4 March Cllr Ridout served the application on the company that held the licence at the time she submitted the Review, this was the date that the application was accepted by the Licensing Authority. During the consultation period the licence has been transferred to Rocky Bars Ltd, and Scott Rock who has been managing the premises for some years, has also become the Designated Premises Supervisor (DPS).
- 1.5 The Review has been advertised at the premises and on the Council’s web pages, in line with Regulation 38 and 39 of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (the Regulations)

2. Premises Licence

- 2.1 The premises have been licensed under the Licensing Act 2003 since June 2006.
- 2.2 The licence is included at **Appendix 2** and permits live and recorded music, plays and the performance of dance, all indoors and outdoors, indoor sports and the on and off sales of alcohol: -

Everyday 00:00 to 23:59

Late-Night Refreshment is licensed indoors and outdoors, from 23:00 – 05:00

- 2.3 The current conditions on the licence were added at a hearing when the licence was first granted in June 2006. Mandatory Conditions have been added subsequently to this. The current conditions can be found at **Appendix 3**.

3. Representations from Responsible Authorities

- 3.1 Section 13 of the Licensing Act contains the list of Responsible Authorities who must be consulted on each application. Dorset Police, Dorset and Wiltshire Fire Service, Public Health Dorset, the Immigration Authority, Dorset Council Trading Standards, Dorset Council Children's Services, Dorset Council Environmental Protection, Dorset Council Planning and Dorset Council Health and Safety Team have all been consulted and offered no representations on this application.

- 3.2 Dorset Council Children's Services have responded with; -

"I am unsure what the alternative available options are here but I would support the request by the applicant that: residents need the re-assurance that stricter conditions and improved Security is put in place immediately, and along with regular Policing, to ensure customers' behaviour is properly monitored and upheld."

- 3.3 Environmental Protection have not made a representation during the time allowed for representations but have given officers a statement of the interactions with complainants, as these have been alluded to in representations. The statement is attached in full at **Appendix 4**.

- 3.4 There were no representations received from any of the other Responsible Authorities.

4. Representations from other bodies and other persons

- 4.1 There have been eight representations from other persons. Of these six were written in support of the premises, and two supporting the review of the Licence.

- 4.2 The representations of support for the review are attached in full at **Appendix 5**.

- 4.3 The representations supporting the premises and the current DPS are included in full at **Appendix 6**.

5. Response from the Licence Holder

- 5.1 The Licence Holder has responded to the comments contained in the residents' statements in the review application and the comments made by interested parties during the course of the notice period. He has offered some solutions to the issues raised and pointed out the pros and cons of any remedial action that could be taken. The full statement can be found at **Appendix 7**.

6. Considerations

- 6.1 All applications and decisions are made with due regard to the Licensing Act 2003, the Revised Guidance issued under Section 182 of the Licensing Act 2003 and the Dorset Council Statement of Licensing Policy (the Policy).
- 6.2 The s182 Guidance gives detailed guidance on the licensing objectives in chapter 2. Crime and disorder are covered by sections 2.1 – 2.7 of the Guidance; -

Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).

In the exercise of their functions, licensing authorities should seek to co-operate with the Security Industry Authority ("SIA") as far as possible and consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed.

Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach,

and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

The inclusion of radio links and ring-round phone systems should be considered an appropriate condition for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. These systems allow managers of licensed premises to communicate instantly with the police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises.

Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.

The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises 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. a copy of any document checked as part of a right to work check or a clear copy of the online right to work check) are retained at the licensed premises.

The objective to crime under the Licensing Act 2003 would include taking measures to prevent incidents of spiking which would usually be prosecuted under section 23 and 24 of the Offences Against the Person Act 1861, and section 61 of the Sexual Offences Act 2003. The following examples are within the range of behaviours that would be considered spiking. This list is not exhaustive:

- Putting alcohol into someone's drink without their knowledge or permission

- Putting prescription or illegal drugs into an alcoholic or non-alcoholic drink without their knowledge or permission
- Injecting another person with prescription or illegal drugs without their knowledge or permission
- Putting prescription or illegal drugs into another person's food without their knowledge or permission
- Putting prescription or illegal drugs into another person's cigarette or vape without their knowledge or permission.

6.3 Public nuisance is detailed in paragraphs 2.21 – 2.27 as; -

The 2003 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. 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.

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 (see chapter 16). 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.

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 appropriate conditions should normally focus on the most sensitive periods. 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.

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.

6.4 The s182 Guidance covers the licensing objective of the protection of children from harm at paragraphs 2.28 and 2.33 and 2.35; -

The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment). Licensing authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions.

Conditions, where they are appropriate, should reflect the licensable activities taking place on the premises. In addition to the mandatory

condition regarding age verification, other conditions relating to the protection of children from harm can include:

- restrictions on the hours when children may be present;
- restrictions or exclusions on the presence of children under certain ages when particular specified activities are taking place;
- restrictions on the parts of the premises to which children may have access;
- age restrictions (below 18);
- restrictions or exclusions when certain activities are taking place;
- requirements for an accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and
- full exclusion of people under 18 from the premises when any licensable activities are taking place.

Licensing authorities should give considerable weight to representations about child protection matters. In addition to the responsible authority whose functions relate directly to child protection, the Director of Public Health may also have access to relevant evidence to inform such representations. These representations may include, amongst other things, the use of health data about the harms that alcohol can cause to underage drinkers. Where a responsible authority, or other person, presents evidence to the licensing authority linking specific premises with harms to children (such as ambulance data or emergency department attendances by persons under 18 years old with alcohol-related illnesses or injuries) this evidence should be considered, and the licensing authority should also consider what action is appropriate to ensure this licensing objective is effectively enforced. In relation to applications for the grant of a licence in areas where evidence is presented on high levels of alcohol-related harms in persons aged under 18, it is recommended that the licensing authority considers what conditions may be appropriate to ensure that this objective is promoted effectively.

6.5 Chapter 11 of the s182 Guidance on Reviews is contained in full at **Appendix 8** of this report. Paragraphs 11.1 and 11.2 the s182 Guidance states that:

The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.

At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.

6.6 Paragraphs 11.16 -11.23 of the s182 Guidance sets the powers available to the Licensing Authority: -

The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.

Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;

- suspend the licence for a period not exceeding three months;
- revoke the licence.

In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

6.7 Section 13 of the Policy contains guidance on how the Licensing Authority will deal with enforcement and reviews. Paragraph 13.1 states; -

The Licensing Act contains measures to ensure that the council, and responsible authorities, are able to deal with premises that wilfully and persistently undermine the licensing objectives. The council and responsible authorities are committed to encouraging a thriving day time and night-time licensed economy but will not tolerate those premises whose activities break the law or infringe upon the quality of life for local residents and businesses.

6.8 Paragraph 13.9 of the Policy states; -

The council will seek to establish the cause or causes of the concern and remedial action will be targeted at such causes. Any action will be proportionate to the problems involved.

7. Financial Implications

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

8. Natural Environment, Climate & Ecology Implications

None

9. Well-being and Health Implications

None

10. Other Implications

None

11. Risk Assessment

HAVING CONSIDERED: the risks associated with this decision; the level of risk has been identified as:

Current Risk: Medium

Residual Risk: Medium

12. Equalities Impact Assessment

Not Applicable

13. Appendices

Appendix 1 – Application

Appendix 2 – Licence

Appendix 3 – Current Conditions

Appendix 4 – Comment from Environmental Protection

Appendix 5 – Representations from people Supporting the Review
Appendix 6 – Representations from people in Support of the Premises
Appendix 7 – Statement of Licence Holder in Response to Review
Appendix 8 – Section from Statutory Guidance on Reviews

14. **Background Papers**

[Licensing Act](#)

[Revised Guidance issued Under section 182 of the Licensing Act 2003](#)

[Dorset Council Licensing Policy](#)