

# Licensing Sub-Committee

## 21 December 2021

### Application to Review the Premises Licence of the Duke of Cornwall, Weymouth

#### For Decision

**Portfolio Holder:** Cllr L Miller, Customer and Community Services

**Local Councillor(s):** Cllr J Orrell

**Executive Director:** J Sellgren, Executive Director of Place

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

#### 1. Executive Summary

An application has been made to review the premises licence for the Duke of Cornwall in Weymouth. 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.

## **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. Well-being and Health Implications**

None

## **4. Climate implications**

None

## **5. Other Implications**

None

## **6. Risk Assessment**

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

Current Risk: Medium

Residual Risk: Medium

## **7. Equalities Impact Assessment**

Not Applicable

## **8. Appendices**

Appendix 1 – Application

Appendix 2 – Licence

Appendix 3 – Response from Licence Holder

Appendix 4 – Representations from Responsible Authorities

Appendix 5 – Representations from Other Persons Supporting the Review

Appendix 6 – Representations from Other Persons in Support of the Premises

Appendix 7 – Notice advertising Review

Appendix 8 – S182 Guidance Chapter on Reviews

## **9. Background Papers**

[Licensing Act](#)

[Live Music Act](#)

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

[Dorset Council Licensing Policy](#)

## 10. Details of Application

- 10.1. Section 51 of the Licensing Act 2003 (the Licensing Act) gives any person, representative body or Responsible Authority 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 premises that is licensed is causing problems.
- 10.2. On the 1 November Respect Weymouth applied to review the premises licence of the Duke of Cornwall in Weymouth.
- 10.3. Respect Weymouth is a group of residents who have made representations to other applications. This is not an anonymous group, but the participants of the group ask that their identities are protected because they are fearful of recriminations. The Licensing Authority has been sent a list of 15 residents from 12 households who live near the premises who are supporting the review application. The withholding of personal information is allowed under the 182 Guidance and it is the decision of officers to allow that.
- 10.4. The review is sought on the licensing objectives of the prevention of public nuisance, and the protection of children from harm. Paragraphs 15.2 and 15.3 of this report include the descriptions of the licensing objectives from the s182 Guidance.
- 10.5. The grounds for the review are detailed in the application form at Appendix 1 of the report.
- 10.6. Respect Weymouth served the application on the licence holders and it has been advertised on the site and the Council’s web pages, in line with Regulation 38 and 39 of the [Licensing Act 2003 \(Premises licences and club premises certificate\) Regulations 2005](#) (the Regulations)

## 11. Premises Licence

- 11.1. The premises have been licensed under the Licensing Act since 2005 with a short break in 2016. The current licence was transferred to the current licence holders, Martin Rollings and Christine Hearn, in September 2020.
- 11.2. The licence is included at Appendix 2 of the report and permits live and recorded music indoors and the on and off sales of alcohol: -

Monday to Saturday	11:00 to 02:00
Sunday	11:00 to 01:00

11.3. The current conditions on the licence relating to the prevention of public nuisance are: -

There will be no external loudspeakers.

Noise from a licensable activity at the premises will be inaudible at the nearest noise sensitive premises.

No deliveries to the premises shall be arranged between 23:00 hours and 07:00 hours.

11.4. The current licence conditions relating to the protection of children from harm are: -

People under 18 years of age will not be admitted.

## **12. Submission from Licence Holder**

12.1. The Licence Holder has made a detailed submission responding to the points raised in the review application which is included in full at Appendix 3. Mr Rollings has supplied the screen shots of the matters referred to in his submission and these have been made available to the Sub-Committee.

## **13. Representations from Responsible Authorities**

13.1. 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 Planning and Dorset Council Health and Safety Team have all been consulted and offered no representations or comments on this application.

13.2. Environmental Protection have made a representation which is attached in full at Appendix 4.

## **14. Representations from other bodies and other persons**

14.1. There have been 197 representations from other persons. Of these 193 were written in support of the premises.

- 14.2. The representations of support for the review are attached in full at Appendix 5.
- 14.3. The representations supporting the pub are included in full at Appendix 6.
- 14.4. The licence holder has provided screenshots from people not being able to get emails through. Officers have checked the names referred to and two out of the three have made representations. The email address was clearly and correctly stated on the notice put up at the pub. In addition to the email address the postal address of the Licensing Service was available along with all the other information as specified in the Regulations. A copy of the screenshots and the Notice is attached at Appendix 7.
- 14.5. An online petition was started supporting the pub which can be viewed at <https://chnq.it/nswNHgfKLB>.
- 14.6. The Town Council stated they had “no objection to the premises licence and would encourage mediation between the affected parties.”

## **15. Considerations**

- 15.1. 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).
- 15.2. The s182 Guidance gives detailed guidance on the licensing objectives in chapter 2. Public nuisance is detailed in paragraphs 2.16 – 2.19 and 2.21 as; -

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.

15.3. The s182 Guidance covers the licensing objective of the protection of children from harm at paragraphs 2.22, 2.27 and 2.29

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.

15.4. 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.

15.5. Paragraphs 11.16 to 11.17 and 11.19 to 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.

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.

15.6. 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.

15.7. Paragraph 13.9 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.

15.8. The Live Music Act 2012 allows any premises with a licence that allows the consumption of alcohol on the premises to have live amplified music between 08:00 and 23:00 without a licence. This only applies when the audience is under 500 people. The Legislative Reform (Entertainment Licensing) Order 2014 amended the Licensing Act so that there is a similar provision for recorded music, and states that any conditions on a premises relating to any of this entertainment would not have any effect between 8am and 11pm.

15.9. The Live Music Act also inserted s177A into the Licensing Act which allows that on a Review of a premises licence the Licensing Authority may (without any prejudice to any other steps available to it under the Licensing Act) add a statement to any condition that the provisions of the Live Music Act do not apply to the said condition.

## **16. Recommendation**

16.1. 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.

16.2. Any steps that the Sub-Committee consider should relate to the issues raised in the review, in this case the levels of the music that can be heard from premises in the vicinity. The steps that the Sub-Committee may take are:

- a) take no action
- b) modify the conditions of the licence
- c) exclude a licensable activity from the scope of the licence
- d) remove the designated premises supervisor
- e) suspend the licence for a period not exceeding three months, or,
- f) revoke the licence.

16.3. The Sub-Committee may also consider whether to apply a statement to any of the conditions currently on the licence, or, imposed as a result of the review, to disapply the provisions of the Live Music Act.

**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.