

# Licensing Sub-Committee

9 September 2022

## Application to Review the Premises Licence for the Sunset Bar in Weymouth

### For Decision

**Portfolio Holder:** Cllr L Beddow, Culture, Communities and Customer Services

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

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

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**Report Status:** Public

**Brief Summary:** An application has been made to review the premises licence for the Sunset Bar (formerly Cool Runnings) 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.

**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. **Reviews**

- 1.1 The Home Office Revised Guidance issued under Section 182 of the Licensing Act 2003 (the S182 Guidance) contains a chapter on Reviews. This chapter is included in full at Appendix 1 of the report. Paragraphs 11.1 and 11.2 of 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.

- 1.2 Section 13 of the Dorset Council Licensing Policy (the DC 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.

- 1.3 Paragraph 13.9 of the DC 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.

Section 13 of the DC Policy is attached in full at Appendix 2 of the Report.

## 2 **Details of the Application**

- 2.1 Jeroen 't Hart and John Davidson have applied for a review of the premises licence WPPL0350 at 78 The Esplanade, Weymouth, DT4 7AA. The premises is licensed under the name of Cool Runnings but is currently signed as Weymouth Sunset Restaurant and Club.

- 2.2 The grounds for the review are contained in full in the application form at Appendix 3. In summary they are that the premises has changed in recent times from a café/restaurant to a disco with extremely loud music that is having a significant impact on the quality of life of nearby residents.
- 2.3 The terms of the lease are a matter for the tenant and the landlord, not the Licensing Authority.

### **3 Current Licence**

- 3.1 The current licence for the premises can be found at Appendix 4. The operating hours of the premises are -

Monday to Saturday	09:00 to 23:59
Sunday	09:00 to 23:00

The licensable activities are the sale of alcohol (on and off the premises), Live and recorded music (indoors) and late-night refreshment and these are all allowed throughout the operating hours.

- 3.2 There is a condition in annex 2 of the licence relating to public nuisance which states that: -

The holder of the premises licence/club registration certificate will ensure that:

- (a) all external doors and windows are kept closed, other than for access and egress
- (b) internal doors are kept closed in all rooms when events involving amplified music or speech are taking place.

- 3.4 Due to Section 177A of the Licensing Act any condition applying to live or recorded music does not have effect in a premises this small until after 23:00.

### **4 Responsible Authorities Representations**

- 4.1 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, Dorset Council Licensing, Dorset Council Environmental Protection and Dorset Council Health and Safety have all been consulted.
- 4.2 Representations have been received from the Licensing Authority acting in its role as a Responsible Authority, Dorset Police, Environmental Protection and Planning. The representations are attached in full at Appendix 5. The representations give the recent history of the bar and the outcomes of visits made to the premises.

## **5 Representations from Other Parties**

- 5.1 Representations have also been received from the Ward Councillor and five residents who live or have businesses in the location. The representations are attached in full at Appendix 6. The representations all allude to the disruption to the daily lives of the people living close to this premises.

## **6 Considerations**

- 5.1 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](#).
- 5.2 The s182 Guidance states in paragraphs 2.16 – 2.19 and 2.21 that; -

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 Live Music Act**

- 6.1 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.
- 6.2 The Act also inserted s177A(3) into the Licensing Act 2003 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. The relevant section of the Act is attached at Appendix 7.

## **7 Options**

- 6.1 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.

## **8 Financial Implications**

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

## **9 Climate Implications**

None

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

None

## **11 Other Implications**

None

## **12 Risk Assessment**

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

Current Risk: Medium

Residual Risk: Medium

## **13 Equalities Impact Assessment**

Not Applicable

## **14 Appendices**

Appendix 1 - S182 Guidance Chapter on Reviews

Appendix 2 - Dorset Council Policy on Reviews

Appendix 3 - Review Application

Appendix 4 - Licence

Appendix 5 - Representations from Responsible Authorities

Appendix 6 - Representations from Other Persons Supporting the Review

Appendix 7 - S177A of the Licensing Act 2003

## **15 Background Papers**

[Licensing Act](#)

[Live Music Act](#)

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

[Dorset Council Licensing Policy](#)