

Licensing Sub Committee

27 September 2023

Application to review the premises licence for Royal Oak, 52-54 Dorchester Road, Weymouth

For Decision

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

Local Councillor(s): Cllrs Barrow and Grey

Executive Director: J Sellgren, Executive Director of Place

Report Author: Kathryn Miller
Title: Senior Licensing Officer
Tel: 01305 838028
Email: Kathryn.miller@dorsetcouncil.gov.uk

Report Status: Public

Brief Summary: An application has been made to review the premises licence for Royal Oak, 52-54 Dorchester Road, Weymouth. The application has been out to public consultation. 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:

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

The steps that the Sub-Committee may take are:

- a) modify the conditions of the premises licence
- b) exclude a licensable activity from the scope of the licence
- c) remove the designated premises supervisor
- d) suspend the licence for a period not exceeding three months
- e) revoke the licence

Reason for Recommendation: The Sub-Committee must consider the oral representations and information given at the hearing before reaching a decision.

1. Background

1.2 Section 4 of the Licensing Act 2003 sets out the duties of the Licensing Authority, it sets out that a Council's licensing functions must be carried out with a view to promoting the four licensing objectives of:

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

1.3 All applications and decisions are made with due regard to the [Licensing Act 2003](#) (the Act), the [Revised Guidance issued under Section 182 of the Licensing Act 2003](#) (the Guidance) and the [Dorset Council Statement of Licensing Policy](#) (the Policy).

2. Details of the application

2.1 Mr Kevin Miles has applied for a review of the premises licence, WPPL0016 at the Royal Oak 52-54 Dorchester Road, Weymouth, DT4 7JZ.

2.2 The grounds for the review are contained in full in the application at Appendix 1. In summary, it is based on the impact on nearby households of excessive noise from outdoor music events held in the beer garden of the Royal Oak public house and the disparity between licensing controls on indoor and outdoor music events at those premises.

2.3 The premises is currently licensed. The licence covers both the building of the pub and the beer garden. A copy of the licence and the plan are attached at Appendix 2, the times that licensable activities are allowed are:

Indoor Sport

Monday to Thursday

1000-0100 hours

Friday to Saturday 1000-0300 hours
Sunday 1100-0300 hours
New Years Eve: except on a Sunday, 10:00 on New Year's Eve to start of permitted hours on the following day.
New Year's Eve on a Sunday, 11:00 on New Year's Eve to start of permitted hours on the following day.

Live and recorded music (indoors)

Monday to Thursday 1000-0100 hours
Friday to Saturday 1000-0300 hours
Sunday 1100-0300 hours
New Years Eve: except on a Sunday, 10:00 on New Year's Eve to start of permitted hours on the following day.
New Year's Eve on a Sunday, 11:00 on New Year's Eve to start of permitted hours on the following day.

Supply of alcohol (on and off the premises)

Monday to Thursday 1000-0100 hours
Friday to Saturday 1000-0300 hours
Sunday 1100-0300 hours
New Years Eve: except on a Sunday, 10:00 on New Year's Eve to start of permitted hours on the following day.
New Year's Eve on a Sunday, 11:00 on New Year's Eve to start of permitted hours on the following day.

- 2.4 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.
- 2.5 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 so that the condition applies at all times. Conditions can also be added under s177A(4), the Licensing Authority may add a condition relating to music as if the music were regulated entertainment, and as if that premises licence licensed music.

- 2.6 Because the garden area is included in the plan of the licensed premises the Live Music Act applies to this area.

3 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 Planning, Dorset Council Licensing, Dorset Council Environmental Protection and Dorset Council Health and Safety have all been consulted.

- 3.2 Environmental Health have not made a representation but have commented and have suggested conditions/actions if the Licensing Sub Committee consider that additional conditions are required, their response can be found at Appendix 3:

- A written monitoring programme/procedure, undertaken by the company and to be agreed by the Environmental Protection Service for any regulated entertainment occurring, and that this shall be duly recorded, the investigation and subsequent actions, by the responsible person (DPS or equivalent), in writing. The log shall be made available on request by an authorised officer of the Council or the Police. This should include public monitoring locations and the expectation of noise level at those locations. The person undertaking the monitoring shall not be unduly affected by temporary threshold shift.

Environmental Protection will be able to assist in this process but equally the site may wish to engage their own acoustic consultant.

- Any complaint made shall be similarly recorded and be made available on request.
- That the conditions imposed should be undertaken at any time that regulated entertainment is being undertaken to ensure that even prior to the Live Music Act 23.00hr start time stipulation, that appropriate controls remain in place (*i.e., remove the exemption provided by the Live Music Act*).
- External regulated entertainment shall be restricted to fortnightly, on one day of a weekend (including any bank holiday) between the hours of 14.00hrs and 21.00hrs, between 01 April and 30 September and at no other time.

- Modify the sound limiting device condition for internal regulated entertainment only.
 - Additionally, to consider the hours of internal regulated entertainment to be narrowed if they are no longer required.
- 3.3 Following these comments, the applicant commented that the mark Environmental Protection put on the map shows the premises location; it did not show the sound stage location. The Environmental Protection Team Leader stated that map indicates the location of the public house for Members and those who may not be familiar with the location. Mr Miles also raised the concerns about one of the suggested conditions made by Environmental Protection. These responses can be found at Appendix 4.
- 3.4 Planning have made a comment which relates to the construction of the permanent outdoor stage in the garden of the premises. They have stated that on the basis of the photo provided, it does appear that planning consent is required, although this would need to be investigated by the Council's Planning Enforcement Team. Planning's comments can be seen at Appendix 5.
- 3.5 There were no representations received from any of the Responsible Authorities.
- 3.6 There have been a total 124 representations received from other parties including two from the local Ward Members.
- 3.7 Nine representations of support of the review were received and they are attached in full at Appendix 6
- 3.8 A further 113 representations were received supporting the premises and the current licence holders. These are included in full at Appendix 7.
- 3.8 There were two comments from the local Ward Members, these can be found at Appendix 8
- 3.9 The representations contain some matters which do not directly relate to the review which is purely focussed on the provision of outside live music and the resulting disturbance from that entertainment in the garden area of the premises.

4 **Reviews**

- 4.1 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 under Background Papers 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.

- 4.2 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.

- 4.3 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.

- 4.4 Section 13 of the DC Policy is attached in full at under Background Papers of the Report.

5 **Considerations**

- 5.1 Paragraphs 11.16 to 11.17 and 11.19 to 11.23 of the s182 Guidance sets the powers available to the Licensing Authority:

- 5.2 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.

- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 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.
- 5.7 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 Financial Implications

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

7 Environmental Implications

None.

8 Well-being and Health Implications

None.

9 Other Implications

None.

10 Risk Assessment

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

Current Risk: Medium

Residual Risk: Medium

11 Equalities Impact Assessment

Not applicable

12 Appendices

Appendix 1 – Review application

Appendix 2 – Current licence and plans

Appendix 3 – Response from Environmental Health

Appendix 4 – Comments from applicant in response to EH

Appendix 5 – Comments from Planning
Appendix 6 - Representations in support of the review
Appendix 7 – Representations against the review
Appendix 8 – Responses from the two local Ward Members

13 Background Papers

[Licensing Act 2003](#)

[Home Office Guidance issued under Section 182 of the Licensing Act 2003](#)

[Dorset Council Statement of Licensing Policy 2021](#)