

Board/Committee:	Licensing Sub - board
Date of Meeting:	19 th July 2010
Title:	Application to Vary the Premises Licence for The Yachtsman 74 High Street Gosport, Hampshire PO12 1DA 10/00502/LAPRE Refers
Author:	ENVIRONMENTAL SERVICES MANAGER
Status:	FOR DECISION/ FOR RECOMMENDATION TO

Purpose

To consider the application to Vary the Premises Licence for The Yachtsman 74 High Street Gosport, Hampshire PO12 1DA

Recommendation

To consider the application and decide whether to grant the application or having regard to the representation take steps to modify the conditions of the licence or to reject the whole or part of the application.

1 BACKGROUND

1.1 Summary of the application

- 1.1.1 Where a premises licence holder wishes to amend the licence the Licensing Act 2003 allows in most cases for an application to vary to be made rather than requiring an application for a new premises licence
- 1.1.2 The application made by Miss Wendy Beharry is to vary a Premises Licence to:-
- Confirm approval of the changes made to the internal layout of the premises.
 - To change the opening hours of the premises and change the hours for the supply of alcohol with the addition of Non Standard Timings.
 - To provided additional types of regulated entertainment on the premises.
 - To remove the condition for using polycarbonate glasses
 - Amend the restriction of admitting persons under 18 years onto the premises.

- 1.1.2 The variation is detailed both in the Application Form, see Appendix A and see Annex F - Table 1 of this report. A copy of the existing Premises Licence is provided, see Appendix B.

2 REPORT

- 2.1 The applicant Miss Wendy Beharry has undertaken a refurbishment of the premises and made structural alterations to the layout of the inside of the premises. The premises reopened on Tuesday 27th April 2010 and started trading under the name "The Yachtsman".

3 PROMOTION OF LICENSING OBJECTIVES

- 3.1 The existing Premises Licence, see Appendix B sets out the steps and conditions the premises licence holder takes to promote the licensing objectives. In the Part 4 Operating Schedule of the Application Form, page 12, see Appendix A. Miss Wendy Beharry has identified conditions currently imposed on the licence which could be removed or replaced as part of the variation application.

4 RESPONSIBLE AUTHORITIES

- 4.1 A representation has been received from the Hampshire Constabulary, see Appendix C. The representation cites concerns relating to all four of the licensing objectives. The police cite a 101 Call - a complaint of a Noise Nuisance at 00:30 hours on Sunday 7th March 2010 and a specific police incident taking place on the Premises at 01:38 hours in the morning of the 28th April 2010 when the police were alerted to a fight at the premises where staff appeared to be having difficulty ejecting a drunken male.
- 4.2 Supplementary police evidence has been received from the police, see Appendix D, citing an incident on Wednesday 23rd June 2010 when it is stated that a drunken male was seen by the police drinking and holding a pint glass of larger,.

5 INTERESTED PARTIES

- 5.1 There has been no other representation received from any other interested party.

6 POLICY CONSIDERATIONS

- 6.1 The following provisions of the Licensing Act 2003 apply to this application:

Part 1, Section 1 Licensable Activities.
Part 3, Premises Licences.

6.2 The following provisions of the Secretary of State's guidance apply to this application:

Chapter 1, Introduction and purpose.

Chapter 2, Licensing objectives

Chapter 3, Licensable activities, 3.1 summary.

Chapter 8, Applications for premises licences, 8.3 authorised persons, 8.46 variations, 8.59 Changes to structure and layout.

Chapter 9, determining applications.

Chapter 10, Conditions attached to premises licences and club premises certificates.

Chapter 12, Appeals,

Annex D, Pool of conditions.

6.3 The following paragraphs of the this authorities statement of licensing policy apply to this application:

2.1 Introduction

2.20 Licensing hours

2.30 Objections/Review hearings

3.18 - 3.21 Premises licences

4.1 – 4.1.9 Prevention of crime and disorder.

4.3 - 4.3.4 Public Safety

4.4 – 4.4.8 Prevention of public nuisance.

4.5 – 4.5.3 Protection of children.

7 OFFICERS' OBSERVATIONS

7.1 Sub-Board has to determine this application with a view to promoting the licensing objectives, which are:

- The prevention of crime and disorder
- Public Safety
- The prevention of public nuisance
- Protection of children from harm

7.2 In making its decision the Sub-Board is also obliged to have regard to the national guidance and this Authority's Statement of Licensing Policy.

7.3 The Sub-Board must take such of the following steps it considers necessary to promote the licensing objectives:

- i. Grant the application as submitted; or
- ii. Modify the conditions of the licence by alteration or addition;
or
- iii. Reject the whole or part of the application.

7.4 Decisions made under ii or iii above might actually be necessary to

promote the licensing objectives. In seeking to identify additional relevant conditions the Licensing Sub Board may wish to refer to the Councils adopted pool of conditions

- 7.5 The DCMS Section 182 Guidance Para. 8.59 advises that changes to layout should be referred to the full variation process if they could potentially have an adverse impact on the promotion of the licensing objectives for example by:-
- Increasing the capacity for drinking on the premises
 - Affecting access between the public part of the premises and the rest of the premises or the street or public way, e.g. block emergency exits or routes to emergency exits
 - Impeding the effective operation of a noise reduction measure such as an acoustic lobby.
- 7.6 On 11th May 2009 the applicant applied to be granted a premises licence under the Gambling Act 2005 to be granted a premises licence for a Betting Office. The ground floor bar area of the premises was structurally altered by dividing the existing areas and erecting a dividing wall to create a separate shop premises. On the 11th June 2009 a premises licence for a Betting Office was issued by Gosport Borough Council under Gambling Act 2005. At the time of issue the Mr. Latchana and Miss Wendy Beharry were advised that the structural alterations made to the premises licence under the Licensing Act 2005 and that they should submit an application to vary the premises licence and submit a new plan of the premises showing the new layout of the premises.
- 7.7 On 15th July 2009 Miss Wendy Beharry's solicitors submitted an application to vary the premises licence issued under the Licensing Act 2003 requesting retrospective approval for the structural alterations made to the premises. On the 11th August 2009 the application was refused because the plans submitted with the variation did not conform to the Licensing Act regulations prescribing plans.
- 7.8 Since the variation application of the premises licence was refused in August 2009 other matters were placed before the Licensing sub-board in connection with the premises licence. Miss Wendy Beharry has now submitted this application to vary the premises licence for retrospective approval for the structural alterations made between 11th May 2009 and 15th June 2009 to the premises.
- 7.9 In the application to vary the premises licence Miss Wendy Beharry has asked for the removal of Condition 2.2 - Use of polycarbonate containers in *Annex C – Conditions attached after a hearing by the Licensing Authority*, see the current premises licence at Appendix B. This condition was attached to the premise licence by the Licensing Sub board at the Review Hearing in November 2009.
- 7.10 Section 145 Licensing Act 2005 makes it a specific offence and

places responsibilities on the designated premises supervisor and or the premises licence holder knowing that the premises are exclusively or primarily used for the supply of alcohol for consumption on the premises allows an unaccompanied child to be on the premises when they are open for the purposes of being used for the purpose of being used for the supply of alcohol consumption there. A “child” means an individual aged under 16 years and a child is unaccompanied if he is not in the company of an individual aged 18 or over.

- 7.11 Hampshire Constabulary as a responsible authority has raised concerns regarding all four of the licensing objectives, see Appendix C. In the representation the police have both identified new conditions to allay their concerns and recommended that all the existing conditions on the licence are reviewed and considered whether they should be retained. The Secretary of States Guidance issued under section 182 of the act requires that “Each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions.
- 7.12 The police have expressed concern that because the first floor is not yet completed and fitted out as set out on the plan accompanying the application the applicant may deviate from the approved plan. The police have followed the applicants request to view the premises as two separate venues and have made recommendations for conditions to be attached to the licence that reflect two separately operated venues within the one premises.
- 7.13 Miss Wendy Beharry has submitted a letter of dated 5th 7th July 2010, see Appendix E. A further letter was submitted by Miss Wendy Beharry dated 7th July 2010 with accompanying rebuttal evidence, see Appendix F. A final letter was submitted by Miss Wendy Beharry dated 8th July 2010 with copies of signs, see Appendix G.
- 7.14 Case law (Daniel Thwaites plc v Wirral Borough Magistrates’ Court) has indicated that the Licensing Authority must have regard to the Licensing Act 2003 and guidance issued under the Act when considering the imposition of conditions in addition to those identified in the operating schedule. Conditions should only be imposed where there is a clear, evidence based need for them and they relate directly to the licensing objectives. Conditions that are imprecise or difficult for licence holders to observe should be avoided.

8 LICENCE CONDITIONS

8.1 Mandatory Conditions.

No additional mandatory conditions are necessitated by this application. The new statutory mandatory conditions will be applied to the premises licence on the statutory implementation dates.

8.2 New licence conditions.

To be determined by the Sub Board taking into account the representations received and the suggestions made by Hampshire Constabulary.

9 OTHER CONSIDERATIONS

9.1 The Crime and Disorder Act 1998 places a duty on the Authority to exercise its functions with due regard to the likely effect of the exercise of its functions on, and the need to do all it reasonably can to prevent crime and disorder in its area. The prevention of crime and disorder is one of the licensing objectives and is a matter that the Authority must take into account when making its decision on the license application.

9.2 The Human Rights Act 1998 applies this guarantees the right to a fair hearing for all parties in the determination of their civil rights. The hearing procedure satisfies this requirement and in addition there are rights of appeal given to applicants and those making representations against the Licensing Authority's decision to the Magistrates Court. The licence is deemed to be a possession and therefore Article 1 of the First Protocol is engaged and this provides that no-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law.

9.3 Article 8 of the Convention states that there is a right to a respect of family life and that a public authority should not interfere with this except in accordance with the law, in the interests of national security, economic well being, prevention of crime and disorder, protection of health or morals or for protection of the rights and freedom of others. The concerns of the local resident should therefore be considered.

10 ASSOCIATED PAPERS

10.1 The Sub-Board's attention is drawn to the following associated papers that are attached:-

APPENDICES

A. Application Form

B. Existing Premises Licence 09/00759/LAPRE

C. Police Representation

D. Supplementary Police evidence and letter dated 29th June 2010

E. Miss Beharry's Letter 5th July 2010 and Statements responding to the Supplementary Police evidence

F. Miss Beharry's Letter 7th July 2010 and rebuttal evidence.

G. Miss Beharry's letter of 8th July 2010 and additional signs.

H. Comparative Table – TABLE 1

Financial Services comments:	
Legal Services comments:	Contained within the Report
Service Improvement Plan implications:	
Corporate Plan:	
Risk Assessment:	
Background papers:	
Appendices/Enclosures:	See Above List at 10.1
Report author/ Lead Officer:	Russell Bray Ext 5553

APPENDIX A

APPLICATION TO VARY THE PREMISES LICENCE AND PLANS

APPENDIX B

COPY OF EXISTING PREMISES LICENCE 09/00759/LAPRE

APPENDIX C

POLICE REPRESENTATION FORM G88

APPENDIX D

**SUPPLEMENTARY POLICE EVIDENCE AND LETTER DATED
29th JUNE 2010**

APPENDIX E

**MISS BEHARRY'S LETTER OF 5th JULY 2010 AND STATEMENTS
RESPONDING TO THE SUPPLEMENTARY POLICE EVIDENCE**

APPENDIX F

**MISS BEHARRY'S LETTER OF 7th JULY 2010 AND REBUTTAL
DOCUMENTS EVIDENCE**

APPENDIX G

MISS BEHARRY'S LETTER OF 8th JULY 2010 AND ADDITIONAL SIGNS

APPENDIX H

COMPARATIVE TABLE – TABLE 1

TABLE 1 – CURRENT AND PROPOSED LICENSING ACTIVITIES AND HOURS FOR “THE YACHTSMAN”

CURRENT ACTIVITY	CURRENT ACTIVITY	CURRENT ACTIVITY	CURRENT ACTIVITY	PROPOSED CHANGES TO HOURS AND ACTIVITY
Activity	Licensing/Activities Hours	Days	Hours	Hours and Days
M. Sale of Alcohol	Sales “Off” the premises	Monday – Saturday Sunday	10:00 – 00:00 10:00 – 23:00	YES Mon – Sat 08:00 – 01:30 Sun 08:00 – 01:30
			<u>Non Standard Timings</u> NIL	<u>Non Standard Timings</u> Close one hour later on Easter Bank Holiday Friday/Saturday/Sunday May Bank Holiday Spring Bank Holiday Summer bank Holiday
	Sales “On” the Premises	Monday – Saturday Sunday	10:00 – 00:00 10:00 – 23:00	Mon – Sat 08:00 – 01:30 Sun 08:00 – 01:30
			<u>Non Standard Timings</u> NIL	<u>Non Standard Timings</u> Close one hour later on Easter Bank Holiday Friday/Saturday/Sunday May Bank Holiday

				Spring Bank Holiday Summer bank Holiday
Regulated Entertainment:	Regulated Entertainment:	Regulated Entertainment:	Regulated Entertainment:	Regulated Entertainment:
A. Plays	None	None	None	YES Monday – Sunday 08:00 – 01:30 <u>Non Standard Timings</u> Close one hour later on Easter Bank Holiday Friday/Saturday/Sunday May Bank Holiday Spring Bank Holiday Summer bank Holiday Both “In” & “out” doors
C. Indoor Sporting Activities (excluding boxing/wrestling).	None	None	None	YES Monday – Sunday 08:00 – 01:30 <u>Non Standard Timings</u> Close one hour later on Easter Bank Holiday Friday/Saturday/Sunday May Bank Holiday Spring Bank Holiday Summer bank Holiday

D. Boxing or Wrestling	None	None	None	None
F. Recorded Music	Yes (Indoors only)	Monday – Saturday Sunday	10:00 – 01:30 12:00 – 01:30 <u>Non Standard Timings</u> NIL	YES Monday – Sunday 08:00 – 01:30 <u>Non Standard Timings</u> Close one hour later on Easter Bank Holiday Friday/Saturday/Sunday May Bank Holiday Spring Bank Holiday Summer bank Holiday Both “In” & “out” doors
G. Performance of Dance	None	None	None	YES Monday – Sunday 08:00 – 01:30 <u>Non Standard Timings</u> Close one hour later on Easter Bank Holiday Friday/Saturday/Sunday May Bank Holiday Spring Bank Holiday Summer bank Holiday Both “In” & “out” doors
H. Other Entertainment falling	Yes (Indoors only)	Monday – Saturday	10:00 – 01:30	YES Monday – Sunday

<p>within the Act similar to E, F or G</p>		<p>Sunday</p>	<p>12:00 – 01:30</p> <p><u>Non Standard Timings</u></p> <p>NIL</p>	<p>08:00 – 01:30</p> <p><u>Non Standard Timings</u> Close one hour later on Easter Bank Holiday Friday/Saturday/Sunday May Bank Holiday Spring Bank Holiday Summer bank Holiday</p> <p>Both “In” & “out” doors</p>
<p>K. Facilities for entertainment similar to I or J</p>	<p>None</p>	<p>None</p>	<p>None</p>	<p>YES Monday – Sunday 08:00 – 01:30</p> <p><u>Non Standard Timings</u> Close one hour later on Easter Bank Holiday Friday/Saturday/Sunday May Bank Holiday Spring Bank Holiday Summer bank Holiday</p> <p>Both “In” & “out” doors</p>
<p>L. Late night Refreshment.</p>	<p>Yes (indoors only)</p>	<p>Every Day</p>	<p>23:00 – 01:30</p>	<p>NO CHANGES</p>