

Somerset West and Taunton Council

Licensing Sub-Committee – 5 July 2021

Application for the grant of a Premises Licence under the Licensing Act 2003

This matter is the responsibility of Cllr Andrew Sully

Report Author: Brad Fear – Licensing Officer

1 Executive Summary / Purpose of the Report

1.1 Members are asked to consider an application to grant a Premises Licence under the Licensing Act 2003 for Stokrotka, 5a East Reach, Taunton TA1 3EN

2 Recommendations

2.1 As relevant representations have been received by the licensing authority, the sub-committee must take such steps as it considers appropriate for the promotion of the four licensing objectives, being:

- The prevention of crime and disorder;
- The prevention of public nuisance;
- Public safety;
- The protection of children from harm.

2.2 The steps the sub-committee may take are to:

- Grant the licence subject to the conditions identified in the applicant's operating schedule (modified to such extent as the authority considers appropriate for the promotion of the licensing objectives) and any appropriate mandatory conditions.
- Exclude from the scope of the licence any of the licensable activities to which the application relates.
- to refuse to specify a person in the licence as the designated premises supervisor;
- Reject the application.

3 Risk Assessment (if appropriate)

- 3.1 The matters to which this report relates does not impact on any of the issues identified within the Corporate and Function Risk Registers.

4 Background and Full details of the Report

- 4.1 Stokrotka is a small grocery (selling groceries and household items) based on East Reach in Taunton. The premises was previously licensed by the local authority to sell alcohol Monday to Sunday from 8am to 10pm. This licence was initially issued/granted in September 2010.
- 4.2 On 18th May 2018 the Licensing Authority received written confirmation (forwarded to us by Nicola Cooper of Avon and Somerset Constabulary) that the then designated premises supervisor (DPS) for the property—Anna Buczek—was formally withdrawing her consent to be named as the DPS, under section 1.41 of the Licensing Act 2003. Attempts were made by the Licensing Authority to make contact with the licence holders (to inform them that they would be unable to sell alcohol until a new DPS had been appointed), however we were then informed that the business had ceased trading on 3rd May 2018.
- 4.3 In November 2018 a letter was sent to the licence holder to advise them that the annual fee payment for the premises licence (which was still valid/ in effect) had not been received and that the licence would be suspended until such time as the fee payment was made.
- 4.4 The Government's Companies House website states that Daro Shop Ltd—who were the existing holders of this licence—had formally dissolved as of March 2020. Under section 27(1)(d) of the Licensing Act 2003, a premises licence lapses if the holder of the licence, being a company, is dissolved. Under section 50 of the Act, there is the ability to reinstate a premises licence that has lapsed in such circumstances, but only where an application to transfer said licence is made within 28 days of that licence having lapsed. No such application to transfer was received by the Licensing Authority during this period, thereby causing the licence to lapse.
- 4.5 On 25th August 2020 the Licensing Authority received an application to transfer the premises licence to the new licence holder--Stokrotka Taunton Limited. At the time, due to an error at Licensing's end, the fact that the old company had dissolved (thereby invalidating the old licence) was missed. As such, an updated licence with the new licence holder information on it was incorrectly issued on 5th March 2021. However, the Licensing Authority had acknowledged from previous records that a new DPS had not been appointed since Anna Buczek's withdrawal of consent in 2018. As such, under sections dictating the licensable activities and DPS information, the Licensing Authority added to the licence the statement: *No alcohol can be sold until an application to vary the DPS has been received by the Licensing Authority.* (Note: a copy of this licence is included with Avon & Somerset Constabulary's report appendices, attached to this sub-committee report collectively as **Appendix E**).
- 4.6 An application to Vary the Designated Premises Supervisor (DPS) was received on 19th March 2021, following a visit to the premises by Nicola Cooper (Area Licensing Practitioner for Avon and Somerset Constabulary), in which she informed the licence holders that they were not licensed to sell alcohol without a DPS in place. It was at this time that it came to the attention of the Licensing Authority that the old licence

had lapsed and, as such, the transfer in August 2020 was invalidated and that the premises in fact had no licence in effect at all. The Licensing Manager, John Rendell, made contact with the licence holder's Licensing Consultant, Tony Clarke, on 25th March 2021 to confirm this and to explain that a new application would be required for an entirely new premises licence for the premises.

- 4.7 An application for the grant of a new premises licence for Stokrotka, 5a East Reach was received on 13th May 2021. The application was to allow for the sale of alcohol (for consumption off-site only) between the hours 08:00 and 22:30 Monday to Sunday. Proposed activities and a copy of the submitted site plan can be viewed under **Appendix A**.
- 4.8 The application was submitted to responsible authorities on 13th May 2021, commencing a mandatory 28-day period of consultation on the application.
- 4.9 Notices advertising the Licence were placed up at the premises and a copy of this was also advertised in the local paper within 10 working days, in accordance with the Licensing Act 2003 (Premises licences and club Premises certificates) Regulations 2005. A copy of this notice was also posted on the Somerset West and Taunton Council website, with a function available for members or the public to make objections online through the website.
- 4.10 Within the application, the applicant has identified steps they intend to take promoting the licensing objectives, and this is often referred to as being part of the 'operating schedule'. In their application, the applicant outlined a number of conditions they would propose being added to any granted licence. These can be view under **Appendix B**.
- 4.11 Following discussions between the applicant and Somerset West and Taunton Planning department on the listed nature of the premises building, amended plans were submitted to the Licensing and Planning Authorities confirming the absence of roller shutters at the front of the building (the amended plan has also been attached to **Appendix A**). In e-mail correspondence with the Licensing team regarding their proposed conditions, the applicant confirmed on 2nd June 2021 that the condition regarding the roller shutter would need to be amended following their correspondence with Planning (the updated wording can also be found in **Appendix B**) and the police were notified of the new wording of the condition in question.

Representations from Responsible Authorities

- 4.12 Representation against the application has been received from a responsible authority—Avon & Somerset Constabulary—within the 28-day consultation period. The representation/objection submitted by Sgt Andrew Gloyn is shown in **Appendix C**. A full and detailed report supporting the representation—and including a detailed history of interactions with the premises—submitted by Nicola Cooper (Area Licensing Practitioner) can also be found under **Appendix D**, and the appendices 1-7 to this separate report have all been attached to this Sub-Committee report collectively under **Appendix E**. Somerset Policing District's CCTV Operational Guidance document—which is also referred to in this police report (as their 8th appendix) can be viewed under **Appendix F** of this sub-committee report.
- 4.13 The overarching concerns raised by representatives from the Police relate to historical issues with the premises, such as underage sales, purchasing of stolen goods, lack of understanding of licensing laws, etc (see above mentioned appendices for full details). These issues have raised concerns with the police on the

fitness/suitability of the applicant to hold (and adhere to the conditions of) a premises licence. It is felt by Avon & Somerset Constabulary that the granting of this licence would undermine the licensing objectives (in particular, the protection of children from harm, prevention of crime and disorder, and maintaining public safety).

Mediation

- 4.14 As stipulated in both Sgt Gloyn's representation (**Appendix C**) and the Area Licensing Practitioner's report (**Appendix D**) it is felt by the police that the addition of further conditions, no matter how robust, would not allay their concerns. As their concerns are centred around the suitability of the applicant to hold a premises licence, it is felt by Avon & Somerset Constabulary that conditions imposed are unlikely to be fully complied with. As such, mediation between Avon and Somerset Constabulary and the applicant in advance of the Sub-Committee hearing was not achievable.

Responses to notice of hearing

- 4.15 Notices of hearing were sent out on 17th May 2021 to the applicants and to the police. Responses to these notices of hearing can be found under **Appendix G**, confirming individuals intending to attend the sub-committee hearing.

Relevant Licensing Policy considerations

- 4.16 Section 1.2 of the Authority's Licensing Policy states: "The Act requires the Licensing Authority to carry out its various licensing functions so as to promote the four licensing objectives". "These four objectives will be the paramount considerations when determining a course of action in relation to the Licensing Authority's licensing functions. Each objective will be given equal importance". The four objectives are: the prevention of crime and disorder, public safety, prevention of children from harm and prevention of public nuisance.

Conditions

- 4.17 Section 1.5.2 of the Policy states "The Licensing Authority may only impose conditions on a premises licence if they are consistent with the operating schedule or after receiving relevant representations. Any conditions attached to the licence must relate to the promotion of the Licensing Objectives".
- 4.18 The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned.
- 4.19 The guidance issued under Section 182 of the Licensing Act 2003 states: "(9.38) *All licensing determinations should be considered on a case by case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be. (9.39) The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. (9.40) Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters.*"

5 Links to Corporate Aims / Priorities

- 5.1 The granting of this application would support an existing business within the district, creating additional sources of income. However, considerations must also be made, where necessary, to the Corporate Strategy's commitment to 'reduce anti-social behaviour, through working with residents and our partners'.

6 Finance / Resource Implications

- 6.1 None.

7 Legal Implications

- 7.1 The Licensing Sub Committee, when determining this application, must comply with the Licensing Act 2003. It should also have due regard to the Home Office Guidance and the Council's Licensing Policy.
- 7.2 In determining an application for a Premises Licence, any Responsible Authority or other party can make representations in relation to the application.
- 7.3 The Licensing Act 2003 created four licensing objectives and in determining this application, only factors that relate to the licensing objectives can be taken into account. Any representation must relate to the licensing objectives and any conditions added by the Licensing Sub Committee must relate to the promotion of the licensing objectives.

Human Rights Act 1998

- 7.4 The sub-committee must also have regard to the provisions of the Human Rights Act 1998 when determining this application. The 1998 Act made the European Convention of Human Rights directly enforceable in British courts. The relevant provisions are Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 11 (freedom of association) and Article 1 of the First Protocol (right to peaceful enjoyment of one's possessions). These provisions require the sub-committee to identify correctly the competing interests, give each appropriate weight in the circumstances of the case, and balance them against each other in order to arrive at a fair and reasonable decision.

Appeals

- 7.5 If the sub-committee modifies conditions or rejects the application, the applicant may appeal within 21 days of notification of the decision to the Magistrates' Court. Those making relevant representations may appeal if they believe that the licence should not have been granted, or that, when granting the licence, the Licensing Authority ought to have imposed different or additional conditions or excluded a licensable activity. The Magistrates' Court may dismiss the appeal, or substitute its own decision, or send back the case to the Licensing Authority with directions as to how the case is to be dealt with. The Magistrates' Court may make any costs order it thinks fit.

8 Environmental Impact Implications (if any)

- 8.1 None identified

9 Safeguarding and/or Community Safety Implications (if any)

9.1 In the event that Avon & Somerset Constabulary's concerns regarding further underaged sales are realised, this could have implications on community safeguarding/ protection of children from harm.

10 Equality and Diversity Implications (if any)

10.1 None identified.

11 Social Value Implications (if any)

11.1 No social value implications were identified.

12 Partnership Implications (if any)

12.1 No partnership implications were identified.

13 Health and Wellbeing Implications (if any)

13.1 Through effective regulation, confidence in licensed premises and activities can be maintained, helping communities to thrive.

14 Asset Management Implications (if any)

14.1 No asset management implications have been identified.

15 Consultation Implications (if any)

15.1 None identified.

16 Scrutiny Comments / Recommendation(s) (if any)

16.1 Not applicable.

Reporting Frequency : Once only

List of Appendices

Appendix A	Licensable activities applied for and plan of area to be licensed
Appendix B	Operating schedule/ licence conditions offered by applicant in their application
Appendix C	Representation from Sgt Andrew Gloyn – Avon & Somerset Constabulary
Appendix D	Report from Area Licensing Practitioner – Avon & Somerset Constabulary
Appendix E	Collected appendices to the Area Licensing Practitioner's report
Appendix F	Somerset Policing District Surveillance Camera Systems Within Licensed Premises Operational Requirement Guidance
Appendix G	Responses to Notice of Hearing

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