

LICENSING SUB – COMMITTEE

Thursday 10 October 2024 10:00 at Guildhall Winchester

Report of the Service Lead for Public Protection

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Application: Application to Vary Premises Licence

Premises: Subway, 165 High Street, Winchester, SO23 9BA

Part A. Report

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Part A.**1. Application****Applicant:** R2 Sub Limited**Premises:** Subway, 165 High Street, Winchester, SO23 9BA

- 1.1 The application is for the variation of premises licence under section 34 of the Licensing Act 2003 for Subway, 165 High Street, Winchester, SO23 9BA.
- 1.2 The application is to offer late night refreshment (indoors only) Thursday to Saturday 2300 to 0400 the next day. A copy of the application can be found at Appendix 1.
- 1.3 The premises is currently licensed under a Premises Licence for late night refreshment (indoors only); Sunday and Monday 2300 to 0000, Tuesday and Wednesday 2300 to 0100 and Thursday to Saturday 2300 to 0200.
- 1.4 Apart from the Mandatory Conditions, there are no premises specific conditions on the current Premises Licence.
- 1.5 The application does not request to amend the hours for late night refreshment Sunday to Wednesday.
- 1.6 During the consultation period, a representation was received from Hampshire Constabulary objecting to the application in relation to the prevention of crime and disorder, public safety and the prevention of public nuisance licensing objectives. A copy of the representation can be found at Appendix 2.
- 1.7 Hampshire Constabulary provided a set of conditions to the applicant and licensing authority for consideration, these can be found in section 5 of the report in *italics*.
- 1.8 One representation has been received from Other Persons as an interested party objecting to the application. This representation relates to the prevention of crime and disorder, public safety and the prevention of public nuisance licensing objectives. A copy of the representation can be found at Appendix 3.
- 1.9 Notice of the application was displayed outside of the premises for a period of 28 days until 17 September 2024 and advertised in the Southern Daily Echo on 4 September 2024.
- 1.10 Notices of the hearing were sent to all Parties on 23 September 2024.

Designated Premises Supervisor

Not applicable for this application.

Steps to promote the Licensing Objectives

Please see Section M Appendix 1.

Relevant Representations

2. Responsible Authorities

All of the Responsible Authorities have been served with a copy of the application. The representations received are as follows:

Environmental Health

No representations received.

Hampshire Constabulary

Representation received seeking additional conditions to be added to the licence, if granted.

Hampshire Fire and Rescue Service

No representations received.

Child Protection Team

No representations received.

Building Control

No representations received.

Head of Trading Standards

No representations received.

Public Health Manager

No representations received.

Home Office

No representations received.

Licensing Authority

No representations received.

Planning

No representations received.

3. Representations from Other Persons

Representations have been received from one 'Other Persons', which are against the application. The main concerns are with regard to the prevention of crime and disorder, public safety and the prevention of public nuisance licensing objectives.

Representations can be seen at Appendix 3.

4. Observations

- 4.1 The Sub-Committee is obliged to determine this application with a view to promoting the Licensing Objectives:
- The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm
- 4.2 In making its decision, the Sub-Committee is also obliged to have regard to the [National Guidance](#) and the Council's [Licensing Policy](#).
- 4.3 The Sub-Committee must have regard to all of the representations.
- 4.4 The Sub-Committee must take such of the following steps it considers appropriate to promote the Licensing Objectives:
- a) Grant the licence subject to conditions in accordance with the operating schedule (modified to such extent as the authority considers appropriate for the promotion of the licensing objectives) and the mandatory conditions;
 - b) exclude from the scope of the licence any of the licensable activities to which the application relates;
 - c) refuse to specify a person in the licence as the premises supervisor;
 - d) reject the application.

Terminal hours

The Sub-Committee should take account of the National Guidance and the Council's Licensing Policy with regard to terminal hours and take such steps as it considers appropriate to promote the Licensing Objectives.

(Licensing Policy 2.22 Part 4, A8, C4)

Licensing Objectives

Crime and Disorder

The Sub-Committee should consider any appropriate conditions to prevent crime and public disorder relating to the premises having regard to the operating schedule and the representations.

(Licensing Policy 1.9, 2.9 - 2.11, 2.17, 2.19 – 2.21 and Part 4 Section A)

Public Safety

The Sub-Committee should consider any appropriate conditions relating to public safety having regard to the relating to the premises having regard to the operating schedule and the representations.

(Licensing Policy Part 4, B2, B3)

Public Nuisance

The Sub-Committee should consider any appropriate conditions to prevent public nuisance caused by noise pollution from the premises relating to the premises having regard to the operating schedule and the representations.

(Licensing Policy Part 4, Section C)

Protection of Children

The Sub-Committee should consider any necessary conditions for the Protection of Children relating to the premises having regard to the operating schedule and the representations.

(Licensing Policy Part 4, D6, D7)

Human Rights

It is considered that Articles 6 (right to a fair trial) 8 (right to respect for private and family life) and Article 1 of the First Protocol (right to peaceable enjoyment of possessions) may be relevant. As there is a right of appeal to the Magistrates' Court, it is considered that there would be no infringement of Article 6. Article 8 is relevant, insofar as the nearby residents could claim that this right would be infringed by disturbance from customers. This should be balanced against the applicants' right to use of their premises under Article 1 of the First Protocol. Interference with these rights is permitted, where this interference is lawful, appropriate in a democratic society, and proportionate. Likewise, the residents may argue that their rights under Article 1 of the First Protocol would be infringed. If conditions are imposed, there should be no interference with any convention rights. To the extent that any interference may occur, it would be justifiable in a democratic society, and proportionate.

Public Sector Equality Duty

The Public Sector equality duty must be taken in to consideration with all decision making. The duty is stated in section 149 of The Equality Act 2010. This application raises no considerations under this Act (or add details if it does).

5. Conditions

Mandatory Conditions

The Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014

– effective from 1 October 2014

1. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
 (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a times limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carried a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
2. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
3. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
 (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
 (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served

- alcohol, identification bearing their photograph, date of birth and either—
- (a) a holographic mark, or
 - (b) an ultraviolet feature.
4. The responsible person must ensure that—
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other an alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25ml or 35ml; and
 - (iii) still wine in a glass: 125ml;
 - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
 - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014
– effective from 28 May 2014

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
2. For the purposes of the condition set out in paragraph 1-
 - (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
 - (b) “permitted price” is the price found by applying the formula- **$P = D + (D \times V)$**
 where-
 - (i) **P** is the permitted price,
 - (ii) **D** is the rate of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) **V** is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
 - (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence-
 - (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
 - (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

- (e) “valued added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.
3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
 4. (1) Sub-paragraph 2 applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.
(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Possible Conditions

If the application is granted, the Sub-Committee may wish to consider the following conditions to reflect the Operating Schedule:

Operating Hours

1. The hours the premises may be used for the provision of late night refreshment shall be:

Sunday and Monday	2300 to 0000
Tuesday and Wednesday	2300 to 0100 the next day
Thursday to Saturday	2300 to 0400 the next day

2. The hours the premises may open for other than Licensable Activities shall be:

Sunday and Monday	2300 to 0000
Tuesday and Wednesday	2300 to 0100 the next day
Thursday to Saturday	2300 to 0400 the next day

Conditions showed in *italics* below have been requested by Hampshire Constabulary to promote the licensing objectives.

Crime and Disorder

Security

- CD1. *On Thursday, Friday, Saturday and days preceding UK public holidays, from 22:00 until the closing time of the venue, an SIA registered frontline door supervisor shall be employed at the venue.*
- CD2. *This individual shall be employed solely on door supervisor / security duties, i.e. safety and security at the venue.*

- CD3. *They shall wear a fluorescent and reflective orange tabard or jacket, clearly marked security at all times.*
- CD4. *All front door refusals are to be recorded promptly, including the reason i.e. too intoxicated, barred suspicion of drugs etc.*
- CD5. *If a person is ejected from the venue a record must be made of the incident including details of the staff members involved and a summary of the circumstances. This must be completed as soon as practicable but prior than the end of that persons shift.*
- CD6. *At the terminal hour of operation, door supervisors shall assist with the management of customers leaving the venue as well as those remaining in the vicinity of the premises.*
- CD7. *The licence holder shall maintain a duty register giving details of each and every person employed in the role of a security and shall provide upon request by any responsible authority, the following details:-*
- a) The full licence number, name, residential address and telephone number of that person;*
 - b) The time at which they commenced that period of duty, with a signed acknowledgement by that person;*
 - c) The time at which they finished the period of duty, with a signed acknowledgement by that person;*
 - d) Any times during the period of duty when they were not on duty;*
 - e) If that person is not employed directly by the licence holder or venue but via a security contractor company, then details of this company must also be supplied (company name and out of office contact details)*
- CD8. *The register shall be so kept upon the premises that it relates so that it can be readily inspected by any responsible authority immediately upon request.*
- CD9. *The duty register shall comprise of a bound, consecutively page-numbered book and the licence holder shall ensure that this register is kept in a secure environment in order to prevent unauthorised access or alterations to same.*

Body Worn Video (BWV)

- CD10. *At times when the venue is operating SIA security, they shall wear and operate body worn video (BWV) recording equipment at all times.*
- CD11. *The equipment shall be maintained and the images shall be made available as soon as practicable but at least within 48 hours to the police on request.*

- CD12. *The equipment shall record high definition colour images and be able to capture sound, specifically conversation. The equipment shall be able to operate in all levels of illumination, images shall be time / date stamped.*
- CD13. *The BWV shall be of a similar specification to those currently utilised by Hampshire Constabulary and as such shall be of sufficient quality to produce evidential data.*
- CD14. *There shall be sufficient number of devices and or batteries at the venue to ensure that the devices are able to operate continually.*
- CD15. *Where the equipment fails the police licensing department responsible for the area, shall be notified immediately in by e- mail as soon as is practicable and the defect rectified within 14 days of the failure.*
- CD16. *Data obtained on the BWV shall be downloaded and stored in such a way to prevent images being edited or deleted as soon as practicable.*
- CD17. *Data shall be retained for a minimum of 28 days.*

Public Safety

CCTV

- PS1. *A colour recording CCTV system that captures images from the main public areas shall be fully operational whilst licensable activities are taking place.*
- PS2. *The system shall be able to cope with all levels of illumination.*
- PS3. *The recording equipment shall be stored and operated in a secure environment with limited access, to avoid damage, theft, unauthorised viewing and maintain the integrity of the system.*
- PS4. *The system shall be serviced at least annually and maintained to a standard that is acceptable to the police licensing department responsible for the area.*
- PS5. *The system clock shall be checked regularly for accuracy taking account of GMT and BST.*
- PS6. *Digital systems shall have sufficient storage capacity for a minimum of 28 days evidential quality recordings.*
- PS7. *The images produced shall be date and time stamped.*
- PS8. *A notice shall be displayed at the entrance to the premises advising that CCTV is in operation.*

- PS9. An additional recording CCTV camera shall be installed and fully operational whilst the venue is open to the public to cover the area immediately outside the front of the premises.*
- PS10. It is important that the Police are able to access data from the systems quickly and easily and therefore provision shall be made that at all times the premises is open a person is in attendance who is nominated by the data controller who has access to the secure area who is able to operate the equipment and download data.*
- PS11. In the event of a technical failure of the CCTV equipment, the premises licence holder or DPS shall notify, via email the police licensing department responsible for the area within 24 hours of the fault and provide details of when the fault shall be repaired.*

6. Other Considerations

Council Strategy Outcome (Relevance To:)

This report relates to the fourth Strategic Outcome; 'Improving the quality of the District's environment' by working with partners and using powers available to us to make the Winchester district a safe and pleasant place to live, work and visit.

Resource Implications

A statutory licence fee of £190 has been received. It is anticipated that an appropriate level of officer attendance will be provided within the existing budget.

Appendices

1. Application by R2 Sub Limited
2. Representations by Responsible Authorities
3. Representations by Other Persons
4. Location of Premises
5. Supporting information by Hampshire Constabulary