

Part One

LICENSING SUB-COMMITTEE	(D)
Date of Meeting: 4th June, 2019	
Reporting Officer: Licensing Officer	
Title: Application for a Premises Licence Summary and Conclusions: This report sets out details of an application for a Premises Licence made under s.17(1) Licensing Act 2003 from Island Express (“the Applicant”), 19 Ramsden Dock Road, Barrow in Furness, Cumbria, LA14 2TP. Valid representations have been received from 3 local residents which require consideration. Recommendation: It is recommended that members grant the application in line with the Operating Schedule put forward by the Applicant.	

Report

The supply of alcohol, provision of regulated entertainment, and sale of late night refreshment are licensable activities under s.1 Licensing Act 2003 (“the Act”). Authorisation from the Council, in its role as the licensing authority, is required in order to carry on any of these activities at premises within the Borough.

The Act provides several forms of authorisation for different scenarios. Persons or organisations wishing to carry on activities at premises on a regular basis, or at larger one-off events, will require a premises licence to authorise those activities. Members’ clubs, satisfying a number of statutory criteria, may alternatively hold a club premises certificate.

Under s. 17(1) an application for a premises licence must be made to the relevant Licensing Authority subject to ss.54 and 55 (form of application and fees to accompany an application). Barrow Borough Council is the licensing authority for the Barrow of Barrow-in-Furness.

The application must be accompanied by:-

- a) An operating schedule
- b) A plan of the premises to which the application relates; and
- c) By a form of consent (where the application includes the sale of alcohol) given by the person whom the applicant has designated as premises supervisor.

Under the scheme of delegation adopted by the Council, the Licensing Sub-Committee (“the Sub-Committee”) is responsible for the exercise of many of the functions of the licensing authority, including determination of premises licence applications where representations have been received.

1. The Application

On 3rd April 2019, under s.17(1) of the Act, an application was made to the Licensing Authority by Island Express, 19 Ramsden Dock Road, Barrow in Furness, Cumbria, LA14 2TP for a premises licence. The application seeks authorisation for the following:

Supply of Alcohol (off the Monday – Sunday 11am – 11pm premises)
Opening Hours of the Premises Monday – Sunday 11am – 11pm

In accordance with s.17(5) the Applicant has advertised the application within the prescribed period in the prescribed form and manner. A notice has been displayed on the premises for a 28 day period and the notice has been published in the local newspaper.

Additionally notice of application has been given by the Applicant through service of a copy of the application to the specified responsible authorities (this obligation is fulfilled by officers where the application was given electronically, sent on 5th April 2019), satisfying s 17(6) of the Act.

Failure to comply with these requirements would render an application invalid.

A copy of the full application including the operating schedule, plan of premises and form of consent is attached at **Appendix 1, 2 and 3**.

The Licensing Department provided pre-application advice to the Applicant on 2nd January 2019, where assistance was given in completing the application form and advice given about what to include.

2. Representations

S. 18(3) of the Act states that where relevant representations are made, the authority must hold a hearing to consider them, unless the authority, the applicant and each person who has made representations agree that a hearing is unnecessary.

The Licensing Authority has received relevant representations and therefore has given notice of the hearing to the Applicant and those persons who have made relevant representations (as defined by s. 18(6)) as required by Sch 2 and regulation 6 Licensing Act 2003 (Hearings) Regulations 2005.

The Council has consulted with the following responsible authorities:-

- Licensing Authority (Barrow Borough Council*) (s.13(4)(g))
- The Local Planning Authority (s.13(4)(d))
- Environmental Protection Team (s.13(4)(e))
- Chief Officer of Police (s.13(4)(a))
- Health and Safety Officer (s.13(4)(c))
- Divisional Officer, Cumbria Fire and Rescue (s.13(4)(b))
- Trading Standards (s.13(4)(f)(ii))
- Public Health (s.13(4)(e))
- Safeguarding and Review, Child Protection (s.13(4)(f)(i));
and
- Home Office Immigration Enforcement (The Immigration Act 2016 made the Secretary of State a responsible authority in respect of premises licensed to sell alcohol)

*A licensing authority must carry out its function under the act with a view to promoting the licensing objectives and its licensing statement (s.4).

Representations from responsible authorities

On 29th April 2019, the Council received a representation from Planning, who are a responsible authority (**Appendix 4**):

the premises received planning permission for a takeaway by virtue of consent 2016/0242 (July 2016). The hours of operation were restricted to 0700-2300h in order to protect residential amenities. It is noted that the alcohol license applied for stays within these hours so no objections from Planning.

There has been no other representations from Responsible Authorities.

Representations from Residents

Relevant objections (“the Objectors”) to the granting of the licence have been received from residents living in close proximity of the premises.

The objections received raise concerns over the Applicant’s ability to promote the licensing objectives which are;

- Prevention of crime and disorder;
- Public safety;
- Prevention of public nuisance; and
- Protection of children from harm

Resident 1:

The first representation was received on 10 April 2019:

please pass on to licensing officer 're the " island express " applying to sell alcohol 7 days per week from 11 am to 11pm, I object to this as live across the road as it's bad enough 're bus route and traffic congestion and danger to pedestrians along with parking / waiting for meals, it's simply the wrong location for this type of business.

A reply was sent to the resident asking them to elaborate on how they think the application may affect the 4 licensing objectives. A reply was received on 10 April 2019:

thanks for prompt reply , my concerns are predominantly about public safety especially children 're drugs and underage drinking, the drug culture over here is well documented and is still going even after all the deaths over here , I think policy change is required from police / council 're housing ex prisoners over here making barrow island cleaner of the drugs , will the shop attract anti social behaviour 're current drugs / alcohol culture which may end up with fighting at all ours of the day , who can prevent the harm to children (what measures will be in place) suitably qualified people will be required with the correct training , who is responsible / accountable for this, 're health & safety the shop location is on a narrow street and bus route am thinking access / egress for fire / ambulances / police , how much noise and disruption will or could occur 're shop location to all the neighbours (me) , parking is a major issue over here especially on that corner 're Chinese , chip shop and island express as it is will it worsen over longer periods there's to much going on in such a built up area again health and safety to general public 're parked cars on bus route 're pedestrians.

hope this explains

Resident 2:

The second objection was received on 11 April 2019:

Please note I am writing to object to the premises licence application for sale/supply of alcohol made by Island Express 19 Ramsden Dock Road Barrow in Furness LA14 2TP on the following grounds:-

**There is already sufficient provision for sales of alcohol in the local area, Coop Island Rd (open daily until 10pm), Mace store Anchor Rd (open daily until 10.30pm) as well as the Royal Hotel, Navy Club, Chandler's and the Devonshire Public House*

**Potential for problems leading to an increase in antisocial behaviour*

**Potential for encouraging under age drinking*

**Increase in traffic volumes and any potential noise/parking issues that may cause*

**Increased ease of access to alcohol for vulnerable people living in the local area who are trying to give up alcohol addiction, possibly undermining the good work being offered by the recently opened welfare centre initiative at Egerton Court*

**Issues with increase in littering of the local and surrounding area which is an ongoing major issue for residents*

I therefore place my objections on record in the strongest possible terms personally and on behalf of other concerned local residents

Yours faithfully

Local Neighbourhood Watch Coordinator

Resident 3:

The final objection was received on 12 April 2019. More information has been requested however at the time of writing this has not been received.

I strongly object to the island express takeaway on barrow island being granted a liquor license on the following grounds.

Noise

Rubbish

Anti social behaviour

And the fact that I didn't think you would grant a license to a residential property.

Thank you [email removed]

Copies of the emails received from residents are attached to this report in **Appendix 5, 6 and 7** and they have all been invited to today's hearing.

3. Officers Summary

The Reporting Officer contacted the Applicant on 16 April 2019 advising of the representations that had been received, and recommended that they put forward some further information about their application and what measures they propose to put in place to promote the 4 licensing objectives (also known as volunteered conditions). Some further information has been put forward by the Applicant which is attached at **Appendix 8** and is tabulated below:

Licensing Objectives	Representations in relation to each objective (some are relevant to more than one objective) (numbers denote which resident has made the representation)	Applicants proposed conditions
Prevention of public nuisance	<ul style="list-style-type: none"> - Noise and disruption to local residents (1) - Anti-social behaviour (1) - Bus route and traffic congestion, potential danger to pedestrians (1) - Potential for problems leading to an increase in antisocial behaviour (1) - Increase in traffic volumes and any potential noise/parking issues that may cause (2) - Issues with increase in littering of the local and surrounding area which is an ongoing major issue for residents (2) - Noise (3) - Rubbish (3) 	<ul style="list-style-type: none"> - CCTV whilst the premises is open and stored securely and kept for 14 days - Clear signage stating that CCTV is in operation. - Waste disposal contract. External cleaning schedule in operation. - All reasonable steps have been taken to prevent nuisance to neighbours/businesses.
Prevention of crime and disorder	<ul style="list-style-type: none"> - Anti-social behaviour (1) - Potential for problems leading to an increase in antisocial behaviour (2) - Anti social behaviour (3) 	<ul style="list-style-type: none"> - No alcohol will be sold within or consumed within the premises. - All sales of alcohol will be recorded in a sales book and be retained. - Conflict resolution training will be given to all

		<p>staff/liaison with police</p> <ul style="list-style-type: none"> - Fire risk assessment to be submitted to Cumbria Fire and Rescue service - Premises licence conditions training-recorded and refreshed every 6 months - CCTV whilst the premises is open and stored securely and kept for 14 days-Sign stating that CCTV is in operation - Open and closing checks completed - Sale of alcohol from 16.00 to 23.00 only - Sale of alcohol delivery only-off the premises - Training provided for all members of staff/new starters by the designated premises supervisor/personal licence holder - Only selling alcohol with a pre-ordered food delivery - If no sale then this will be recorded in a no sale book and the reason why will be recorded. - If more than one refusal at one given address on the basis of drunkenness, then permanent future no sale of alcohol to that address. - No sale of alcohol to somebody who is drunk or in the presence of somebody who is drunk.
<p>Protection of children from harm</p>	<ul style="list-style-type: none"> - Children (drugs and underage drinking) (1) - Potential for encouraging under age drinking (2) 	<ul style="list-style-type: none"> - ID confirmed with Cumbria constabulary Staff must be trained in checking customers' ages by only accepting approved identification. - Alcohol not to be on displayed on premises. - Challenge 25 policy in place and full training

		<p>given to all staff by DPS.</p> <ul style="list-style-type: none"> - A refusal book on the premises where staff can record details of everyone who has been refused alcohol. - If a customer is under 18 or in the company of persons under 18, the delivery of alcohol will be cancelled. - If refusal of sale at any given address, on the basis of under the age of 18 or insufficient proof of age, then permanent ban of sale of alcohol to that address.
Public Safety	<ul style="list-style-type: none"> - Bus route and traffic congestion, potential danger to pedestrians (1) - Increased ease of access to alcohol for vulnerable people living in the local area who are trying to give up alcohol addiction, possibly undermining the good work being offered by the recently opened welfare centre initiative at Egerton Court (2) 	<ul style="list-style-type: none"> - Fire risk assessment-ensure it complies with all statutory fire safety controls. - First Aid trained member of staff on duty at all times. - No sale or consumption of alcohol on the premises

4. Mediation

The Reporting Officer has acted as the mediator between the Applicant and Objectors to try and agree on terms that would satisfy all parties concerned.

A copy of the attached information at **Appendix 9** was forwarded on 24th April 2019 to all those who had objected for comment. Resident 1 replied on 24th April 2019 to say:

thanks for information, the alcohol will be only sold with food deliveries looks fine no problem, no alcohol to be sold over the counter again looks fine no problem,, cctv and training looks fine no problem, the only issue i can see is the potential traffic congestion on that corner, re taxi, bus services along with the parking issues over here, i am thinking of pedestrians especially children, not an easy answer in this one, what assurances re road health and safety is my concern.

Resident 2 replied on 26th April 2019 to say:

Hello and thank you for the additional information given in your email.

After careful consideration, I still have some reservations about the premises licence application, as follows:-

In most localities, within the applicants delivery catchment area, there is sufficient provision for sales of alcohol

How will the conditions of sale of alcohol (only with food deliveries) be "policed"? I feel that temptation remains for alcohol purchases to be made in person at the premises, with or without purchases of takeaway food.

The potential for encouraging under age drinking (at the delivery address) remains.

Ease of access by allowing alcohol purchases with food deliveries may still have a detrimental effect on vulnerable people who have alcohol related problems.

For the reasons given, I still object to the premises licence application.

Yours faithfully

Copies of these emails are attached at **Appendix 10**

Residents have been invited to attend today's meeting to address the Committee to support their objections to the granting of the premises licence.

5. Borough of Barrow in Furness, Statement of Licensing Policy 2015

Applications

The Statement of Licensing Policy makes clear to applicants and persons who have made representations the considerations that will be taken into account when determining applications. It is also intended to guide the Sub-Committee when considering licensing applications; however, the Sub-Committee may depart from either the Statement of Licensing Policy or the statutory guidance where the circumstances of the application justify it and if there are good reasons for doing so. Full reasons must be given and Sub-Committees should be aware that such departures could give rise to an appeal or judicial review.

When considering applications, the Licensing Authority will have regard to:

- The Licensing Act and licensing objectives
- Government guidance issued under Section 182 of the Licensing Act 2003
- Any supporting regulations
- The Statement of Licensing Policy

7.4 When considering applications where representations have been made, the Licensing Authority will seek to balance those factors against its duty to promote the four licensing objectives and the rights of residents to peace and quiet.

6. The Licensing Objectives

This section sets out the controls the licensing authority and responsible authorities will expect to see where it is deemed relevant to promote the licensing objectives.

The Sub-Committee must ensure that all licensing decisions have a direct relationship to the promotion of one or more of the licensing objectives. Every application should be considered on its merits, and there must not be a 'blanket policy' to the extent that it is applied so rigidly that an exercise of discretion in each individual case is precluded. Applications must be considered with regard to the principles of fair process and the Human Rights Act.

7. National Guidance

Revised guidance issued under section 182 of the Licensing act 2003.

Section 2 – The Licensing Objectives is attached at **Appendix 11**.

Section 9 – Determining applications is attached at **Appendix 12**.

The provisions of chapter 10 of the statutory guidance highlight that only precise, appropriate and proportionate conditions, which promote one or more of the licensing objectives, should be attached to the licence or certificate. The Sub-Committee should only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the representations received, and should avoid straying into undisputed areas. Conditions duplicating other statutory provisions are not considered to be appropriate.

8. Determination of application for premises licence

When the Licensing Authority receives an application for a premises licence made in accordance with s.17 and it is satisfied that the applicant has complied with the requirements imposed under s.17(5) the Licensing Authority must grant the licence in accordance with the application subject only to:-

- a) Such conditions as are consistent with the operating schedule accompanying the application; and
- b) Any conditions which must, under ss. 19, 20, 21 be included in the licence (mandatory conditions).

The application must be determined having regard to any relevant representations made take such of the steps mentioned below as it considers necessary for the promotion of the licensing objectives.

The steps are:

- a) To grant the licence subject to:-
 - (i) Conditions which are consistent with the Operating Schedule, modified to such extent as the Licensing Authority considers necessary for the promotion of the licensing objectives
 - (ii) Any applicable mandatory conditions
- b) Refuse to grant the premises licence.

9. Recommendation

I recommend that members **GRANT** the premises licence subject to:-

- (i) Conditions which are consistent with the Operating schedule, modified to such an extent as the Licensing Authority considers necessary for the promotion of the licensing objectives.

Reasons for Recommendation

The reasons for the Officers recommendations are:-

- a) Details provided in the operating schedule and the modified conditions clearly outline the steps the Applicant will take in promoting the licensing objectives.

Measures to ensure the protection of children from harm include operating a Challenge 25 policy and no alcohol to be sold at the premises (delivery only).

- b) No representations were made by the Police; no concerns were raised regarding the potential for an increase in crime and disorder in or around the premises.
- c) The Licensing Authority was approached by the Applicant pre-application to discuss intended measures and for guidance on the application. It is the Reporting Officers' opinion that this displays a willingness to co-operate with responsible authorities in the promotion of the licensing objectives.
- d) The Applicant voluntarily offered a reduction in opening hours to meet the needs of nearby residents in satisfying their concerns regarding public nuisance.
- e) It is the reporting officers' opinion that the modified conditions provide a balance between The Applicants' duty to promote the licensing objectives and the residents' rights to peace and quiet.

(i) Legal Implications

The application met the requirements of The Licensing Act 2003.

The Sub-Committee is obliged to determine this application with a view to promoting the licensing objectives which are central to The Licensing Act 2003:

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

In making its decision, the Sub-Committee is also obliged to have regard to national guidance and the Council's own Statement of Licensing Policy.

Any party to an application (that being an applicant or someone who made a representation) has a right of appeal to the Magistrates Court.

(ii) Risk Assessment

The recommendation has no, minor or significant implications.

(iii) Financial Implications

If any appeal is successful, the costs would need to be met by the Council.

(iv) Health and Safety Implications

The recommendation has no, minor or significant implications.

(v) Equality and Diversity

The recommendation has no detrimental impact on service users showing any of the protected characteristics under current Equalities legislation.

(vi) Health and Well-being Implications

The recommendation has little impact on the Health and Wellbeing of users of this service.

Background Papers

Nil