

BROMSGROVE DISTRICT COUNCIL

LICENSING SUB-COMMITTEE

4TH AUGUST 2009

APPLICATION FOR A REVIEW OF A PREMISES LICENCE – DUKE OF YORK, BROAD STREET, BROMSGROVE

Responsible Portfolio Holder	Cllr. P. Whittaker
Responsible Head of Service	Head of Planning and Environment Services

1. SUMMARY

- 1.1 To consider an application to review a Premises Licence in respect of the Duke of York, Broad Street, Bromsgrove.

2. RECOMMENDATION

- 2.1 That Members review the licence based upon the representations received.

3. BACKGROUND

- 3.1 The Licensing Authority has received an application from a local resident in accordance with the Licensing Act 2003 to review the above-mentioned licence. The grounds for the review are set out at Appendix 'A'.
- 3.2 Members may wish to note that a number of written warnings have been issued by the Licensing Authority on 24th February and 29th June 2009, informing the Licence Holder of the need for improvement in terms of keeping the volume of the music down to an acceptable level, ensuring that all windows are kept closed in accordance with licence conditions. A joint site visit with the Police has also taken place on 5th June 2009 and the Designated Premises Supervisor was informed of the concerns expressed by local residents.
- 3.3 The current hours of operation are as follows:

Supply and retail sale of alcohol on and off the premises

Times	Days
11.00 a.m. – 11.00 p.m.	Monday - Wednesday
11.00 a.m. – 12 midnight	Thursday - Saturday
12 Noon – 11.00 p.m.	Sunday
11.00 a.m. – 1.00 a.m.	Christmas Eve

11.00 a.m. – 12.30 a.m.	Boxing Day; Friday, Saturday, Monday for every bank holiday, namely Easter, early May Bank Holiday, Spring Bank Holiday and August Bank Holiday
12 noon – 12 midnight	Sunday for every bank holiday, namely Easter, early May Bank Holiday, Spring Bank Holiday and August Bank Holiday
12 noon – 3.00 p.m. and 7.00 p.m. – 10.30 p.m.	Christmas Day
Till the start of trading hours on New Year's Day	New Year's Eve

Provision of regulated entertainment inside the premises (Exhibition of films, sporting events, live music, recorded music, entertainment of a similar description to those already mentioned and provision of facilities for making music)

Times	Days
11.00 a.m. – 11.00 p.m.	Monday - Wednesday
11.00 a.m. – 12 midnight	Thursday - Saturday
12 Noon – 11.00 p.m.	Sunday
11.00 a.m. – 1.00 a.m.	Christmas Eve
11.00 a.m. – 12.30 a.m.	Boxing Day; Friday, Saturday, Monday for every bank holiday, namely Easter, early May Bank Holiday, Spring Bank Holiday and August Bank Holiday
12 noon – 12 midnight	Sunday for every bank holiday, namely Easter, early May Bank Holiday, Spring Bank Holiday and August Bank Holiday
12 noon – 3.00 p.m. and 7.00 p.m. – 10.30 p.m.	Christmas Day
Till the start of trading hours on New Year's Day	New Year's Eve

Provision of late night refreshment inside the premises

Times	Days
11.00 p.m. – 12 Midnight	Thursday to Saturday
11.00 p.m.- 1.00 a.m.	Christmas Eve
11.00 p.m. – 12.30 a.m.	Boxing Day; Friday, Saturday, Monday for every bank holiday, namely Easter, early May Bank Holiday, Spring Bank Holiday and August Bank Holiday
12 noon – 12 midnight	Sunday for every bank holiday, namely Easter, early May Bank Holiday, Spring

	Bank Holiday and August Bank Holiday
12 noon – 3.00 p.m. and 7.00 p.m. – 10.30 p.m.	Christmas Day
Till the start of trading hours on New Year's Day	New Year's Eve

- 3.4 Details of licence conditions currently attached to the licence are set out at Appendix 'B'. Members will note that a number of conditions were placed on the licence by the Licensing Authority as a result of a previous application to vary the premises licence which was determined by the Council's Licensing Sub-Committee on 19th September 2005, as a consequence of representations being made by local residents.
- 3.5 As part of the review process, responsible authorities and interested parties are entitled to make representations. Responsible authorities include the Police Authority, Planning Authority, the Council's own Environmental Health Department, Fire Authority, Trading Standards and the Area Child Protection Committee.
- 3.6 On this occasion, a representation has been received from the Council's Environmental Health Section on the grounds of public nuisance. During the consultation period, the Council's Environmental Health Section carried out monitoring of the regulated entertainment and their findings are contained in the report is attached at Appendix 'C'. It is clear from the outcome of the monitoring exercise, that the premises was in breach of a number of its licence conditions.
- 3.7 A representation has also been submitted by West Mercia Police Authority, who has expressed concern over the management of the premises. A copy of their report is attached at Appendix 'D'.
- 3.8 A number of representations have also been received from local residents as a result of advertising the review application in accordance with the Act. Copies of their representations are attached at Appendix 'E'.
- 3.9 Leading up to and during the consultation period, the applicant, Mr. Smith has regularly informed the Licensing Authority of any incidents which were of concern to him. A copy of these incidents are attached at Appendix 'F', however certain references to personal information have been redacted to comply with data protection.
- 3.10 No representations have been received from the other responsible authorities.
- 3.11 A plan showing the location of the premises is attached at Appendix 'G'.
- 3.12 A plan showing the layout of the premises is attached at Appendix 'H'.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications arising from this Report. However if either party made a successful appeal to the Magistrates' Court against the decision of the Council, the Council may be liable for any legal costs.

5. LEGAL IMPLICATIONS

- 5.1 Each party is entitled to appeal to the Magistrates' Court if they are dissatisfied with the decision of the Council, within 21 days from the date of decision.

- 5.2 The Sub-Committee must have regard to the Statutory Guidance, issued by the Secretary of State under Section 182 of the Licensing Act 2003, in particular the determination of a review. The following is an extract taken from the Statutory Guidance:

"The 2003 Act provides a range of powers for the licensing authority on determining a review that it may exercise where it considers them necessary for the promotion of the licensing objectives.

The licensing authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives.

Where the licensing authority considers that action under its statutory powers are necessary, it may take any of the following steps:

- *to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition);*
- *to exclude a licensable activity from the scope of the licence;*
- *to suspend the licence for a period not exceeding three months;*
- *to revoke the licence.*

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 which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

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 a necessary means of promoting the licensing objectives. 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 necessary and proportionate to the promotion of the licensing objectives."

5.3 The Sub-Committee must have regard to the Council's Statement of Licensing Policy.

5.4 The conduct of the Sub-Committee is governed by the Licensing Act 2003 (Hearings) Regulations 2005, as amended.

5.5 The Sub-Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights.

6. COUNCIL OBJECTIVES

6.1 This item links with the Council Objective CO2.

7. RISK MANAGEMENT

7.1 There are not risks identified with this report.

8. CUSTOMER IMPLICATIONS

8.1 All parties will be notified of the Council's decision in writing.

9. EQUALITIES AND DIVERSITY IMPLICATIONS

9.1 All applicants are dealt with on their own individual merits are accepted in line with legislation and Council Policy.

10. VALUE FOR MONEY IMPLICATIONS

10.1 None.

11. OTHER IMPLICATIONS

Procurement Issues – None
Personnel Implications – None
Governance/Performance Management – None
Community Safety including Section 17 of the Crime and Disorder Act 1998 – None
<ul style="list-style-type: none">▪ Policy – The Council's Statement of Licensing Policy applies to this application. This reads: "<i>Conditions will only be attached where, a relevant representation or request for a review has been received, and the condition relates to the representation or request for a review, and it is necessary for the promotion of one or more of the licensing objectives.</i>"

Environmental - None

12. OTHERS CONSULTED ON THE REPORT

Portfolio Holder	Yes
Chief Executive	No
Corporate Director (Services)	No
Assistant Chief Executive	No
Head of Service	Yes
Head of Financial Services	No
Head of Legal, Equalities and Democratic Services	Yes
Head of Organisational Development & HR	No
Corporate Procurement Team	No

13. WARDS AFFECTED

All wards.

14. APPENDICES

- Appendix A – Details of the review application
- Appendix B – Conditions attached to the current licence.
- Appendix C – Report from Environmental Health
- Appendix D – Report from the Police Authority
- Appendix E – Representations from local residents
- Appendix F – Details of incidents recorded by a local resident
- Appendix G – Location plan of the area and premises.
- Appendix H – Internal layout plan of the premises

15. BACKGROUND PAPERS

- Application form received on 15th June 2009
- Email received from the Police dated 13th July 2009
- Memo received from Environmental Services dated 22nd June 2009
- Letters from local residents

Contact officer

Name: Sharon Smith, Principal Licensing Officer
E Mail: sharon.smith@bromsgrove.gov.uk
Tel: (01527) 881626