

Agenda Item No:

Licence Reference **WK/2009**

Report To: **LICENSING SUB COMMITTEE**

Date: **31ST JULY 2009**

Report Title: Licensing Act 2003 - Application is made by for the review of the premises licence in respect of The Albion Public House, Albion Place, Willesborough, Ashford, Kent, TN24 0BU on the grounds of the prevention of public nuisance.

Report Author: Licensing Manager



Summary:

The report advises Members of a licence application under the provisions of the Licensing Act 2003.

Application type: **Application is made for the review of the premises licence under the provisions of section 51 to the Licensing Act 2003**

Applicant: **Ashford Borough Council's Environmental Control Officer**

Premises: **The Albion Public House, Albion Place, Willesborough, Ashford, Kent, TN24 0BU**

To advise elected members of a valid 'Application for a Review of a Premises Licence' under Section 51 of the Licensing Act 2003 has been received and a hearing and determination is required under Section 52(2) of the Act.

Key Decision: NO

Affected Wards: South Willesborough

Recommendations: **That the Licensing Sub-Committee recommended to make a determination, at the conclusion of the Hearing, as required by Regulation 26(2) of the Licensing Act (Hearings) Regulations 2005.**

Policy Overview: The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy. Where the decision departs from the Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and such departure must be supported by clear and cogent reasons.

Financial Implications: There are no specific financial implications arising from this application. However additional costs may be incurred should

the matter go to appeal.

**Other Material
Implications:**

HUMAN RIGHTS: In considering this application the Sub Committee will balance the competing Human Rights of the various parties including the right to respect for private and family life, the protection of property and the right to a fair hearing.

LEGAL: Under the Licensing Act 2003 the Council has a duty to exercise licensing control of relevant premises and this includes determinations for applications to review.

Exemption Clauses: Not applicable

**Background
Papers:** None

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Report Title: Licensing Act 2003 - Application is made for the review of the premises licence of The Albion Public House, Albion Place, Willesborough, Ashford, Kent, TN24 0BU

Purpose of the Report

1. The report advises Members of a review application under the provisions of the Licensing Act 2003.

Application type: **Application is made for a review of a premises licence**

Applicant: **Ashford Borough Council's Environmental Control Officer**

Premises: **The Albion Public House, Albion Place, Willesborough, Ashford, Kent, TN24 0BU**

Issue to be Decided

2. Members are asked to consider an application to review a premises licence received under the provisions of section 51 of the Licensing Act 2003

Background

3. The Licensing Act 2003, which consolidated six licensing regimes in a single statute and which replaced the previous controls on the sale of alcohol under the provisions of the Licensing Act 1964, introduced the concept of the 'premises licence'.
4. A premises licence is required for any venue where any 'licensable activity' is carried on. Such activities include the sale or supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment etc.
5. All pubs, nightclubs, private members clubs, off licences, cinemas, theatres and late night takeaways, etc require a licence.
6. The government included a very clear presumption in favour of businesses in the Licensing Act 2003 since the Act requires that any application should be granted on the terms on which it is applied for, unless any valid representation is made.
7. Where representations are made, the Act suggests that the Licensing Authority can apply a 'light touch' regulation.
8. This approach is 'balanced' in the Act by provisions which permit a premises licence to be reviewed by the Licensing Authority, upon receipt of a valid application for review from an interested party or responsible authority.
9. An application for the review of a premises licence must be circulated to the responsible authorities to give them the opportunity to make representations. (Police, Fire Service, Environmental Health – Pollution Control & Health & Safety, Trading Standards, Social Services and the Planning Department).

10. Where an application for a review has been accepted by the Licensing Authority the Act requires that a notice is displayed on the premises, in a position where it can be seen from the outside of the premises, stating that an application to review the premises licence has been made. A notice must also be displayed at the Council's offices.
11. Members of the public or businesses in the area where the premises to which the review application relates is situated, or their representatives, can also make representations, which can be considered as part of the review.
12. Representations are only valid where they relate to one of the four licensing objectives, namely:
 - a) the prevention of public nuisance
 - b) the prevention of crime and disorder
 - c) ensuring public safety
 - d) protection of children from harm
13. The review application must be considered in the light of the four licensing objectives (above) and Ashford Borough Council's Statement of Licensing Policy.

Application for a review received

14. An Officer from Ashford Borough Council's Environmental Control Team has submitted an application for a review of the premises licence held by Mr Tom Dixon and Mr Rob Dixon for premises known as The Albion Public House, Albion Place, Willesborough, Ashford, Kent, TN24 0BU.
15. The Licensing Authority received the application on 22nd June 2009 and can be found (with supporting documents, in Appendix A).
16. The application for the review relates to the prevention of public nuisance licensing objective.
17. All applications for the review of a premises licence require the applicant to state the grounds for the review. The Environmental Control Officer has provided the following information:
 - a) This application for a review of the premises licence is based upon the need to resolve ongoing problems associated with excessive noise emitted from the premises.
 - b) Despite attempts to persuade the licence holder to be more proactive in controlling noise it has become necessary to serve a noise abatement notice in accordance with Section 79(1)(g) of the Environmental Protection Act 1990.
 - c) Since the notice was issued officers from the Environmental Protection Team have witnessed continuing noise from amplified music which is considered to be a nuisance to the immediate neighbourhood. It is

therefore necessary to request a review of the premises licence to address these matters under the terms of 'preventing public nuisance'.

18. The Environmental Control Officer has provided statements from officers who have witnessed the noise emanating from the premises and from people using the pub. These documents are submitted in support of the review application and are produced at Appendix A.
19. The Licensing Authority has accepted the application for a review as valid.
20. Following acceptance of the application for a review, the notice which is required to be displayed, was displayed, at the premises of The Albion Public House, Albion Place, Willesborough, Ashford, Kent, TN24 0BU and at the offices of the Council in Tannery Lane. These notices were checked throughout the consultation period.
21. The Licensing Authority has complied with the requirements of Section 51 (3)(b) and (d) of the Licensing Act 2003 by advertising the Application for a Review and inviting Representations. A copy of the Public Notice is appended as Appendix B.
22. The Licensing Authority has received no other representations from either a responsible authority or interested parties who live or work in the vicinity of the premises.
23. A location map can be found in Appendix C.

Relevant premises history

24. The premises is situated just off New Town Road/Crowbridge Road in a residential area. The two storey pub is a large public house with a central bar and a function room all situated on one level and garden facilities.
25. There is evidence of the current licence holders applied and were granted a Justice's Licence granted by the Magistrates' Court in 2007, however it is not known how long they have been involved with the premises. The designated premises supervisor is Mr Rob Dixon, although it would appear that Mr Myall is responsible for running the premises on a day to day basis and is in effect he day to day manager of the premises.
26. A premises licence was first issued to the premises and current licence holders in 2005, when an application to covert a Justice's Licence and simultaneously vary the licence to permit music and dancing was granted automatically when no representations were received from interested parties or responsible authorities..
27. The premises licence, as in Appendix D, permits the following activities:

<i>Alcohol Sales (on and off the premises)</i>		<i>Recorded music (indoors and outdoors)</i>		<i>Facilities for Dancing (indoors only)</i>	
Sunday	10:00 - 00:00	Sunday	10:00 - 00:30	Sunday	10:00 - 00:00
Monday	10:00 - 00:00	Monday	10:00 - 00:30	Monday	10:00 - 00:00

Tuesday	10:00 - 00:00	Tuesday	10:00 - 00:30	Tuesday	10:00 - 00:00
Wednesday	10:00 - 00:00	Wednesday	10:00 - 00:30	Wednesday	10:00 - 00:00
Thursday	10:00 - 00:00	Thursday	10:00 - 00:30	Thursday	10:00 - 00:00
Friday	10:00 - 01:00	Friday	10:00 - 01:30	Friday	10:00 - 01:00
Saturday	10:00 - 01:00	Saturday	10:00 - 01:30	Saturday	10:00 - 01:00

Live music (indoors and outdoors)		Other Entertainment (indoors only)	
Sunday	19:00 – 00:00	Sunday	19:00 – 00:00
Friday	19:00 – 00:00	Friday	19:00 – 00:00
Saturday	19:00 – 00:00	Saturday	19:00 – 00:00

28. Complaints of loud music were initially received by the licensing authority in September 2006 by one individual living in the vicinity of the premises and as a result of these complaints the licence holders were spoken to by James Hann (Licensing Manager) and Dave Griffiths (Police Licensing Officer) on 26th September 2006. A further complaint was received on 1st October and a letter was sent to the licence holders reminding them of their responsibilities.
29. No further complaints were received from anyone living in the vicinity of the premises until January 2007. Upon speaking to the complaint the licensing authority were informed that the nuisance caused by amplified music had improved since October 2006, although it did cause problems on occasions. Following this complaint a further letter was written to the licence holders reminding them of their responsibilities under the Licensing Act to promote the prevention of public nuisance objective.
30. In June 2008 a complaint was received regarding loud music emanating from the premises and the premises was visited by a Licensing Officer and an officer from the Environmental Control Team.
31. A further complaints were received regarding the noise generated from people in the garden of the premises for the weekends of 4th/5th and 11th/12th July 2008. Following a telephone conversation with Mr Rob Dixon on 14th July the licence holder agreed to restrict people from using the garden after 23:00.
32. All the complaints receive to this point were from a single source, namely a person living in the vicinity of the premises.
33. Upon receipt of complaints in August 2008 the matter was referred to Ashford Borough Council's Environmental Control Team for investigation.
34. The application to review the Albion's premises licence contains a log of the complaints received by the Environmental Control Team since August 2008. (Appendix A)

35. After Environmental Control Officers had provided advice to the licence holders and the public house's manager and obtained a list of events planned at the premises, checks were made on the premises by officers when events involving amplified music were staged.
36. Appendix A lists the enforcement visits by officers and their views on the level of music that could be heard from outside the premises. It also illustrates the advice given to the premises manager and licence holders to try reduce the noise levels heard outside the Albion.
37. Following complaints and observations by officers and the apparent failure of the premises licence holders or their staff to resolve the noise issues, the Environmental Control Team reviewed the case and a Noise Abatement Notice was issued on 8th May 2009 (Copy of Notice is contained in Appendix A).
38. Further complaints were received after the Noise Abatement Notice had been served. Environmental Control Officers monitored the premises on 23rd May, 6th June and 13th June 2009 and witnessed excessive music noise.
39. The Environmental Control Officer, Mr Tom Dixon and the licence holder's representative met on 10th July to discuss the review and possible steps that could be taken by the licence holder to promote the prevention of public nuisance objective.
40. The Officer has proposed a number of conditions that she believes will limit the noise nuisance and these are contained in Appendix E, along with a plan of the premises that may assist members.

Options

General

41. Members attention is drawn to the following matters:
 - a) All applications are to be considered on their merits as well as against the relevant policy and statutory framework.
 - b) Due regard should be given to the provisions of the Human Rights Act 1998, Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 and Section 17 of the Crime and Disorder Act
 - c) The various options put forward within this report are suggested on the basis of:
 - a) information contained within the application form;
 - b) the responsible authority representation and
 - c) on those measures currently in existence.
 - d) Section 4 of the 2003 Act sets out the general duties of licensing authorities stating that "A licensing authority must carry out its functions under this Act with a view to promoting the licensing objectives. The licensing objectives are ... (c) the prevention of public nuisance."

- e) Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning for the Act's purposes. The prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.
- f) In the context of preventing public nuisance, it is essential that conditions are focused on measures within the direct control of the licence holder. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, or premises management cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises. Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law.
- g) The Guidance states "the conditions that are necessary for the promotion of the licensing objectives should emerge initially from a prospective licensee's risk assessment which should be undertaken by applicants or clubs before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule that it is proposed to take to promote the licensing objectives."
- h) It is therefore perhaps useful to look at the conditions on the current premises licence and see whether they have been adhered to and whether additional conditions may be necessary to promote the prevention of public nuisance.
- i) If members, after considering the evidence in front of them and having listened to all parties come to the conclusion that the lack of management is a significant contributing factor, then they may wish to consider conditions that are not influenced by management competence, the restriction or the removal of a licensable activity.
- j) Members are also referred to Ashford Borough Council's Statement of Licensing Policy. The following paragraphs are relevant to this application:

Para 45.

The Licensing Authority will primarily focus on the direct impact of the activities taking place at licensed premises on those attending the premises and members of the public living, working or otherwise engaged in normal activity in the vicinity concerned.

Para 63.

Licensed premises have a significant potential to adversely impact on communities through public nuisances that arise from their operation. The Licensing Authority wishes to proactively maintain and protect the conditions of residents and other businesses from the potential consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide. The benefits of licensable activities will need to be carefully balanced with the impact of such

activities on neighbourhoods and the individuals living, working or active within them.

Hearings Regulations

42. Regulations governing hearings under the Licensing Act 2003 have been made by the Secretary of State.

43. The Licensing Authority has provided all parties with the information required in the Regulations to the 2003 Act including:

- a copy of the Notice of Hearing;
- the rights of a party provided in Regulations 15 and 16;
- the consequences if a party does not attend or is not represented at the hearing
- the procedure to be followed at the hearing.

Appeals

44. The Licensing Act 2003 section 181 and Schedule 5 makes provision for appeals to be made by the applicant; the holder of the premises licence and those making representations against decisions of the Licensing Authority to the Magistrates' Court.

Recommendations

45. That members carefully consider the application for review and take such steps as detailed in paragraph 48 below that the Sub-Committee consider necessary for the promotion of the Licensing Objectives.

Decision options

46. The options available to members are set out in paragraph 46 below. If members believe steps should be taken to promote the prevention of public nuisance they may wish to consider the following conditions:

- a) The playing of amplified music in outside areas of the premises is not permitted.
- b) The playing of amplified live and/or recorded music is removed as a licensable activity.
- c) Certain doors and windows to be kept closed in rooms when events involving amplified music or speech are taking place.
- d) Restricting the playing of amplified music in certain rooms.
- e) Restricting the playing of amplified music to certain days and/or times.

- f) Consideration of ventilation schemes in rooms where amplified music is permitted if windows and doors are kept closed.
- g) Prominent, clear notices shall be displayed at all exits and in the garden/outside areas, requesting customers to respect the needs of local residents and leave the premises and the area quietly.
- h) The restriction of use of the garden area after specific times.
- i) Restricting the permitted hours for the sale of alcohol.
- j) Restricting the opening hours of the premises when members of the public may be on the premises.

Legal options open to members

47. The Licensing Act 2003 at section 52(3) requires that the Licensing Authority must, having regard to the application and any relevant representations, take such steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

48. Section 52(4) states:

“The steps are –

- a) To modify the conditions of the licence;*
- b) To exclude the licensable activity from the scope of the licence;*
- c) To remove the designated premises supervisor;*
- d) To suspend the licence for a period not exceeding three months;*
- e) To revoke the licence;*

and for this purpose the conditions of the licence are modified if any of them is altered or omitted, or any new condition added.”

49. If members decide to take the steps referred to in (a) or (b) above, it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

50. The Licensing Act 2003 at section 52(11) states that:

“A determination under this section does not have effect –

- a) until the end of the period given for appealing against the decision, or*
- b) if the decision is appealed against, until the appeal is disposed of.”*

Consultation

51. All relevant parties have followed the consultation procedures required under the Licensing Act 2003. The decision should be made with regard to the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the

Licensing Act 2003. Where the decision departs from either the Guidance or the policy clear and cogent reasons must be given.

Human Rights

55. While all Convention Rights must be considered, those which are of particular relevance to the application are:

- Article 8 - Right to respect for private and family life
- Article 1 of the First Protocol - Protection of Property
- Article 10 – Freedom of Expression

The full text of each Article is given in the attached Appendix F.

Handling

56. The timings for handling the application are set out in the Licensing Act 2003 and related regulations.

Conclusion

57. Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework

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APPENDIX F - HUMAN RIGHTS

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 1 of the First Protocol

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws, as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 10

3. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
4. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.