

Leominster Sports & Social Club – Local Authority Representation

Firstly, I would like to apologise to the committee for being unable to attend the Licensing hearing in respect of this matter but on medical advice I have been advised to avoid contact with people leading up to my operation. As you are aware whilst I could send someone else from the Licensing Authority, there are few who have my knowledge of the legislation that would be able to assist the committee, you will of course have your legal advisor with you who will be able to provide clarity if required. This objection is based purely on the crime prevention objective.

In respect of the representation, in accordance with paragraph 9.37 of the Section 182 Guidance it states ‘A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation’. This document is an expansion upon the existing representation.

I understand that the applicant’s solicitor has objected to the Local Authority representation on the grounds that it is not relevant. A relevant representation is defined by virtue of Section 18(6) of the Licensing Act and states “relevant representations” means representations which are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives. As can be seen, from the information contained within this expansion, there can be no doubt that the representation does meet that criteria and therefore is relevant. The Licensing Authority has already agreed that the representation is relevant, had they not done so then this matter would not be before this committee for determination.

It is noted that the application for this premises licence is made in the name of Leominster Sports & Social Club Ltd. Leominster Sports & Social Club Ltd are also shown on the declaration required to obtain the Club Premises Certificate and therefore it would be reasonable to assume that if the premises licence was to be granted then the licence and the Club Premises Certificate would be held by the same company. It is therefore difficult to understand how one can operate as a qualifying club for the benefit of its members and at the same time operate for commercial gain by obtaining money from non-members.

The current Club Premises Certificate includes the Clubhouse together with the function room. The Clubhouse and Function Room are joined and therefore appear to be one premises, which clearly is accepted by the applicant as there is only one club premises certificate in place to cover the premises. In order to obtain the Club Premises Certificate there are certain qualifying conditions which the premises has to meet in order to satisfy the Licensing Authority that it is a qualifying club.

Irrespective of whether the premises holds a club premises certificate or a premises licence, the building itself is still a premises for the purpose of the Licensing Act 2003. It is reasonable to assume that where a premises is failing to promote any of the licensing objectives under one licence then they are likely to fail to promote them under another type of licence, particularly as in this case the application is to cover the same premises and both licences would be held and operated by the same company. Both licences are covered by the same four licensing objectives and therefore it follows that where the crime prevention objective is not promoted under one licence it is unlikely to be promoted under the other licence. The duty is for all to promote the four licensing objectives in respect of those premises. Paragraph 9.4 of the Section 182 Guidance which states ‘There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises’. Consequently the authority is not required to produce real evidence in accordance with Daniel Thwaites Plc v Wirral Borough Magistrates' Court (Case No: CO/5533/2006) at the High Court

of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943.

Section 60 (1) (a) of the act provides a meaning of a premises to be covered by a club premises certificate and states 'in respect of premises occupied by, and habitually used for the purposes of, a club'.

Any premises licence granted would mean that the function room would become open to non-members as well as members and therefore would no longer meet the requirements of a club as the premises would cease to be 'habitually used' as a club and therefore would cease to meet the qualifying conditions of a club.

Any licensable activity undertaken on these premises, particularly the sale of alcohol, would be an unauthorised licensable activity and therefore would become a criminal offence and thus undermine the crime prevention licensing objective.

The application for the function room includes a bar which clearly forms part of the club and is shown within the plans for the club premises certificate. Under Section 60(6) of the Act which deals with the general conditions it states that general Condition 5 'is that alcohol is not supplied, or intended to be supplied, to members on the premises otherwise than by or on behalf of the club'. In accordance with this condition there can be no sale of alcohol as under the club premises certificate there can only be a supply to members. This is further explained in the Section 182 Guidance which states at paragraph 6.3 'Technically the club only sells alcohol by retail at such premises to guests. Where members purchase alcohol, there is no sale (as the member owns part of the alcohol stock) and the money passing across the bar is merely a mechanism to preserve equity between members where one may consume more than another'. Therefore any sale under the intended premises licence of the alcohol purchased by the club would be an unauthorised sale and therefore a further offence under Section 136 of the act of an unauthorised licensable activity which would again undermine the crime prevention objective.

Under Section 60 (4) the third general qualifying condition of a club is that it is established and conducted in good faith as a club which is defined by section 63. The Licensing Authority has concerns in relation to the club's ability to meet these qualifying conditions particularly in relation to Section 63 (2) (a) which deals with the arrangements restricting the club's freedom of purchase of alcohol. There is no provision preventing the club's alcohol being supplied to non-members when it is to be sold from the bar of the function room.

In addition, the authority would have concerns over the nature of the premises occupied by the club if the premises licence was to be granted, as there isn't anything preventing the free movement of members of the public between the function room and the club premises.

Section 90 of the act allows the licensing authority to withdraw the club premises certificate where a club ceases to meet the qualifying conditions as shown in Section 61. Unless these matters are addressed this is something which the authority would have to consider.

It is disappointing that the applicant's solicitor has failed to engage with the Licensing Authority to try and resolve these issues.

The only matter he seems willing to discuss is in relation to Section 2 (3) of the act which states that 'Nothing in this Act prevents two or more authorisations having effect concurrently in respect of the whole or a part of the same premises or in respect of the same person and for that purpose

“authorisation” means a premises licence; a club premises certificate; or a temporary event notice. This is not a matter that the authority disputes; nevertheless the authority has a duty to ensure that the legislation is complied with and that the licensing objectives are promoted.

The easiest option to resolve these issues would be for club to apply to remove the function room from the Club Premises Certificate. This would ensure that that part of the club left, would continue to meet the qualifying conditions. The function room would still be available for use by its members as well as by members of the public. There is nothing within the act which prevents a premises running as a club under a premises licence.

Should the applicant continue to pursue the need for both a premises licence and a club premises certificate to cover the function room, then the authority seeks the following conditions to be attached to the licence in order to promote the crime prevention licensing objective:

- The summary of the licence (either premises licence or club premises certificate) shall be displayed on the front door of the function room when in use, to show under which licence/certificate the premises is being operated.
- All alcohol from the function room bar shall be removed from the bar and taken into the main club premises prior to the function room being used under the premises licence.
- All alcohol sold under the premises shall be marked with a sticky label which clearly identifies it as belonging to the function room and not the club.
- A physical barrier (or a steward shall be employed) between the function room and the club premises to prevent members of the public accessing the club premises.
- Access to the function room will only be permitted through the front door of the function room when the function room is operating under the premises licence.
- No more than one event per month shall be permitted in the function room under the premises licence (This is to ensure that the whole of the club is habitually used as a club)

Signature
Redacted

Fred Spriggs
Licensing Officer