

Supplement to the agenda for

Licensing sub-committee

Wednesday 1 March 2023

10.30 am

Online Meeting

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5. REVIEW OF A PREMISES LICENCE IN RESPECT OF THE DUCKER, 11 SOUTH STREET, LEOMINSTER. HR6 8JA CALLED BY WEST MERCIA POLICE - LICENSING ACT 2003	3 - 10
Supplemental papers from licence holder	

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Licensing Act 2003 Sections 51 and 52

51 Application for review of premises licence

(1) Where a premises licence has effect, **[F1**a responsible authority or any other person**]** may apply to the relevant licensing authority for a review of the licence.

(2) Subsection (1) is subject to regulations under section 54 (form etc. of applications etc.).

(3) The Secretary of State must by regulations under this section—

(a) require the applicant to give a notice containing details of the application to the holder of the premises licence and each responsible authority within such period as may be prescribed;

(b) require the authority to advertise the application and invite representations about it to be made to the authority by **[F2**responsible authorities and other persons**]** ;

(c) prescribe the period during which representations may be made by the holder of the premises licence, any responsible authority or any **[F3**other person**]** ;

(d) require any notice under paragraph (a) or advertisement under paragraph (b) to specify that period.

(4) The relevant licensing authority may, at any time, reject any ground for review specified in an application under this section if it is satisfied—

(a) that the ground is not relevant to one or more of the licensing objectives, or

(b) in the case of an application made by a person other than a responsible authority, that—

(i) the ground is frivolous or vexatious, or

(ii) the ground is a repetition.

(5) For this purpose a ground for review is a repetition if—

(a) it is identical or substantially similar to—

(i) a ground for review specified in an earlier application for review made in respect of the same premises licence and determined under section 52, or

(ii) representations considered by the relevant licensing authority in accordance with section 18, before it determined the application for the premises licence under that section, or

(iii) representations which would have been so considered but for the fact that they were excluded representations by virtue of section 32, and

(b) a reasonable interval has not elapsed since that earlier application for review or the grant of the licence (as the case may be).

(6) Where the authority rejects a ground for review under subsection (4)(b), it must notify the applicant of its decision and, if the ground was rejected because it was frivolous or vexatious, the authority must notify him of its reasons for making that decision.

(7) The application is to be treated as rejected to the extent that any of the grounds for review are rejected under subsection (4).

Accordingly the requirements imposed under subsection (3)(a) and (b) and by section 52 (so far as not already met) apply only to so much (if any) of the application as has not been rejected.

52 Determination of application for review

(1) This section applies where—

(a) the relevant licensing authority receives an application made in accordance with section 51,

(b) the applicant has complied with any requirement imposed on him under subsection (3)(a) or (d) of that section, and

(c) the authority has complied with any requirement imposed on it under subsection (3)(b) or (d) of that section.

(2) Before determining the application, the authority must hold a hearing to consider it and any relevant representations.

(3) The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers [F1appropriate] for the promotion of the licensing objectives.

(4) The steps are—

(a) to modify the conditions of the licence;

(b) to exclude a 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 is added.

(5) Subsection (3) is subject to sections [F219 to 21](requirement to include certain conditions in premises licences).

(6) Where the authority takes a step mentioned in subsection (4)(a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

(7) In this section “relevant representations” means representations which—

(a) are relevant to one or more of the licensing objectives, and

(b) meet the requirements of subsection (8).

(8) The requirements are—

(a) that the representations are made—

(i) by the holder of the premises licence, a responsible authority or [F3any other person] , and

(ii) within the period prescribed under section 51(3)(c),

(b) that they have not been withdrawn, and

(c) if they are made by [F4a person who is not a responsible authority] , that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

(9) Where the relevant licensing authority determines that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for that determination.

(10) Where a licensing authority determines an application for review under this section it must notify the determination and its reasons for making it to—

(a) the holder of the licence,

(b) the applicant,

(c) any person who made relevant representations, and

(d) the chief officer of police for the police area (or each police area) in which the premises are situated.

(11) 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.

Reviews arising in connection with crime

11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

