

AGENDA

Regulatory Sub-Committee

Date: **Tuesday 29 April 2014**

Time: **10.00 am**

Place: **The Council Chamber, Brockington, 35 Hafod Road,
Hereford**

Notes: Please note the **time, date** and **venue** of the meeting.

For any further information please contact:

Tim Brown, Democratic Services Officer

Tel: 01432 260239

Email: tbrown@herefordshire.gov.uk

If you would like help to understand this document, or would like it in another format or language, please call Tim Brown, Democratic Services Officer on 01432 260239 or e-mail tbrown@herefordshire.gov.uk in advance of the meeting.

Agenda for the Meeting of the Regulatory Sub Committee

Membership

Councillor BA Durkin
Councillor JW Hope MBE
Councillor Brig P Jones CBE

AGENDA

| | | Pages |
|----|--|-----------|
| 1. | ELECTION OF CHAIRMAN To elect a Chairman for the hearing. | |
| 2. | APOLOGIES FOR ABSENCE To receive apologies for absence. | |
| 3. | NAMED SUBSTITUTES (IF ANY) To receive any details of Members nominated to attend the meeting in place of a Member of the Committee. | |
| 4. | DECLARATIONS OF INTEREST To receive any declarations of interest by Members in respect of items on the Agenda. | |
| 5. | APPLICATION FOR A REVIEW OF THE PREMISES LICENCE IN RESPECT OF 'THE YEW TREE INN, PRESTON ON WYE, HR2 9JT' - LICENSING ACT 2003 To consider an application for a review of the premises licence in respect of 'The Yew Tree, Inn, Preston on Wye, HR2 9JT'. | 9 - 122 |
| 6. | APPLICATION FOR A REVIEW OF THE PREMISES LICENCE IN RESPECT OF 'INDIAN SUMMER, 9 HIGH STREET, ROSS ON WYE, HR9 5HL' - LICENSING ACT 2003 To consider an application for a review of the premises licence in respect of 'Indian Summer, 9 High Street, Ross on Wye, HR9 5HL'. | 123 - 144 |
| 7. | HIGHWAYS ACT 1980, SECTION 118A. PROPOSED RAIL CROSSING EXTINGUISHMENT ORDER FOOTPATH LY9A (PART) IN THE PARISH OF LLANCILLO To consider an application under section 118A of the Highways Act 1980, to make a rail crossing extinguishment order in relation to part of the definitive public footpath LY9A in the Parish of Llancillo. | 145 - 150 |

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- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
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HEREFORDSHIRE COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

FIRE AND EMERGENCY EVACUATION PROCEDURE

In the event of a fire or emergency the alarm bell will ring continuously.

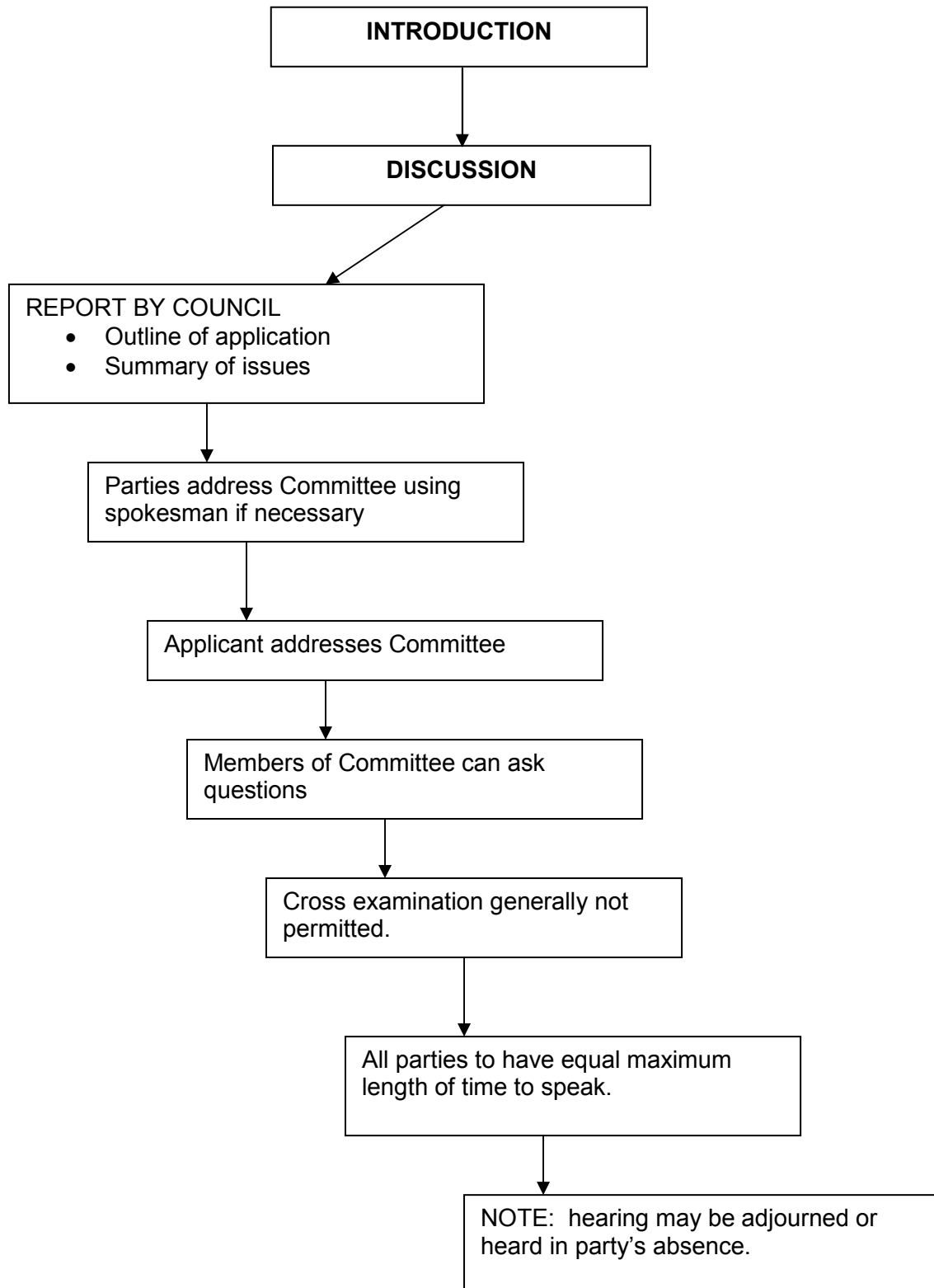
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Do not delay your vacation of the building by stopping or returning to collect coats or other personal belongings.

LICENCING HEARING FLOW CHART



| | |
|-------------------------|--|
| MEETING: | REGULATORY SUB-COMMITTEE |
| DATE: | 29 APRIL 2014 |
| TITLE OF REPORT: | APPLICATION FOR A REVIEW OF THE PREMISES LICENCE IN RESPECT OF 'THE YEW TREE INN, PRESTON ON WYE, HR2 9JT' – LICENSING ACT 2003 |
| REPORT BY: | LICENSING OFFICER |

1. Classification

Open

2. Key Decision

This is not an executive decision

3. Wards Affected

Golden Valley North

4. Purpose

To consider an application for a review of the premises licence in respect of 'The Yew Tree, Inn, Preston on Wye, HR2 9JT'.

5. Recommendation(s)

THAT

The Sub-Committee determine the application with a view to promoting the licensing objectives in the overall interests of the local community. They should give appropriate weight to:

- **The steps that are appropriate to promote the licensing objectives,**
- **The Guidance issued to local authorities under the Licensing Act 2003, and**
- **The Herefordshire Council Licensing Policy.**
- **The Licensing Authority's review application**
- **Any other evidence produced in relation to the review**

6. Key Points Summary

- The application requests a review (appendix 1) of the premises licence in order to promote the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance.
- The premises received a number of warning letters offering advice in relation to non-compliance with the law. These letters were sent on 28th September 2012 (appendix 2), 21st November 2012 (appendix 3), 31st May 2013 (appendix 4), 13th June (appendix 5) and the 18th December (appendix 6).
- On 4th June the premises licence holder wrote to the Licensing Authority in response to the letter of 31st May (appendix 7)
- On 18th June the premises licence holder again wrote to the Licensing Authority following their letter of 13th June (appendix 8)
- On 13th - 14th July the premises had a Late Temporary Event Notice (LTEN) (appendix 9).
- On 19th July a LTEN was submitted. The Environmental Health Officer objected to the LTEN and as a result it was refused (appendix 10)
- On 24th August a Temporary Event Notice (appendix 11) was allowed following a committee hearing.
- On the evening of 20th December the Environmental Health Department installed a noise monitoring unit in a premise close to the pub. This showed that on that night music was played until 11.40 pm.
- Representations have been received from the Police (appendix 12) and EHO (appendix 13) supporting the review.
- Representations have been received from the premises licence holder (appendix 14)
- Representations have been received from the public both for and against the application (appendix 15)
- A statement has been obtained from a witness (appendix 16) who produces a log of events (appendix 17)
- The Licensing Authority attended the vicinity of the premises and logged events (appendix 18)
- A noise monitoring recording was obtained (appendix 21 - see also reports at appendix 19 and 20)
- An activity timeline has been produced to show events at the premises set against complaints received (appendix 22)
- Herefordshire Council Planning Department have made comment in relation to the marquee at the premises (appendix 23).
- A complaint was received by email from a member of the public (appendix 24) and

from the Parish Council (appendix 25)

7. Options

There are a number of options open to the Sub-Committee:

- the modification of the conditions of the premises licence;
- to exclude a licensable activity from the scope of the licence;
- the removal of the designated premises supervisor from the licence;
- the suspension of the licence for a period not exceeding 3 months;
- the revocation of the licence;
- the modification of the conditions of the premises licence to add a statement that S177A Licensing Act 2003 does not apply to it and
- add conditions relating to live music as if —
 - (a) the live music were regulated entertainment, and
 - (b) the licence or certificate licensed the live music.
- to take no action

8. Reasons for Recommendations

To ensure compliance with the legislation.

9. Introduction and Background

Background Information

| | | |
|---------------------------------------|--|--|
| Applicant | Herefordshire Council as the Licensing Authority represented by Mr F Spriggs | |
| Premise Licence Holder | Phillip Pugh and Theresa Brandeberry Yew Tree Inn, Preston on Wye, Herefordshire, HR2 9JT | |
| Designated Premises Supervisor | Theresa Brandeberry | |
| Solicitor | Not known | |
| Type of application: Review | Date received: 5th March 2014 | 28 Days consultation 2nd April 2014 |

The grounds for the review are:

The request for this review is based on the licensing objectives regarding the prevention of Crime and disorder and the Prevention of public nuisance.

The premises is licensed only for the sale of alcohol, although live music may be played up to 11 pm without licence.

Between 15th November 2012 and 8th February 2014 there have been 24 events where the music has allegedly gone on past 11 pm.

The Licensing Authority has sent the premises licence holder 5 warning letters in respect of the breaches and advising them of the breaches of the law.

There are 2 members of the public who have complained about the noise.

The Licensing Authority is satisfied that as the law continues to be broken that the premises licence holders are committing criminal offences and therefore are not promoting the licensing objective of the prevention of crime.

Furthermore as disturbance is being caused to neighbours the premises licence holders are failing to prevent public nuisance.

The information submitted to support the grounds stated:

The premises came under new ownership in Autumn 2012.

The premises is licensed only for the sale of alcohol, although from the 1st October 2012 the Live Music Act 2012 allowed for live music to be played without a licence up to 11 pm.

A local resident has kept a log of the events held at the premises, between 15th November 2012 and 8th February 2014. There have been 24 events where the music has allegedly gone on past 11 pm. Some of these events have involved recorded music which is not licensed to be played at any time at the premises.

On 28th September 2012 the Licensing Section wrote to the premises licence holder advising them that it was alleged that an unlicensed music event took place on 14th September and informing them of the law.

On 21st November 2012 the Licensing Section again wrote to the premises licence holder advising them that they understood that music was being played at the premises without a licence and inviting application to vary the licence.

On 31st May 2013 the Licensing Section again wrote to the premises licence holder advising them that they understood that a beer festival with live music, which was played until at least half past midnight, had taken place on the previous weekend. They informed them that the authority had a number of options available to them including the launching of a review against the premises. They were also informed the Licensing Authority may make unannounced visits to the premises.

On 4th June the premises licence holder wrote to the Licensing Authority and part of that letter stated that in their opinion the plans they had for the premises did not fall outside the terms of their licence.

On 8th June a member of the Licensing Team visited the premises and witnessed live music being played which concluded at 12.05 am.

On 13th June the Licensing Authority wrote to the Premises Licence Holder and advised them of the visit and requested a response to that letter.

On 18th June the premises licence holder again wrote to the Licensing Authority and admitted that the music had been played past 11 pm.

On 4th July a Late Temporary Event Notice (LTEN) was received to allow regulated entertainment until 1 am on 14 July. This was allowed.

On 19th July a Late TEN was submitted to allow licence music at the premises until 1 am on 28th July. The Environmental Health Officer objected to the LTEN and as a result it was refused.

On 8th August a Temporary Event Notice was submitted for Regulated Entertainment for the 24th August until Midnight. This was allowed.

On 18th December the Licensing Authority again wrote to Phillip Pugh and Theresa Brandeberry, the Premises Licence holders, to inform them that music had been witnessed being played on 14th December until 0020 hours.

On the evening of 20th December the Environmental Health Department installed a noise monitoring unit in premises close to the pub. This showed that on that night music was played until 11.40 pm.

Since that time a witness statement has been obtained from a member of the public to support these events.

Despite offering advice to the premises licence holders, Phillip Pugh and Theresa Brandeberry, they continue to breach the law by either playing recorded music or live music after 11 pm.

The Licensing Authority therefore now seeks a review of the licence.

10. Summary of Application

The current licence (appendix 26 and 27 plan) authorises:

| | |
|----------------------|---|
| Sale of Alcohol | Monday-Thursday: 12:00 - 00:00 Friday-Saturday: 12:00 - 01:00 Sunday: 12:00 - 23:00 |
| Non standard Timings | Christmas Eve: 12:00-01:00 New Year's Eve: 12:00-02:00 |

Summary of Representations

- Two (2) Representations received from other Responsible Authorities (the Police and Environmental Health). (Appendix 12 & 13)
- Five (5) Representations received from Interested Parties (Appendix 15)

Whilst a number of letters of support have been received in relation to the premises they failed to meet the criteria to form a representation. Relevant representations are those that: relate to one or more of the licensing objectives; have not been withdrawn; and are made by the premises licence holder, a responsible authority or an interested party (who is not also a responsible authority).

11. Key Considerations

To consider what action should be taken, if any, to promote the four licensing objectives in accordance with the recommendation.

The licensing objectives are:

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

12. Community Impact

The granting of the licence as applied for may have an impact on the Community.

13. Equality and Human Rights

No implications have been identified.

14. Financial Implications

There are unlikely to be any financial implications at this time to the authority.

15. Legal Implications

The Sub-Committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.

The case of 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, Before the Honourable Mrs Justice Black.

In this case it was summed up that: -

A licensing authority must have regard to guidance issued by the Secretary of State under section 182. Licensing authorities may depart from it if they have reason to do so but will need to give full reasons for their actions.

Furthermore the Thwaites case established that only conditions should be attached to a licence with a view to promoting the Licensing objectives and that 'real evidence' must be presented to support the reason for imposing these conditions.

This judgement is further supported in the case of *The Queen on the Application of Bristol Council v Bristol Magistrates' Court*, CO/6920/2008 High Court of Justice Queen's Bench Division The Administrative Court, 24 February 2009, [2009] EWHC 625 (Admin) 2009 WL 648859 in which it was said:

'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'. (Since the stated case, amendments have been enacted to the Licensing Act which replace the word necessary with appropriate. Members will need to give due consideration to the intended meaning of this change and give weight to the difference as they see fit. Whilst the wording of the judge cannot be altered, it may be useful for Members to read the advice by replacing the words necessary and proportionate with appropriate).

In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

The Decision

The Act 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

Right of Appeal

Schedule 5 gives a right of appeal which states:

Review of premises licence

- 8 (1) This paragraph applies where an application for a review of a premises licence is decided under section 52.
- (2) An appeal may be made against that decision by—
 - (a) the applicant for the review,
 - (b) the holder of the premises licence, or
 - (c) any other person who made relevant representations in relation to the application.
- (3) In sub-paragraph (2) "relevant representations" has the meaning given in section 52(7).

Section 9 states that any such appeal must be made to a Magistrates Court for the area in which the premises are situated within 21 days of notification of the decision.

16. Risk Management

No risks have been identified

17. Consultees

Responsible authorities and persons living within the vicinity or with a business interest within the vicinity of the premises.

A copy of the application was served on the responsible authorities. This was backed up by an email sent to them by the Licensing Authority.

The notice of application was displayed on the premises prior to the start of the consultation period and for a period of 28 days.

The notice was also displayed at the offices of the Licensing Authority at Blueschool House, Hereford.

A copy of the Review Application was also available to be viewed on the Herefordshire Council Website.

18. Appendices

1. Review Application Form (p21)
2. Warning letter from the authority dated 28th September 2012 (p27)
3. Warning letter from the authority dated 21st November 2012 (p28)
4. Warning letter from the authority dated 31st May 2013 (p29)
5. Warning letter from the authority dated 13th June 2013 (p31)
6. Warning letter from the authority dated 18th December 2013 (p33)
7. Letter from premises licence holder dated 04th June 2013 (p35)
8. Letter from the premises licence holder dated 18th June 2013 (p37)
9. Copy of Temporary Event Notice (TEN) for 13th - 14th July 2013 (p39)
10. Copy of refused Late Temporary Event Notice of 19th July 2013 (p45)
11. Copy of TEN for 24th August a Temporary Event Notice 2013 (p53)
12. Copy of Police Representation (p63)
13. Copy of Environmental Health Representation (p67)
14. Copy of Licence Holder Representation (p71)
15. Copy of Interested Parties Representations (p73)
16. Copy of Civil Statement (p83)
17. Copy of Live Music Log for Yew Tree Inn exhibit (p86)
18. Copy of log of visits on 08.06.13 and 29.03.14 (p87)
19. EHO Report 1 and log (p89)
20. EHO Report 2 and log (p93)
21. Noise Monitoring Recording (To be played at hearing)
22. Activity Comparison timeline (p97)
23. Copy of Planning Dept. comment and letter re use of marquee (p101)
24. Copy of e-mailed complaint 22.06.2013 (p103)
25. Copy of complaint from Parish Council (p105)
26. Copy of current Premises Licence (p107)
27. Location and premises plans (p113)
28. Live Music Act 2012 and guidance (p116)

19. Background Papers

Background papers are available for inspection in the Council Chamber, Brockington, 35 Hafod Road, Hereford 30 minutes before the start of the hearing.

Background Information

HEREFORDSHIRE COUNCIL LICENSING POLICY states;

Section 18: Summary

This section explains who can call for a review of a premises licence and that The Licensing Authority will have expected the premises licence holder to have been consulted prior to the review being called. This section also deals with the action that the authority will take in respect of test purchases.

18 REVIEWS AND COMPLAINTS ABOUT LICENSED PREMISES.

- 18.1** Reviews represent a key protection for the community. Where the licensing authority considers action necessary under its statutory powers it will take necessary steps to support the licensing objectives.
- 18.2** If a premise has an existing licence, a responsible authority or an interested party may apply to the Licensing Authority for a review of a Premises Licence or Club Premises Certificate. Once a review application has been lodged with the Licensing Authority any other responsible authority or interested party may make representations (within the legal deadline) to the Licensing Authority in relation to the premises. The licence holder of the premises may make representations against the review application. Review applications and subsequent representations can only be made on the grounds of one or more of the licensing objectives.
- 18.3** Review applications will be heard by the Licensing Authority's Licensing Committee or Licensing Sub-Committee, who will determine the outcome of the Licence/Certificate after hearing and considering the application and the representations for and against it. Each case will be decided on its own merits, and the Licensing Authority may take several courses of action (e.g. take no action, revoke the licence, reduce the licensed hours etc) in accordance with the Act.

Guidance issued under Section 182 of The Licensing Act 2003 (relevant Sections)

11. Reviews

The review process

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.5 Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.
- 11.6 Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities. Further information on how licensing authorities should achieve this separation of responsibilities can be found in Chapter 9, paragraphs 9.13 to 9.19 of this Guidance.
- 11.9 Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent written representation. The licensing authority may also agree in advance that the representation need not be given in writing.
- 11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply

for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

Powers of a licensing authority on the determination of a review

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

11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

11.18 However, where responsible authorities such as the police or environmental health Officer s have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.

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

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

11.20 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 that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.

11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

11.23 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 an appropriate 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 appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

**Application for the review of a premises licence or club premises certificate
under the Licensing Act 2003**

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.
If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

We Herefordshire Council as the Licensing Authority

(Insert name of applicant)

apply for the review of a premises licence under section 51 of the Licensing Act 2003 for the premises described in Part 1 below

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description

Yew Tree Inn
Preston-on-Wye

Post town Hereford

Post code (if known) HR2 9JT

Name of premises licence holder or club holding club premises certificate (if known)

Mr Phillip Pugh and Miss Theresa Brandeberry
Yew Tree Inn
Preston-on-wye
Hereford
HR2 9JT

Number of premises licence or club premises certificate (if known)

PR00211

Part 2 - Applicant details

I am

Please tick yes

1) an interested party (please complete (A) or (B) below)

a) a person living in the vicinity of the premises

☐

b) a body representing persons living in the vicinity of the premises

☐

c) a person involved in business in the vicinity of the premises

☐

- d) a body representing persons involved in business in the vicinity of the premises ☐
- 2) a responsible authority (please complete (C) below) ☒
- 3) a member of the club to which this application relates (please complete (A) below) ☐

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick

Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other title
(for example, Rev)

Surname

First names

Please tick yes

I am 18 years old or over

☐

**Current postal
address if
different from
premises
address**

Post town

Post Code

Daytime contact telephone number

**E-mail address
(optional)**

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

| |
|--|
| Name and address Fred Spriggs Licensing Officer on behalf of Herefordshire Council as the Licensing Authority Licensing Section, Herefordshire Council, Blueschool House, PO Box 233, Hereford HR1 2ZB |
| Telephone number (if any) 01432 261761 |
| E-mail address (optional) licensing@herefordshire.gov.uk |

This application to review relates to the following licensing objective(s)

Please tick one or more boxes

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

| |
|-------------------------------------|
| <input checked="" type="checkbox"/> |
| <input type="checkbox"/> |
| <input checked="" type="checkbox"/> |
| <input type="checkbox"/> |

Please state the ground(s) for review (please read guidance note 1)

The premises came under new ownership in Autumn 2012.
 The premises is licensed only for the sale of alcohol, although live music may be played up to 11 pm without licence.
 Between 15th November 2012 and 8th February 2014 there have been 24 events where the music has gone on past 11 pm.
 The Licensing Authority has sent the premises licence holder 5 warning letters in respect of the breaches and advising them of the breaches of the law.
 There are 2 members of the public who have complained about the noise.
 The Licensing Authority is satisfied that as the law continues to be broken that the premises licence holders are committing criminal offences and therefore are not promoting the licensing objective of the prevention of crime.
 Furthermore as disturbance is being caused to neighbours the premises licence holders are failing to prevent public nuisance.

Please provide as much information as possible to support the application
(please read guidance note 2)

The premises came under new ownership in Autumn 2012.

The premises is licensed only for the sale of alcohol, although from the 1st October 2012 the Live Music Act 2012 allowed for live music to be played without a licence up to 11 pm.

A local resident has kept a log of the events held at the premises, between 15th November 2012 and 8th February 2014. There have been 24 events where the music has gone on past 11 pm. Some of these events have involved recorded music which is not licensed to be played at any time at the premises.

On 28th September 2012 the Licensing Section wrote to the premises licence holder advising them that it was alleged that an unlicensed music event took place on 14th September and informing them of the law.

On 21st November 2012 the Licensing Section again wrote to the premises licence holder advising them that they understood that music was being played at the premises without a licence and inviting application to vary the licence.

On 31st May 2013 the Licensing Section again wrote to the premises licence holder advising them that they understood that a beer festival with live music, which was played until at least half past midnight, had taken place on the previous weekend. They informed them that the authority had a number of options available to them including the launching of a review against the premises. They were also informed the Licensing Authority may make unannounced visits to the premises.

On 4th June the premises licence holder wrote to the Licensing Authority and part of that letter stated that in their opinion the plans they had for the premises did not fall outside the terms of their licence.

On 8th June a member of the Licensing Team visited the premises and witnessed live music being played which concluded at 12.05 am.

On 13th June the Licensing Authority wrote to the Premises Licence Holder and advised them of the visit and requested a response to that letter.

On 18th June the premises licence holder again wrote to the Licensing Authority and admitted that the music had been played past 11 pm.

On 4th July a Late Temporary Event Notice (LTEN) was received to allow regulated entertainment until 1 am on 14 July. This was allowed.

On 19th July a LTEN was submitted to allow licence music at the premises until 1 am on 28th July. The Environmental Health Officer objected to the LTEN and as a result it was refused.

On 8th August a Temporary Event Notice was submitted for Regulated Entertainment for the 24th August until Midnight. This was allowed.

On 18th December the Licensing Authority again wrote to Phillip Pugh and Theresa Brandeberry, the Premises Licence holders, to inform them that music had been witnessed being played on 14th December until 0020 hours.

On the evening of 20th December the Environmental Health Department installed a

noise monitoring unit in a premises close to the pub. This showed that on that night music was played until 11.40 pm.

Since that time a witness statement has been obtained from a member of the public to support the events.

Despite offering advice to the premises licence holders Phillip Pugh and Theresa Bradeberry, they continue to breach the law by either playing recorded music or live music after 11 pm.

The Licensing Authority therefore now seeks a review of the licence.

Please tick yes

Have you made an application for review relating to this premises before ☐

If yes please state the date of that application

| Day | | Month | | Year | |
|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |

If you have made representations before relating to this premises please state what they were and when you made them

Please tick yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate ☒
- I understand that if I do not comply with the above requirements my application will be rejected ☒

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant’s solicitor or other duly authorised agent (See guidance note 4). If signing on behalf of the applicant please state in what capacity.

Signature



Date

5.3.14

Capacity Licensing Officer

| | |
|---|------------------|
| Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5) | |
| | |
| Post town | Post Code |
| Telephone number (if any) | |
| If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) | |

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

People's Services Directorate

Director: Jo Davidson

Mr Phillip Pugh & Theresa Brandeberry



Your Ref:

Our Ref: PR00211

Please ask for: Licensing Assistant

Direct Line / Extension: 01432 260 105

Fax: 01432 383412

E-mail: fspriggs@herefordshire.gov.uk

28th September 2012

Dear Sir,

YEW TREE INN

I refer to the premises licence issued in respect of the above premises.

A premise licence is issued authorising the use of the premises for certain licensable activities, the times of operating and the conditions to be complied with.

I note that your premise licence does not authorise the playing of recorded or live music,

On the evening of Friday 14th September 2012, it is alleged that there was an unlicensed event. If this is the case, then this breaches the conditions of your licence.

Under Section 136 of the Licensing Act 2003 it is an offence to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation (premises licence). This offence on summary conviction is punishable with six months imprisonment and/or £20,000.

In line with this Authority's Policy, I must advise you that should you choose to operate outside your authorisation we may take enforcement action against you.

Yours sincerely,

**EMMA BOWELL
LICENSING ASSISTANT
ENVIRONMENTAL HEALTH & TRADING STANDARDS
HEREFORDSHIRE COUNCIL**



Putting People First Providing for our Communities Preserving our Heritage Promoting the County Protecting our Future
County of Herefordshire District Council, County of Herefordshire District Council, Licensing Unit, 10 Blackfriars Street,
Hereford. HR4 9HS

Main Switchboard (01432) 260000 - www.herefordshire.gov.uk

People's Services Directorate

Director: Jo Davidson

Mr Phillip Pugh & Theresa Brandeberry

Your Ref:

Our Ref: EBO/PR00211

Please ask for: Licensing Assistant

Direct Line / Extension: 01432 260 105

Fax: 01432 383412

E-mail: licensing@herefordshire.gov.uk

21st November 2012

Dear Sir/Madam

YEW TREE INN, PRESTON-ON-WYE

I refer to the premises licence issued in respect of the above premises.

A premise licence is issued authorising the use of the premises for certain licensable activities, the times of operating and the conditions are to be complied with.

I note that your premise licence does not authorise the playing of recorded or live music. The Live Music Act 2012 came into force on 1st October 2012. The Live Music Act means that small venues in England and Wales (under a 200-person capacity) will no longer need local authority permission to host performances of live amplified music between the hours of 8am-11pm.

We are of the understanding that you hold regular live music performances beyond these times.

Under Section 136 of the Licensing Act 2003 it is an offence to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation (premises licence). This offence on summary conviction is punishable with six months imprisonment and/or £20,000.

In line with this Authority's Policy, I must advise you that should you choose to operate outside your authorisation we may take enforcement action against you.

I have enclosed an application pack to vary your licence should you wish to add live music to your licence.

Yours faithfully,

EMMA BOWELL
LICENSING ASSISTANT
ENVIRONMENTAL HEALTH & TRADING STANDARDS



Putting People First Providing for our Communities Preserving our Heritage Promoting the County Protecting our Future
County of Herefordshire District Council, County of Herefordshire District Council, Licensing Unit, 10 Blackfriars Street,
Hereford. HR4 9HS

Main Switchboard (01432) 260000 - www.herefordshire.gov.uk

Places and Communities Directorate

Director: Geoff Hughes

Phillip Pugh & Theresa Brandeberry

Your Ref:

Our Ref: FS/PR00211

Please ask for: Licensing Assistant

Direct Line / Extension: 01432 260105

Fax: 01432 383142

E-mail: licensing@herefordshire.gov.uk

31st May 2013

Dear Sir & Madam

LICENSING ACT 2003

THE YEW TREE INN, PRESTON-ON-WYE, HEREFORDSHIRE, HR2 9JT

Once again the way that your premises are being run has been brought to my attention.

I understand last weekend a beer festival was held within the grounds of the pub and that live music was provided which was still being played at half past midnight.

I note that the premises is only authorised for the sale of alcohol, inside the premises and for no other activities. This would mean that any sale taking place within the marquee at the rear of the premises was unauthorised. Whilst the introduction of the Live Music Act gives you an exemption for an event where there are less than 200 people and which finishes before 11 pm, no exemption exists for music played after that time, nor for the play of recorded music. I also note that no notification was given by way of temporary event notice which would have authorised these activities.

As a responsible authority I now have to consider whether the licensing objectives are being promoted by you at the premises and at this moment in time I am struggling to find that they are.

The continual breach of the law in relation to the licence does cause me some serious concerns and I am at the point now where, after having given you at least 2 previous warnings, I have to consider what steps need to be taken to promote the licensing objectives. I am now leaning towards launching a review against the premises and asking the Licensing Committee to consider whether:

- a) Theresa Brandeberry remains a suitable person to be the designated premises supervisor
- b) Whether the premises should continue to be licensed or whether the licence for the premises should be revoked.

As an alternative we could take more formal enforcement action and pursue the matter of unauthorised licensable activities through the court.

In order to avoid these steps I would suggest that you take the following action:

1. Apply for a variation to your premises licence to include live music after 11 pm and recorded music.
2. If it is your intention to hold further outside events then the application for the variation of the licence should include this fact

Working in partnership for the people of Herefordshire

PO Box 233, Hereford, HR1 2ZF

Herefordshire Council

Main Switchboard (01432) 260000, www.herefordshire.gov.uk

NHS Herefordshire

Main Switchboard (01432) 344344, www.herefordshire.nhs.uk

3. If these are only occasional events then you should apply for a Temporary Event Notice which would authorise them.

I must also advise you now that the Licensing Authority will make unannounced visits to the vicinity of your premises to ensure compliance with the law.

I understand that you have already been sent an application pack to vary your licence.

Yours sincerely,



Fred Spriggs
LICENSING OFFICER
ENVIRONMENTAL HEALTH & TRADING STANDARDS

Phillip Pugh & Theresa Brandeberry



Places and Communities Directorate

Director: Geoff Hughes

Your Ref:

Our Ref: FS/PR00211

Please ask for: Licensing Assistant

Direct Line / Extension: 01432 260105

Fax: 01432 383142

E-mail: licensing@herefordshire.gov.uk

13th June 2013

Dear Sir & Madam

LICENSING ACT 2003

THE YEW TREE INN, PRESTON-ON-WYE, HEREFORDSHIRE, HR2 9JT

I acknowledge receipt of your letter dated 4th June 2013, the contents which I have noted.

I make reference to my letter sent to you on 31st May where I advised you that 'the Licensing Authority will make unannounced visits to the vicinity of your premises to ensure compliance with the law'.

I must advise you that on the evening of Saturday 8th June between the hours of 9.55 pm and 12.05 am a member of the Licensing Authority was either inside or outside the premises. The log in relation to this reads as follows:

21:55 – Arrived at the premise. Can hear live music playing from the car park. Entered the premise, there was a trio singing. Microphones, speakers, guitars and a Bongo. No drinks being sold outside but drinks (including alcohol) consumed outside. A marquee was in the garden but was not being used.

22:05 – Music stopped – singers having a break

22:18 – Music started again

22:35 – Music still playing, can be heard outside in beer garden. People outside drinking and smoking quite loud. Approx 20 people.

23:01 – Music still playing at pub, customers still outside drinking and chatting. People outside quite loud

23:15 – People outside getting louder. Cheering, chatting, laughing.

23:27 – Live Music still being played, drinking games outside pub. Customers cheering, shouting and clapping.

23:40 – Live Music still being played. People outside still causing a noise nuisance.

00:02 – People outside drinking, chatting, shouting and swearing.

00:05 – Live Music stopped and band packing away. People still with drinks outside chatting.

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Herefordshire Council

Main Switchboard (01432) 260000, www.herefordshire.gov.uk

NHS Herefordshire

Main Switchboard (01432) 344344, www.herefordshire.nhs.uk

As you can see the Licensing Authority now have sufficient evidence to either prosecute you for the carrying on of an unlicensed licensable activities or to launch a review in respect of the premises licence.

Prior reaching a decision it is only right and proper that we give you the opportunity to respond to the details provided in this letter. I must advise you though that;

"You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence."

I will await a response from you until Wednesday Monday 19th June when the Licensing Authority will make a decision as to what action, if any, should be taken.

Yours sincerely,



Fred Spriggs
LICENSING OFFICER
ENVIRONMENTAL HEALTH & TRADING STANDARDS

Economy, Communities and Corporate Directorate
Director: Geoff Hughes

Phillip Pugh & Theresa Brandeberry



Your Ref:

Our Ref: FS/PR00211

Please ask for: Licensing Assistant

Direct Line / Extension: 01432 260105

Fax: 01432 261982

E-mail: licensing@herefordshire.gov.uk

18th December 2013

Dear Sir / Madam

LICENSING ACT 2003

THE YEW TREE INN, PRESTON-ON-WYE, HEREFORDSHIRE, HR2 9JT

Once again the way your premises are being run has been brought to our attention.

It is understood that Live Music was provided on Friday 13th December 2013 until 00:20 hours on 14th December 2013.

We are led to believe that Live Music will again be provided on Friday 20th December 2013.

I note that the premises is only authorised for the sale of alcohol, inside the premises and for no other activities. Whilst the introduction of the Live Music Act gives an exemption for an event where there are less than 200 people and which finishes before 11 pm, no exemption exists for music played after that time, nor for the playing of recorded music. I also note that no notification was given by way of temporary event notice which would have authorised these activities.

As a responsible authority we now have to consider whether the licensing objectives are being promoted by you at the premises.

The continual breach of the law in relation to the licence causes serious concerns and, having given you at least four previous warnings, we have to consider what steps need to be taken to promote the licensing objectives. An application to review the premises licence may now be considered to determine if:

- a) Theresa Brandeberry remains a suitable person to be the designated premises supervisor
- b) Whether the premises should continue to be licensed or whether the licence for the premises should be revoked.

As an alternative we could take more formal enforcement action and pursue the matter of unauthorised licensable activities through the court.

In order to avoid these steps, please take the following action:

1. Apply for a variation to your premises licence to include live music after 11 pm and recorded music.
2. If it is your intention to hold further outside events or within the marquee, then the application for the variation of the licence should include this fact

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PO Box 233, Hereford, HR1 2ZF

Herefordshire Council

Main Switchboard (01432) 260000, www.herefordshire.gov.uk

3. If these are only occasional events then you should apply for a Temporary Event Notice which would authorise them.

If you have any queries, please do not hesitate to contact me on the number above

Yours faithfully,

**ADRIENNE POOLE
LICENSING OFFICER
ENVIRONMENTAL HEALTH & TRADING STANDARDS**



Preston-On-Wye

Hereford

HR2 9JT

04.06.13

Fred Spriggs

Environmental Health & Trading Standards

PO Box 233

Hereford

HR1 2ZF

Dear Mr Spriggs,

On receipt of your letter dated 31st May 2013, I express concern and dismay that you feel we are breaching any licensing objective.

I understand that we have been brought to your attention before, but please do not assume that the complaints have any substance behind them. I did speak to an officer from Environmental health (noise) on the Saturday to discuss any measures we could take as a preventative to a complaint as he had already received a telephone call from our neighbour who rings your office before and after every event.

We have placed signs around the premises asking patrons to respect our neighbours and leave quietly from the building, we have invited our neighbour to discuss any issues they have with us and to see if we can find any resolution to their complaints without a detrimental effect to activities enjoyed by the majority, and indeed our trade, we have moved all bottle bins as the noise was upsetting our neighbours, we haven't applied for TEN's as we have not booked bands over 11pm at night so as not to upset our neighbours, we have not sold alcohol outside our pub, we have no facility to do so as it takes more to run an outside bar than just a marquee. I can confirm that we have no outside bar facilities and no plans to ever operate one. There has never been more than 200 people at the site and I really can not see where or when we have breached our licence. I am more than happy to meet with yourself to go through our license and address any failings on our part, I am very aware of the responsibilities of having a license to supply alcohol and I can not stress how

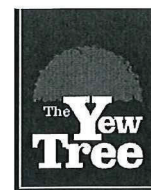
upsetting that the constant barrage of allegations and complaints to every authority that will listen is, after our hard work to bring the community back to our local pub.

I asked licensing if there was any procedure we had to go through for having music outside, I received a variation pack with no letter or recommendation. After reading the info we concluded that our plans did not fall outside our licence. If this is an oversight on our part I do sincerely apologise.

Please can you contact myself to discuss this issue as I obviously have concerns and have tried to appease all parties previously.

Many thanks for your anticipated reply,

Theresa Brandeberry



Preston-On-Wye

Hereford

HR2 9JT

18.06.13

Dear Mr Spriggs,

Thank you for the schedule written by the member of the licensing authority on Saturday the 8th of June.

Our band for the evening was booked between 9 and 11pm. The band were late arriving, and did not start to play until 9.30 ish. They made an attempt to stop at 11.10 and got jeered on to continue until 11.30. However, your document states they went on until midnight? I have asked several locals who were in the bar and they have confirmed that the band finished at 11.30 and had indeed left by 12 completely. I do recognise that it was still later than 11 and I wholeheartedly apologise for this.

To ensure this does not happen again we have no live music booked for several weeks and will make sure we have a temp events notice in place as back up in case they should over run. Please see this as the oversight it was, not a deliberate error.

I am confused about the other points on the manuscript.

We are licensed to serve alcohol until 1pm on a Saturday with half hour drinking up time. The beer garden is included for the consumption of alcohol too.

At 10pm a large group of visitors came to the pub, they ordered drinks and sat outside, there was approximately 15 of them and two of the members did seem very loud.

After ordering several rounds of drinks, the two members became louder and I asked them to keep the noise down at around 11pm when I collected glasses.

I didn't hear any shouting or bad language and I was unaware of drinking games but they were buying a variety of drinks in a round as groups often do.

Before the band left at 12 I advised I would be calling last orders as they couldn't keep the noise down, I refused to serve the one gentleman as he displayed rowdy behaviour. He got cross with me and went back outside. At 12.30 I pulled the blinds down, turned the lights off outside and asked them to leave. All had gone bar three remaining locals by 12.40, and they followed shortly after. I had locked up by 12.50 and the other staff had gone, 40 mins earlier than in my license.

I am very apologetic to our neighbour who is clearly dismayed about living close to our village pub. I am also sincere about the issue with music on Saturday and I will endeavour to make sure it won't happen again.

However, I can not see where else we have ever breached the terms of our license and would really appreciate meeting with someone from licensing for some advice and guidance on this matter.

We are a tiny village pub in a very rural area, we have very quiet long spells and occasional busy periods of entertainment, food and visitors. Without which the business would certainly not be viable.

I have asked and followed advice from environmental health about noise, public nuisance and our neighbouring complaints.

I am sorry that you feel the need for such a formal look on our oversight and I ask you to look at our business and the fragile balance between remaining open as the village pub and another rural closure.

I await your consideration,

Many thanks,

Theresa Brandeberry

[Insert name and address of relevant licensing authority and its reference number (optional).]

Temporary Event Notice


Before completing this notice, please read the guidance notes at the end of the notice. If you are completing this notice by hand, please write legibly in block capitals. In all cases, ensure that your answers are inside the boxes and written in black ink or typed. Use additional sheets if necessary. You should keep a copy of the completed notice for your records. You must send at least one copy of this notice to the licensing authority and additional copies must be sent to the chief officer of police and the local authority exercising environmental health functions for the area in which the premises are situated. The licensing authority will give to you written acknowledgement of the receipt of the notice.

I, the proposed premises user, hereby give notice under section 100 of the Licensing Act 2003 of my proposal to carry on a temporary activity at the premises described below.

| | |
|---|--|
| 1. The personal details of premises user (Please read note 1) | |
| 1. Your name | |
| Title | Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms <input checked="" type="checkbox"/> Other (please state) |
| Surname | Brandeberry |
| Forenames | Theresa |
| 2. Previous names (Please enter details of any previous names or maiden names, if applicable. Please continue on a separate sheet if necessary) | |
| Title | Mr <input type="checkbox"/> Mrs <input checked="" type="checkbox"/> Miss <input type="checkbox"/> Ms <input type="checkbox"/> Other (please state) |
| Surname | |
| Forenames | |
| 3. Your date of birth | |
| 4. Your place of birth | |
| 5. National Insurance Number | |
| 6. Your current address (We will use this address to correspond with you unless you complete the separate correspondence box below) | |
| The Yew Tree Inn Preston-on-Wye Herefordshire HR29JT | |
| Post town Hereford | Postcode HR29JT |
| 7. Other contact details | |
| Telephone numbers | |
| Daytime | 01981500359 |
| Evening (optional) | |
| Mobile (optional) | |
| Fax number (optional) | |

Engagement Party

| | | |
|---|-----------------------|-------------------------------------|
| 3. The licensable activities | | |
| Please state the licensable activities that you intend to carry on at the premises (please tick all licensable activities you intend to carry on). (Please read note 6) | | |
| The sale by retail of alcohol | | <input checked="" type="checkbox"/> |
| The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club | | <input type="checkbox"/> |
| The provision of regulated entertainment | | <input checked="" type="checkbox"/> |
| The provision of late night refreshment | | <input type="checkbox"/> |
| Are you giving a late temporary event notice? (Please read note 7) | | <input checked="" type="checkbox"/> |
| Please state the dates on which you intend to use these premises for licensable activities. (Please read note 8) | | |
| Saturday 13 th July | | |
| Please state the times during the event period that you propose to carry on licensable activities (please give times in 24 hour clock). (Please read note 9) | | |
| 19.30 – 1.00pm Sale of alcohol is already licensed within this time scale, we just wish for music to be played until 1am. | | |
| Please state the maximum number of people at any one time that you intend to allow to be present at the premises during the times when you intend to carry on licensable activities, including any staff, organisers or performers. (Please read note 10) | | 80 |
| If the licensable activities will include the supply of alcohol, please state whether the supplies will be for consumption on or off the premises, or both (please tick as appropriate). (Please read note 11) | On the premises only | <input checked="" type="checkbox"/> |
| | Off the premises only | <input type="checkbox"/> |
| | Both | <input type="checkbox"/> |

| 4. Personal licence holders (Please read note 12) | | | |
|---|---|--|--------------------------------|
| Do you currently hold a valid personal licence? (Please tick) | | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If "Yes" please provide the details of your personal licence below. | | | |
| Issuing licensing authority | Hereford | | |
| Licence number |  | | |
| Date of issue | | | |
| Date of expiry | | | |
| Any further relevant details | | | |


| 5. Previous temporary event notices you have given (Please read note 13 and tick the boxes that apply to you) | | |
|--|---------------------------------|---|
| Have you previously given a temporary event notice in respect of any premises for events falling in the same calendar year as the event for which you are now giving this temporary event notice? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| If answering yes, please state the number of temporary event notices (including the number of late temporary event notices, if any) you have given for events in that same calendar year | | |
| Have you already given a temporary event notice for the same premises in which the event period: a) ends 24 hours or less before; or b) begins 24 hours or less after the event period proposed in this notice? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

| 6. Associates and business colleagues (Please read note 14 and tick the boxes that apply to you) | | |
|--|---------------------------------|---|
| Has any associate of yours given a temporary event notice for an event in the same calendar year as the event for which you are now giving a temporary event notice? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| If answering yes, please state the total number of temporary event notices (including the number of late temporary event notices, if any) your associate(s) have given for events in the same calendar year. | | |
| Has any associate of yours already given a temporary event notice for the same premises in which the event period: a) ends 24 hours or less before; or b) begins 24 hours or less after the event period proposed in this notice? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Has any person with whom you are in business carrying on licensable activities given a temporary event notice for an event in the same calendar year as the event for which you are now giving a temporary event notice? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

| | | |
|--|---------------------------------|---|
| If answering yes, please state the total number of temporary event notices (including the number of late temporary event notices, if any) your business colleague(s) have given for events in the same calendar year. | | |
| Has any person with whom you are in business carrying on licensable activities already given a temporary event notice for the same premises in which the event period: a) ends 24 hours or less before; or b) begins 24 hours or less after the event period proposed in this notice? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

| 7. Checklist (Please read note 15) | |
|--|-------------------------------------|
| I have: (Please tick the appropriate boxes) | |
| Sent at least one copy of this notice to the licensing authority for the area in which the premises are situated | <input checked="" type="checkbox"/> |
| Sent a copy of this notice to the chief officer of police for the area in which the premises are situated | <input checked="" type="checkbox"/> |
| Sent a copy of this notice to the local authority exercising environmental health functions for the area in which the premises are situated | <input checked="" type="checkbox"/> |
| If the premises are situated in one or more licensing authority areas, sent at least one copy of this notice to each additional licensing authority | <input type="checkbox"/> |
| If the premises are situated in one or more police areas, sent a copy of this notice to each additional chief officer of police | <input type="checkbox"/> |
| If the premises are situated in one or more local authority areas, sent a copy of this notice to each additional local authority exercising environmental health functions | <input type="checkbox"/> |
| Made or enclosed payment of the fee for the application | <input checked="" type="checkbox"/> |
| Signed the declaration in Section 9 below | <input checked="" type="checkbox"/> |

| 8. Condition (Please read note 16) |
|---|
| It is a condition of this temporary event notice that where the relevant licensable activities described in Section 3 above include the supply of alcohol that all such supplies are made by or under the authority of the premises user. |

| 9. Declarations (Please read note 17) | |
|---|--|
| The information contained in this form is correct to the best of my knowledge and belief. | |
| <p>I understand that it is an offence:</p> <p>(i) to knowingly or recklessly make a false statement in or in connection with this temporary event notice and that a person is liable on summary conviction for such an offence to a fine not exceeding level 5 on the standard scale; and</p> <p>(ii) to permit an unauthorised licensable activity to be carried on at any place and that a person is liable on summary conviction for any such offence to a fine not exceeding £20,000, or to imprisonment for a term not exceeding six months, or to both.</p> | |
| Signature |  |
| Date | 2/7/13 |

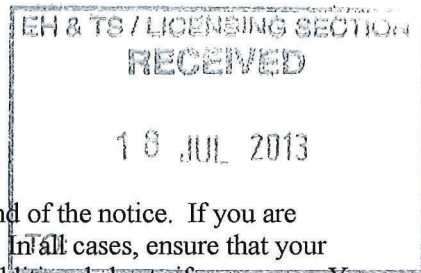
| | | |
|---------------------------|--|--|
| Name of Person signing | | |
|---------------------------|--|--|

For completion by the licensing authority

| | |
|---|---|
| 10. Acknowledgement (Please read note 18) | |
| I acknowledge receipt of this temporary event notice. | |
| Signature | <div>On behalf of the licensing authority</div> |
| Date | 4/7/2013 |
| Name of Officer signing | Adrian Jones |

[Insert name and address of relevant licensing authority and its reference number (optional).]

Temporary Event Notice



Before completing this notice, please read the guidance notes at the end of the notice. If you are completing this notice by hand, please write legibly in block capitals. In all cases, ensure that your answers are inside the boxes and written in black ink or typed. Use additional sheets if necessary. You should keep a copy of the completed notice for your records. You must send at least one copy of this notice to the licensing authority and additional copies must be sent to the chief officer of police and the local authority exercising environmental health functions for the area in which the premises are situated. The licensing authority will give to you written acknowledgement of the receipt of the notice.

I, the proposed premises user, hereby give notice under section 100 of the Licensing Act 2003 of my proposal to carry on a temporary activity at the premises described below.


| | |
|---|--|
| 1. The personal details of premises user (Please read note 1) | |
| 1. Your name | |
| Title | Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms <input checked="" type="checkbox"/> Other (please state) |
| Surname | Brandeberry |
| Forenames | Theresa |
| 2. Previous names (Please enter details of any previous names or maiden names, if applicable. Please continue on a separate sheet if necessary) | |
| Title | Mr <input type="checkbox"/> Mrs <input checked="" type="checkbox"/> Miss <input type="checkbox"/> Ms <input type="checkbox"/> Other (please state) |
| Surname | [REDACTED] |
| Forenames | [REDACTED] |
| 3. Your date of birth | |
| 4. Your place of birth | |
| 5. National Insurance Number | |
| 6. Your current address (We will use this address to correspond with you unless you complete the separate correspondence box below) | |
| The Yew Tree Inn Preston-on-Wye Herefordshire HR29JT | |
| Post town Hereford | Postcode HR29JT |
| 7. Other contact details | |
| Telephone numbers | 01981500359 |
| Daytime | |
| Evening (optional) | |
| Mobile (optional) | |
| Fax number (optional) | |

| | |
|--|-------------------------------|
| E-Mail address (if available) | theyewtreepreston@hotmail.com |
| 8. Alternative address for correspondence (If you complete the details below, we will use this address to correspond with you) | |
| | |
| Post town | Postcode |
| 9. Alternative contact details (if applicable) | |
| Telephone numbers: Daytime | |
| Evening (optional) | |
| Mobile (optional) | |
| Fax number (optional) | |
| E-Mail address (if available) | |

| | |
|---|---------|
| 2. The premises | |
| Please give the address of the premises where you intend to carry on the licensable activities or, if it has no address, give a detailed description (including the Ordnance Survey references) (Please read note 2) | |
| The Yew Tree Inn, Preston-on-Wye | |
| Does a premises licence or club premises certificate have effect in relation to the premises (or any part of the premises)? If so, please enter the licence or certificate number below. | |
| Premises licence number | PR00211 |
| Club premises certificate number | |
| If you intend to use only part of the premises at this address or intend to restrict the area to which this notice applies, please give a description and details below. (Please read note 3) | |
| | |
| Please describe the nature of the premises below. (Please read note 4) | |
| Public House | |
| Please describe the nature of the event below. (Please read note 5) | |
| | |

live music event, solo performer

| | |
|---|-------------------------------------|
| 3. The licensable activities | |
| Please state the licensable activities that you intend to carry on at the premises (please tick all licensable activities you intend to carry on). (Please read note 6) | |
| The sale by retail of alcohol | <input checked="" type="checkbox"/> |
| The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club | <input type="checkbox"/> |
| The provision of regulated entertainment | <input checked="" type="checkbox"/> |
| The provision of late night refreshment | <input type="checkbox"/> |
| Are you giving a late temporary event notice? (Please read note 7) | <input type="checkbox"/> |
| Please state the dates on which you intend to use these premises for licensable activities. (Please read note 8) | |
| Saturday 27 th July | |
| Please state the times during the event period that you propose to carry on licensable activities (please give times in 24 hour clock). (Please read note 9) | |
| <p>19.30 – 1.00pm</p> <p>Sale of alcohol is already licensed within this time scale, we just wish for music to be played until 1am.</p> | |
| Please state the maximum number of people at any one time that you intend to allow to be present at the premises during the times when you intend to carry on licensable activities, including any staff, organisers or performers. (Please read note 10) | 80 |
| If the licensable activities will include the supply of alcohol, please state whether the supplies will be for consumption on or off the premises, or both (please tick as appropriate). (Please read note 11) | On the premises only |
| | Off the premises only |
| | Both |

| | | | |
|---|---|--|--------------------------------|
| 4. Personal licence holders (Please read note 12) | | | |
| Do you currently hold a valid personal licence? (Please tick) | | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If "Yes" please provide the details of your personal licence below. | | | |
| Issuing licensing authority | Hereford | | |
| Licence number |  | | |
| Date of issue | | | |
| Date of expiry | | | |
| Any further relevant details | | | |


| | | |
|--|--|---|
| 5. Previous temporary event notices you have given (Please read note 13 and tick the boxes that apply to you) | | |
| Have you previously given a temporary event notice in respect of any premises for events falling in the same calendar year as the event for which you are now giving this temporary event notice? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If answering yes, please state the number of temporary event notices (including the number of late temporary event notices, if any) you have given for events in that same calendar year | 1 | |
| Have you already given a temporary event notice for the same premises in which the event period: a) ends 24 hours or less before; or b) begins 24 hours or less after the event period proposed in this notice? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

| | | |
|--|---------------------------------|---|
| 6. Associates and business colleagues (Please read note 14 and tick the boxes that apply to you) | | |
| Has any associate of yours given a temporary event notice for an event in the same calendar year as the event for which you are now giving a temporary event notice? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| If answering yes, please state the total number of temporary event notices (including the number of late temporary event notices, if any) your associate(s) have given for events in the same calendar year. | | |
| Has any associate of yours already given a temporary event notice for the same premises in which the event period: a) ends 24 hours or less before; or b) begins 24 hours or less after the event period proposed in this notice? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Has any person with whom you are in business carrying on licensable activities given a temporary event notice for an event in the same calendar year as the event for which you are now giving a temporary event notice? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

| | | |
|--|---------------------------------|---|
| If answering yes, please state the total number of temporary event notices (including the number of late temporary event notices, if any) your business colleague(s) have given for events in the same calendar year. | | |
| Has any person with whom you are in business carrying on licensable activities already given a temporary event notice for the same premises in which the event period: a) ends 24 hours or less before; or b) begins 24 hours or less after the event period proposed in this notice? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

| | |
|--|-------------------------------------|
| 7. Checklist (Please read note 15) | |
| I have: (Please tick the appropriate boxes) | |
| Sent at least one copy of this notice to the licensing authority for the area in which the premises are situated | <input checked="" type="checkbox"/> |
| Sent a copy of this notice to the chief officer of police for the area in which the premises are situated | <input checked="" type="checkbox"/> |
| Sent a copy of this notice to the local authority exercising environmental health functions for the area in which the premises are situated | <input checked="" type="checkbox"/> |
| If the premises are situated in one or more licensing authority areas, sent at least one copy of this notice to each additional licensing authority | <input type="checkbox"/> |
| If the premises are situated in one or more police areas, sent a copy of this notice to each additional chief officer of police | <input type="checkbox"/> |
| If the premises are situated in one or more local authority areas, sent a copy of this notice to each additional local authority exercising environmental health functions | <input type="checkbox"/> |
| Made or enclosed payment of the fee for the application | <input checked="" type="checkbox"/> |
| Signed the declaration in Section 9 below | <input checked="" type="checkbox"/> |

| |
|---|
| 8. Condition (Please read note 16) |
| It is a condition of this temporary event notice that where the relevant licensable activities described in Section 3 above include the supply of alcohol that all such supplies are made by or under the authority of the premises user. |

| | |
|--|--|
| 9. Declarations (Please read note 17) | |
| The information contained in this form is correct to the best of my knowledge and belief. | |
| I understand that it is an offence: (i) to knowingly or recklessly make a false statement in or in connection with this temporary event notice and that a person is liable on summary conviction for such an offence to a fine not exceeding level 5 on the standard scale; and (ii) to permit an unauthorised licensable activity to be carried on at any place and that a person is liable on summary conviction for any such offence to a fine not exceeding £20,000, or to imprisonment for a term not exceeding six months, or to both. | |
| Signature |  |
| Date | 15-7-13 |

| | |
|---------------------------|--|
| Name of Person signing | |
|---------------------------|--|

For completion by the licensing authority

| | |
|---|--------------------------------------|
| 10. Acknowledgement (Please read note 18) | |
| I acknowledge receipt of this temporary event notice. | |
| Signature | |
| | On behalf of the licensing authority |
| Date | |
| Name of Officer signing | |

Rejected



MEMORANDUM

To : Emma Bowell – LICENSING ASSISTANT
From : Richard Roberts
Tel : 01432 261668 My Ref : RRO/134733
Date : 12 August 2013 Your Ref : TEN7839

YEW TREE INN, YEW TREE INN, PRESTON ON WYE, HEREFORDSHIRE, HR2 9JT

Having assessed the TEN application at the above location, I would like to make the following comments:

- I object to the Ten due to previous complaints from more that one household regarding noise nuisance from live music and recorded music, and disturbance to nearby residents relating to noise from similar recent events.

**RICHARD ROBERTS
PUBLIC PROTECTION OFFICER**

PRESCRIBED FORM OF COUNTER NOTICE (LATE TEMPORARY EVENT NOTICE)

The prescribed form for a counter notice (late temporary event notice) is as follows:

Herefordshire Council, Licensing Section, PO Box 233, Bath Steet, Hereford HR1 2ZF

Counter Notice (Late Temporary Event Notice) – Permitted Temporary Activities

On 18.07.2013 the licensing authority received from you, Theresa Brandeberry, a late temporary event notice (“the notice”) in respect of proposed temporary licensable activities due to take place on 27.07.2013 at The Yew Tree Inn, Preston-on-Wye, Herefordshire. The licensing authority has received an objection under section 104(2) of the Licensing Act 2003 (“the Act”).


The objection which applies is indicated by an “X” in the following table.

| Objection | Insert “X” as applicable |
|---|--------------------------|
| A chief officer of police for any police area in which the premises are situated is satisfied that allowing the premises to be used in accordance with the notice would undermine a licensing objective. | |
| A local authority exercising environmental health functions for the area in which the premises are situated is satisfied that allowing the premises to be used in accordance with the notice would undermine a licensing objective. | X |

A copy of this counter notice will be sent to the chief of police and the local authority exercising environmental health functions for the area in which the premises specified in the late temporary event notice you gave is situated.

The Licensing Act 2003 does not make provision for you to appeal against this counter notice.

Under section 136 of the Licensing Act 2003, a person commits an offence if he carries on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation; or if he knowingly allows a licensable activity to be so carried on. A person convicted of such an offence is liable to imprisonment for a term not exceeding six months or to a fine not exceeding £20,000, or to both.

| | | | |
|--------------------------------|---|-------------|----------|
| SIGNATURE |  On behalf of the licensing authority | DATE | 19.07.13 |
| Name of Officer signing | EMMA BOWELL | | |

[Insert name and address of relevant licensing authority and its reference number (optional).]

Temporary Event Notice

Before completing this notice, please read the guidance notes at the end of the notice. If you are completing this notice by hand, please write legibly in block capitals. In all cases, ensure that your answers are inside the boxes and written in black ink or typed. Use additional sheets if necessary. You should keep a copy of the completed notice for your records. You must send at least one copy of this notice to the licensing authority and additional copies must be sent to the chief officer of police and the local authority exercising environmental health functions for the area in which the premises are situated. The licensing authority will give to you written acknowledgement of the receipt of the notice.

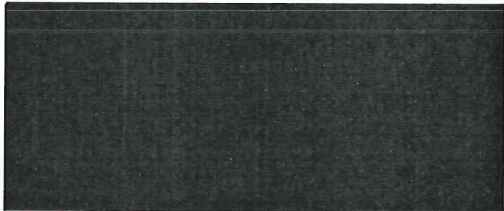
I, the proposed premises user, hereby give notice under section 100 of the Licensing Act 2003 of my proposal to carry on a temporary activity at the premises described below.

| | |
|---|--|
| 1. The personal details of premises user (Please read note 1) | |
| 1. Your name | |
| Title | Mr <input checked="" type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms <input type="checkbox"/> Other (please state) |
| Surname | Pugh |
| Forenames | Phillip |
| 2. Previous names (Please enter details of any previous names or maiden names, if applicable. Please continue on a separate sheet if necessary) | |
| Title | Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms <input type="checkbox"/> Other (please state) |
| Surname | |
| Forenames | |
| 3. Your date of birth | Day <input type="text"/> |
| 4. Your place of birth | <input type="text"/> |
| 5. National Insurance Number | <input type="text"/> |
| 6. Your current address (We will use this address to correspond with you unless you complete the separate correspondence box below) | |
| The Yew Tree Inn Preston-on-Wye Herefordshire HR29JT | |
| Post town Hereford | Postcode HR29JT |
| 7. Other contact details | |
| Telephone numbers | 01981 500359 |
| Daytime | |
| Evening (optional) | |
| Mobile (optional) | |
| Fax number (optional) | |

| | |
|---|-------------------------------|
| E-Mail address (if available) | theyewtreepreston@hotmail.com |
| 8. Alternative address for correspondence (If you complete the details below, we will use this address to correspond with you) | |
| | |
| Post town | Postcode |
| 9. Alternative contact details (if applicable) | |
| Telephone numbers: | |
| Daytime | |
| Evening (optional) | |
| Mobile (optional) | |
| Fax number (optional) | |
| E-Mail address (if available) | |
| 2. The premises | |
| Please give the address of the premises where you intend to carry on the licensable activities or, if it has no address, give a detailed description (including the Ordnance Survey references) (Please read note 2) | |
| The Yew Tree Inn, Preston-on-Wye | |
| Does a premises licence or club premises certificate have effect in relation to the premises (or any part of the premises)? If so, please enter the licence or certificate number below. | |
| Premises licence number | PR00211 |
| Club premises certificate number | |
| If you intend to use only part of the premises at this address or intend to restrict the area to which this notice applies, please give a description and details below. (Please read note 3) | |
| | |
| Please describe the nature of the premises below. (Please read note 4) | |
| Public House | |
| Please describe the nature of the event below. (Please read note 5) | |

Anniversary Party

| | | |
|---|-----------------------|-------------------------------------|
| 3. The licensable activities | | |
| Please state the licensable activities that you intend to carry on at the premises (please tick all licensable activities you intend to carry on). (Please read note 6) | | |
| The sale by retail of alcohol | | <input checked="" type="checkbox"/> |
| The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club | | <input type="checkbox"/> |
| The provision of regulated entertainment | | <input checked="" type="checkbox"/> |
| The provision of late night refreshment | | <input type="checkbox"/> |
| Are you giving a late temporary event notice? (Please read note 7) | | <input type="checkbox"/> |
| Please state the dates on which you intend to use these premises for licensable activities. (Please read note 8) | | |
| Saturday 24 th August | | |
| Please state the times during the event period that you propose to carry on licensable activities (please give times in 24 hour clock). (Please read note 9) | | |
| 19.30 – 12 midnight | | |
| Please state the maximum number of people at any one time that you intend to allow to be present at the premises during the times when you intend to carry on licensable activities, including any staff, organisers or performers. (Please read note 10) | | 80 |
| If the licensable activities will include the supply of alcohol, please state whether the supplies will be for consumption on or off the premises, or both (please tick as appropriate). (Please read note 11) | On the premises only | <input checked="" type="checkbox"/> |
| | Off the premises only | <input type="checkbox"/> |
| | Both | <input type="checkbox"/> |

| | | |
|---|--|--------------------------------|
| 4. Personal licence holders (Please read note 12) | | |
| Do you currently hold a valid personal licence? (Please tick) | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If "Yes" please provide the details of your personal licence below. | | |
| Issuing licensing authority | Hereford | |
| Licence number |  | |
| Date of issue | | |
| Date of expiry | | |
| Any further relevant details | | |


| | | |
|--|---------------------------------|---|
| 5. Previous temporary event notices you have given (Please read note 13 and tick the boxes that apply to you) | | |
| Have you previously given a temporary event notice in respect of any premises for events falling in the same calendar year as the event for which you are now giving this temporary event notice? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| If answering yes, please state the number of temporary event notices (including the number of late temporary event notices, if any) you have given for events in that same calendar year | | |
| Have you already given a temporary event notice for the same premises in which the event period: a) ends 24 hours or less before; or b) begins 24 hours or less after the event period proposed in this notice? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

| | | |
|--|--|---|
| 6. Associates and business colleagues (Please read note 14 and tick the boxes that apply to you) | | |
| Has any associate of yours given a temporary event notice for an event in the same calendar year as the event for which you are now giving a temporary event notice? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If answering yes, please state the total number of temporary event notices (including the number of late temporary event notices, if any) your associate(s) have given for events in the same calendar year. | | |
| Has any associate of yours already given a temporary event notice for the same premises in which the event period: a) ends 24 hours or less before; or b) begins 24 hours or less after the event period proposed in this notice? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Has any person with whom you are in business carrying on licensable activities given a temporary event notice for an event in the same calendar year as the event for which you are now giving a temporary event notice? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

| | | |
|--|---------------------------------|---|
| If answering yes, please state the total number of temporary event notices (including the number of late temporary event notices, if any) your business colleague(s) have given for events in the same calendar year. | 1 | |
| Has any person with whom you are in business carrying on licensable activities already given a temporary event notice for the same premises in which the event period: a) ends 24 hours or less before; or b) begins 24 hours or less after the event period proposed in this notice? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

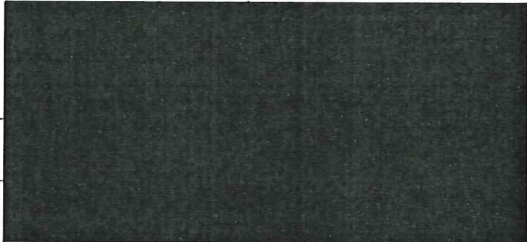
| | |
|--|-------------------------------------|
| 7. Checklist (Please read note 15) | |
| I have: (Please tick the appropriate boxes) | |
| Sent at least one copy of this notice to the licensing authority for the area in which the premises are situated | <input checked="" type="checkbox"/> |
| Sent a copy of this notice to the chief officer of police for the area in which the premises are situated | <input checked="" type="checkbox"/> |
| Sent a copy of this notice to the local authority exercising environmental health functions for the area in which the premises are situated | <input checked="" type="checkbox"/> |
| If the premises are situated in one or more licensing authority areas, sent at least one copy of this notice to each additional licensing authority | <input type="checkbox"/> |
| If the premises are situated in one or more police areas, sent a copy of this notice to each additional chief officer of police | <input type="checkbox"/> |
| If the premises are situated in one or more local authority areas, sent a copy of this notice to each additional local authority exercising environmental health functions | <input type="checkbox"/> |
| Made or enclosed payment of the fee for the application | <input checked="" type="checkbox"/> |
| Signed the declaration in Section 9 below | <input checked="" type="checkbox"/> |

| |
|---|
| 8. Condition (Please read note 16) |
| It is a condition of this temporary event notice that where the relevant licensable activities described in Section 3 above include the supply of alcohol that all such supplies are made by or under the authority of the premises user. |

| | |
|--|--|
| 9. Declarations (Please read note 17) | |
| The information contained in this form is correct to the best of my knowledge and belief. | |
| I understand that it is an offence: (i) to knowingly or recklessly make a false statement in or in connection with this temporary event notice and that a person is liable on summary conviction for such an offence to a fine not exceeding level 5 on the standard scale; and (ii) to permit an unauthorised licensable activity to be carried on at any place and that a person is liable on summary conviction for any such offence to a fine not exceeding £20,000, or to imprisonment for a term not exceeding six months, or to both. | |
| Signature |  |
| Date | 24.07.13 |

| | |
|---------------------------|--------------|
| Name of Person signing | Phillip Pugh |
|---------------------------|--------------|

For completion by the licensing authority

| | |
|---|---|
| 10. Acknowledgement (Please read note 18) | |
| I acknowledge receipt of this temporary event notice. | |
| Signature |  |
| Date | |
| Name of Officer signing | |

MEMORANDUM

To : **Emma Bowell – LICENSING ASSISTANT**

From : **Richard Roberts**

Tel : **01432 261668** My Ref : **RRO/134733**

Date : **12 August 2013** Your Ref : **TEN7839**

YEW TREE INN, YEW TREE INN, PRESTON ON WYE, HEREFORDSHIRE, HR2 9JT

Having assessed the TEN application at the above location, I would like to make the following comments:

- I object to the Ten due to previous complaints from more that one household regarding noise nuisance from live music and recorded music, and disturbance to nearby residents relating to noise from similar recent events.

RICHARD ROBERTS
PUBLIC PROTECTION OFFICER

Economy, Communities and Corporate Directorate

Director: Geoff Hughes

Mr Phillip Pugh

Your Ref:

Our Ref: EBO/TEN7839

Please ask for: Licensing Assistant

Direct Line / Extension: 01432 260105

Fax: 01432 383142

E-mail: licensing@herefordshire.gov.uk

15 August 2013

Dear Sir/Madam,

LICENSING ACT 2003**TEMPORARY EVENT NOTICE – THE YEW TREE INN, PRESTON-ON-WYE, HEREFORDSHIRE, HR2 9JT****You should read the whole of this letter as it contains important information, which may affect the grant of your notice.**

On **08.08.13** the licensing authority received from you, **Phillip Pugh**, a temporary event notice ("the notice") in respect of proposed temporary licensable activities due to take place on **24.08.2013** at **The Yew Tree Inn, Preston-on-Wye, Herefordshire, HR2 9JT**. The licensing authority has received an objection under section 104(2) of the Licensing Act 2003 ("the Act").

The objection which applies is indicated by an "X" in the following table.

| Objection | Insert "X" as applicable |
|--|--------------------------|
| A chief officer of police for any police area in which the premises are situated is satisfied that allowing the premises to be used in accordance with the notice would undermine a licensing objective. | |
| A local authority exercising environmental health functions for the area in which the premises are situated is satisfied that allowing the premises to be used in accordance with the notice would undermine a licensing objective. | X |

Due to objection(s) having been received, a date now has been arranged for this matter to be heard before members of the Regulatory Licensing Committee of Herefordshire Council (hereafter referred to as the authority). The hearing will be as follows: -

Date: Tuesday 20th August 2013**Time: 14:00****Place: Room 22a, Brockington, 35 Hafod Road, Hereford, HR1 1SH**

Working in partnership for the people of Herefordshire

Herefordshire Council, Licensing Section PO Box 233, Hereford, HR1 2ZF

Herefordshire Council Main Switchboard (01432) 260000, www.herefordshire.gov.ukNHS Herefordshire Main Switchboard (01432) 344344, www.herefordshire.nhs.uk



HEREFORDSHIRE COUNCIL

REGULATORY COMMITTEE DECISION NOTICE (THE LICENSING ACT 2003)

| | |
|-------------------------|--|
| PREMISES | The Yew Tree |
| APPLICANT'S NAME | Mr P Pugh |
| APPLICATION TYPE | Temporary Event Notice |
| EVENT DATES | 24 August 2013 |
| PANEL MEMBERS | Councillor JW Hope MBE (Chairman) Councillor CM Bartrum Councillor BA Durkin |
| DATE OF MEETING | 20 August 2013 |

Members of the Licensing Panel of the Council's Regulatory Committee considered the above application, full details of which appeared before the Members in their agenda and the background papers.

Prior to making their decision the Members heard from Ady Poole, Licensing Officer, Elisabeth Laughland, Principal Environmental Health Officer, and Phillip Pugh, the applicant and Theresa Brandeberry, the premises licence holder.

Having carefully considered those matters brought before them and in reaching their decision, the Members had full regard to both the provisions of the Licensing Act 2003 and the Council's Licensing Policy.

Herefordshire Council as Licensing Authority of the Yew Tree, Preston on Wye, Herefordshire, has decided not to issue a counter notice in respect of the application. The effect of this is to approve the temporary event notice listed above.

REASONS

The application is granted because the Sub-Committee refuses to issue a counter notice. However, the decision is made with some misgivings.

Any future Sub-Committee will not be bound by today's decision. Depending on what, if any, further complaints or objections are being made known to it its decision will be based on the evidence put before it on that day.

The Sub-Committee urges you as licensee to ensure that music ends at midnight sharp and that in future you clarify exactly where an external event will be held; and further, generally, fuller details are needed in any future application.

A right of appeal against this notice exists under section 181 and Schedule 5 of the Licensing Act 2003.

From: Mooney, James [REDACTED]
Sent: 11 March 2014 12:04
To: Licensing; Spriggs, Fred
Cc: [REDACTED]
Subject: Yew Tree Inn - review application

Attachments: Yew Tree Inn.doc

NOT PROTECTIVELY MARKED

West Mercia Police are in receipt of notification of a review application concerning the Yew Tree Inn, Preston on Wye, Herefordshire

West Mercia Police agree with this review application.

Attached is a schedule of incidents concerning noise nuisance at the venue that have been reported to West Mercia Police. The reports indicate a failure to comply with the current conditions attached to the premises licence and a failure to promote the licensing objectives.

Regards

Jim Mooney (on behalf of Insp Paul Crumpton)
Licensing and Harm Reduction Coordinator
Policing Unit - Herefordshire
West Mercia Police
DDI 01432 347102
Switchboard '101' x 4702
[REDACTED]

Think...Confidence and Satisfaction: making the difference

EB821**PREMISES DETAIL SHEET****YEW TREE INN**

Printed: 09 April 2014 18:18

Premises Type: PUBLIC HOUSE
Lic. Authority: Herefordshire Council
Owner:
PremLH: PHILLIP PUGH
Address: YEW TREE INN
 PRESTON-ON-WYE
 HEREFORD
 HEREFORDSHIRE
 HR2 9JT

Licence Type: Sale by retail of alcohol
Premises Status: Live
Sales: BOTH
Main Phone: 01981 500359
Alt Phone:
Email:
Fax:

Person Links:**Vists and Incidents:**

DATE OF INCIDENT 31/10/2013 TIME OF INCIDENT 18:19 INCIDENT NO. 0510S 311013

INCIDENT TYPE(S) Public Nuisance

ATTENDING OFFICER(S)

DESCRIPTION

LOCAL RESIDENT COMPLAINING ABOUT EXCESSIVE MUSIC NOISE FROM THE PREMISES.
 EHO ADVICE GIVEN. NO POLICE DEPLOYMENT

DATE OF INCIDENT 13/07/2013 TIME OF INCIDENT 23:12 INCIDENT NO. 0616S 130713

INCIDENT TYPE(S) Public Nuisance

ATTENDING OFFICER(S)

DESCRIPTION

LOCAL RESIDENT COMPLAINING ABOUT EXCESSIVE MUSIC FROM VENUE.
 TEN IN OPERATION. EHO ADVISE GIVEN. NO POLICE ATTENDANCE

DATE OF INCIDENT 22/06/2013 TIME OF INCIDENT 23:27 INCIDENT NO. 0309N 220613

INCIDENT TYPE(S) Public Nuisance

ATTENDING OFFICER(S)

DESCRIPTION

LOCAL RESIDENT COMPLAINING OF MUSIC NOISE FROM LIVE BAND AT PREMISES -
 BREACH OF LICENCE. EHO ADVICE GIVEN

DATE OF INCIDENT 25/05/2013 TIME OF INCIDENT 23:45 INCIDENT NO. 0284N 250513

INCIDENT TYPE(S) Public Nuisance

ATTENDING OFFICER(S)

DESCRIPTION

LOCAL RESIDENT COMPLAINING OF ESCESSIVE MUSIC NOISE FROM PREMISES. NO POLICE
 ATTENDANCE. EHO ADVICE GIVEN

DATE OF INCIDENT 02/03/2013 TIME OF INCIDENT 00:43 INCIDENT NO. 0011N 020313

INCIDENT TYPE(S) Public Nuisance

ATTENDING OFFICER(S)

DESCRIPTION

NOISE COMPLAINT - MORE LIKE A BREACH OF LICENCE ISSUE - LOCAL RESIDENT

REPORTING THAT LIVE BAND ENDED AT 2300 TO BE REPLACED BY RECORDED MUSIC.
NO POLICE ATTENDANCE, INFORMATION SHARED WITH LICENSING AUTHORITY

DATE OF INCIDENT 08/02/2013 TIME OF INCIDENT 12:00 INCIDENT NO. LICENSING OFFICER

INCIDENT TYPE(S) Crime and Disorder, Public Nuisance

ATTENDING OFFICER(S) 60154 (CIV MOONEY)

DESCRIPTION

COMPLAINT VIA THE LA THAT THE PREMISES ARE HAVING LIVE MUSIC AFTER 2300 AND UP TO 0100.

SPOKE TO MANAGER - [REDACTED] BRANDEBERRY, CONFIRMED THAT LIVE MUSIC DOES TAKE PLACE AND THAT IT ENDS AT 2300 AS PER THE LAW. SPOKE ABOUT PREMISES LICENCE - ESTABLISHED THAT THE NAMED DPS NO LONGER WORKS AT THE PREMISES AND HAD LEFT IN AUG 2012. ADVISED TO INFORM PLH THAT CHANGE OF DPS SHOULD BE MADE ASAP.

LA INFORMED REGARDING ALL THE ABOVE INFORMATION.

DATE OF INCIDENT 02/11/2012 TIME OF INCIDENT 22:06 INCIDENT NO. 0666S 021112

INCIDENT TYPE(S) Public Nuisance

ATTENDING OFFICER(S)

DESCRIPTION

LOCAL RESIDENT REPORTING EXCESSIVE MUSIC FROM PREMISES. NO POLICE ATTENDANCE. EHO ADVISE GIVEN. EHO INFORMED 05/11/12

DATE OF INCIDENT 12/10/2012 TIME OF INCIDENT 23:33 INCIDENT NO. 0736S 121012

INCIDENT TYPE(S) Public Nuisance

ATTENDING OFFICER(S)

DESCRIPTION

CALL BY LOCAL RESIDENT REGARDING EXCESSIVE MUSIC NOISE. EHO ADVICE GIVEN. NO POLICE ATTENDANCE

EHO INFORMED 15/10/12

DATE OF INCIDENT 12/08/2012 TIME OF INCIDENT 03:40 INCIDENT NO. 0165S 120812

INCIDENT TYPE(S) Crime and Disorder, Positive Crime and Disorder

ATTENDING OFFICER(S)

DESCRIPTION

LOCAL RESIDENT REPORTING NOISE AND NUISANCE FROM CUSTOMERS LEAVING THE PUB. NO POLICE ATTENDANCE

MEMORANDUM

To : LICENSING OFFICER
From : Elisabeth Laughland
Tel : 01432 261676 My Ref : ELA/146370
Date : 1 April 2014 Your Ref : EB/PR00211

**LICENSING ACT 2003
APPLICATION FOR NEW OR VARIATION OF PREMISES LICENCE
YEW TREE INN, PRESTON ON WYE, HEREFORDSHIRE, HR2 9JT**

Having assessed the above application, I would like to make the following representation:

Representation

PREVENTION OF PUBLIC NUISANCE

The Environmental Health - Environmental Protection Service raised concerns over the Yew Tree management controls and monitoring of noise emanating from their property, especially during events held within their Marquee. We have also collected evidence on the time the events have run for as there have been additional complaints of the music being played longer than the Premises Licensing conditions.

This Service has received seven noise complaints from local resident and the Wyeseid Group Parish Council regarding music emanating from entertainments at the Yew Tree Inn since October 2012. These were following at least six different events held at the premises under the current premises management. The events were held either inside the premises or within a Marquee in the garden of the premises. Statutory Noise Nuisance investigations of both types of events have been carried out. These included installing noise monitoring equipment and officer visits to the complainants' properties. As part of these investigations we also noted the times the music events ran for.

Marquee outdoor events

The initial results identified noise from the outdoor marquee events were found to create significant noise issues to a number of residence who live in close proximity to the Yew Tree Inn.

As a result of the noise complaints and findings the Environmental Protection Team recommended refusal for a TENS Application for the pubs 'New Management Anniversary Party' on 24th August 2013 in the marquee. This was put before the Licensing Committee, which the Licensing Committee subsequently approved.

Immediately following the Committee hearing Environmental Protection Officers spoke to the Licensee duty holders to discuss the event and recommended action to minimise the noise

impact on the neighbouring domestic properties e.g. siting of marquee & speakers, request DJ be informed of noise complaints so they can set appropriate level to minimise disturbance and recommended regular noise monitoring checks off the premises during the event to ensure minimum disturbance.

Noise monitoring equipment was installed in one of the complainant's property for this event. Following the event the noise readings and diary sheet was assessed (EH Officers Report 1 attached). The noise monitoring sheets detailed they heard the DJ saying "Do you want it Louder?". Following this event we were not informed of any other Marquee events for us to consider further actions under Statutory Nuisance.

OFFICER'S LOG

| Date | Officers notes | Evidence |
|---------|--|--|
| 24/8/13 | <p>Noise monitoring recordings from the Yew Tree Inn anniversary event in the premises marquee. Equipment installed in the complainant's front room on the ground floor. Music clearly audible on the recordings from inside the complainant's property with the window closed and even louder and clearer with the window open. From the sound clips recorded the music, base and lyrics were clearly audible and was the dominant sound in the room when the music was playing. Noise level noted from the recordings were as follows:-</p> <p>Time - LAeq range 16.00 - 34 dB 19.30 - 36 to 61 dB 21.00 - 44 to 67 dB 22.00 - 36 to 67 dB 00.00 - 48 to 61 dB 02.00 - 30 - 31 dB (event finished)</p> | <p>EH Officer Report 1</p> <p>Noise Recording</p> <p>Complainant Log Sheet</p> <p>Site Plans</p> |

Planning Issue

To our knowledge the marquee was erected and used for several months over the summer 2013 period. As well as being used for TENS events the marquee was advertised as being available for bookings and used as additional restaurant and bar space for customers. It is also our understanding that the pub is popular with visitors from outside the village including campers from the local campsites in the area. Planning Enforcement have looked into the use of the Marquee and planning permission maybe required depending on the size, degree of permanence and physical attachment to the ground. Further information on this year's intended use of the marquee would be required to clarify this issue.

Events within the premises

The events held within the premises were audible from the complainant's premises yet no significant issues with regards to Statutory Nuisance was identified. However, one of these events were found to overrun the Licensing Conditions time (EH Officers Report 2 attached).

OFFICER'S LOG

| | | |
|----------|--|--|
| 29/11/13 | Officers visit to complainant's property from 22.30 to 23.30. Live acoustic band advertised to play inside the Yew Tree Inn. Music heard emanating from the Yew Tree Inn when stood in the road. Inside the complainants property the drum beat and base of music was audible in the front room when the T.V was on mute and the windows closed. However the lyric's and the main tune of the music was not recognisable. Although the music was audible it was not sufficiently loud or intrusive to constitute a statutory nuisance. The music stopped within 5 minutes of 23.00 and no other music was heard emanating from the premises up to 23.30 when we left the complainant's property. | |
| 20/12/13 | Noise monitoring recordings from the Yew Tree Inn event held inside the premises. Equipment installed in the complainant's front room on the ground floor. Music audible on the recordings from inside the complainant's property, however, not sufficiently loud to raise concerns over statutory nuisance. However, there are three sound clips made in the complainants property that music can be heard playing outside the property up to 23.44. Time LAeq range 21.30 - 32 to 33 dB 22.00 - 32 to 41 dB 23.00 - 30 to 31 dB 00.00 - 30 to 31 dB | EH Officer Report 2 Noise Recordings Log Sheet |

Conclusions

The initial results identified noise from the outdoor marquee events was found to create significant noise issues to a number of residents who live in close proximity to the Yew Tree Inn. The events held within the premises were audible from the complainant's premises yet no significant issues with regards to Statutory Nuisance were identified. However one of these events were found to overrun the Licensing Conditions time. Therefore, there are concerns over the Yew Tree management controls and monitoring of their music events.

ELISABETH LAUGHLAND

**PRINCIPAL ENVIRONMENTAL HEALTH OFFICER
HEREFORDSHIRE COUNCIL**

The Yew Tree Inn

Preston-on-Wye

Herefordshire

HR2 9JT

08.04.14

Dear Mr Spriggs,

I am writing today for the last time to ask you to please reconsider the necessity for our license to be reviewed.

Please take the following points into consideration;

- 1-The complainants are the obvious minority, despite not being the closest house to our pub.
- 2- They knowingly moved and chose to live near a village pub just 14 months ago.
- 3- The completely clear "no issues" relationship we hold with the police.
- 4-The log of "24 events" does not even correspond with our diary of booked, actual events.
- 5- The fact we have been wrongly accused of playing recorded music (other than background music) and the confusion this has caused.
- 6-The efforts we have put in to trying to discuss our neighbours concerns (as recommended by noise abatement and Enviro Health), and the fact that they have refused.
- 7-The measures and controls that we have already put in place to reduce noise levels and show consideration to our neighbours – self door closures, blinds, notices, only booking events until 11, noise policy that we adhere to monitoring speakers, sound levels outside, - We have had no tolerance shown back.
- 8- The fact we have had no dealings ever with the police in relation to "crime and public disorder" or "noise and public nuisance" – other than the 2 visits when they were sent out by your office and both times were more than satisfied, in fact somewhat confused as to why they were there.
- 9- We asked for mediation and in deed visits from enviro health and licensing and have been refused on all accounts.
- 10-Licensing have been inaccurate issuing statements to the Media.
- 11- The one time we played music overtime and one time when we breached our license by playing music outside without a variation or TEN was deemed as a misunderstanding and resolved at the successful TEN appeal in August 2013, or so we thought.
- 12- Our business has already suffered significant loss due to a premises license being issued to a campsite less than a mile away.
- 13- We are more than prepared to apply for a variation on our current license as you are already aware.

14- We have the vast majority of support from a very broad cross section of our village and surrounding community.

15- We sought advice from Noise abatement and acted on their advice and recommendations –this has been overlooked by licensing.

16- We sought advice from Herefordshire Environmental Health and are still waiting for their “2 week investigation” 18 months later – this has been overlooked by licensing.

17- We have responded either verbally or formally by letter to every correspondence from the council regarding noise and the “accusation” of breaching our license.

18 -I have evidence to back up every point above.

19- We are a small rural business, family and community focused, we cannot afford to suffer any losses this year after this winter. The pub will not remain viable.

20- We believe that the consistent allegations and complaints are now feasible for us to look into harassment against our family and business.

With all this in mind, surely there is more than enough reason to negate the need for a hearing and work together to resolve any licensing issues?

Kind Regards,

Theresa Brandeberry

Adrienne Poole
Licensing Officer
Herefordshire Council
233 County Offices
Bath Street
Hereford
HR1 2ZF



Appendix 15

23rd March 2014

Dear Ms Poole

Re: Our letter to you 6th March in support of the Yew Tree Inn, Preston on Wye

~~Thank you for your letter of 18th March advising us that our letter in support of the Yew Tree was rejected due to our representation not being relevant.~~

~~We can appreciate that you have to adhere to a strict set of guidelines, and that the comments made did not meet your criteria. However we would like you to understand that as regular customers of the Yew Tree we have never witnessed incorrect, or noisy, anti-social behaviour from any of the people who use the pub. Phil and Theresa make sure everyone who uses the pub is aware that we all conduct ourselves in a responsible way when at, or leaving the premises. We value what the pub has to offer!~~

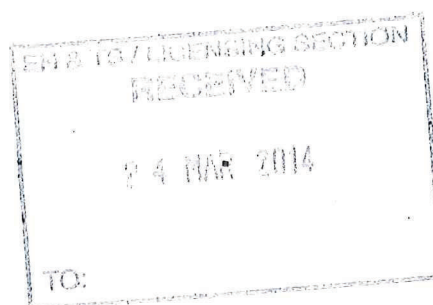
~~We cannot provide you with 'documented' evidence of the dates and times we have enjoyed ourselves at the Yew Tree. We have gone there to enjoy meeting up with friends, not to make notes because we were intent on taking malicious action! We question the obsession of the household complaining!~~

We have attended music events at the Yew Tree, and again would emphasise that these events are run in a completely correct way and we have never known them to go 'over time'. ~~Again because we never thought we would have to keep a diary of our social life to be able to substantiate our letter of support of the Yew Tree, we can provide no evidence!~~

~~The Yew Tree provides us all with a very good place to meet and relax. They should be supported by the Council for what they have done to ensure that the pub is run in such a responsible way.~~

Yours sincerely





Licensing Section
Herefordshire Council
Blue School House
P.O.Box 233
Hereford
HR1 2ZB

20/03/14

Dear Sir,

~~I would like to comment on the Blue notice given to the Yew Tree Inn Preston On Wye. My family have just moved to the village last November and have used the Yew Tree on many occasions and found it very friendly welcoming and community orientated. We have been welcomed into the village with open arms which would have been much harder and taken a very long time if there was not a local pub as this is the centre of the community and there is not a shop or other places we may meet villagers.~~

Last Saturday night we went to the Yew tree to see a band called Mirror Ball the pub was full unfortunately we had to leave early about 10 pm when out side the pub we were surprised at how quiet it was I would be very surprised if any local householders could hear the music inside their houses.

The land lord has obviously give the noise issue a lot of thought and moves the pool table out the way and has the band in this part of the pub with the speakers facing away from the road and the nearest neighbours

~~It was great to see a small rural pub full of people last Saturday evening.~~

~~These few nights they have music on is obviously a real boost to their takings and I am sure without these nights with live music on it would make it hard if not impossible to keep this small rural pub open.~~

I have now been to 4 live music nights and the first three have finished promptly at 11pm I cannot comment on last Saturday night as we left early.

~~It seems that the vocal minority are trying to stop the silent majority from going about their business and I hope you can see through this and leave the Pub license as it is as I feel any changes or tightening of hours or restrictions may eventfully cause the Yew Tree to close which would be a real shame to this small community.~~

Yours Sincerely



re: the Yew Tree Inn
Preston-on-Wye
HR2 9 JT:
case to be debated
early in April.

The Licensing Section
Hdls Council
Blueschool House
PO Box 233
HR1 2ZB

Appendix 15

Dear Madam/Sir,
~~From the parish council we learn that there have been~~
~~objections to the renewal of the entertainment license for the Yew Tree Inn.~~
We live closest to it and do not object. Music events etc. are at (some of
the) summer week-ends and stop at the mandated times. Verbal noise
continues after but has been harmonious. No conflicts have occurred, to
our hearing, since the relatively new landlords arrived.

~~Being very rare pub-visitors we carry no brief for the~~
~~pub's survival, but see Theresa & Philip Pugh trying hard, in a civilised~~
~~manner, to support or employ an extensive, & local, family. The atmosphere~~
~~has improved under their tenure, become much more welcoming to women~~
~~and have provided suitably in summer for children.~~

~~We appreciate that if someone says they are disturbed~~
~~by noise then they are. We might be if we had to rise earlier. But I~~
~~believe there is a middle way - not merely two opposite alternatives -~~
~~and that the landlords are sensible and accommodating~~
~~people~~

Yours faithfully

✓ AD

23rd March 2014

The Licencing Section
Herefordshire Council
Blueschool House
PO Box 223
Hereford
HR1 2ZB

To whom it may concern,

REF: PREMISES LICENCE REVIEW – YEW TREE INN, PRESTON-ON-WYE

~~I am, once again, writing to offer my full support to Teresa and Phil in their current licence review. I have read the "Application for the Review" and I notice that the grounds for the review are :-~~

- ~~- the prevention of crime and disorder~~
- ~~- the prevention of public nuisance~~

~~Neither of which have altered in the village as a result of the new licensees of the Yew Tree.~~

~~I have lived in Preston all my life, and like the "majority" of the village, have always enjoyed the fact that we have a vibrant and well-used local, which is the hub of our community. I find it frustrating that two complainants can cause so much trouble for so many people, when there really is no noise issues from the pub.~~

~~I currently live virtually opposite the pub, and the complainants are my neighbours. My main living area and bedroom are both facing the pub, and I have no issues to report with noise from the pub - in fact I have more issues with my neighbours dog barking - but this is something that is annoying to me and I do not go around asking them to keep their dogs quiet or to not have one.~~

~~There was a worry when the previous landlord was selling up, as to what might become of our little pub, but I am pleased to say that Phil and Teresa have both embraced it's former attributes and enhanced them greatly! They have managed to attract a wide range of the village to pub (many who never used it when the previous Landlord was there) and this has not been done through increasing the "noisy" events, but offering good food, catering for families, offering golden diners days to mention but a few. None of which are affecting the grounds of your review.~~

While I do attend some of the events and eat regularly at the pub, I have also been at home when others are on and I do not find any issue with noise, even with the windows open on a lovely summer evening.

In relation to the log (that has been compiled by the complainants) in your report it is difficult to offer specific and documented evidence to contradict it – as this is not something someone would do without knowing it was needed - but I know there are many inaccurate representations in it.

~~1 – there have been 17 events, some of which have had extended licences and the others finished on time.~~

~~2 – the Pub has both a PRS and PPL Licence, so I believe these are the relevant licences needed to play recorded music.~~

3 – Phil and Theresa have implemented many things, which seem to have been overlooked: -

- their own soundchecks on music nights,
- signs asking people to respect our neighbours and leave quietly,
- self closures on the door,
- new blinds,
- notices to notify our neighbours that we have an event,
- re position speakers,
- since the last complaint they haven't bothered applying for a late ten only allowing music to run from 9-11pm

~~I like many others in the village find it frustrating that one household can have such an impact on our community, and the potential success (or failure) of our local. It seems quite clear to me that the "complainants" will stop at nothing to cause trouble for the pub – back during the recent storms a tree on the pub property was blown over and was blocking the road, and rather than offering help to clear the road (which is what other members of the community did) there was a call to Herefordshire Council reporting the potential cutting down of a tree without a licence.~~

~~I really do think that it is the responsibility of individuals to research the area they are moving into before they do, as surely it is unfair to ask an village to change for a minority few.~~

~~I hope this letter is accepted by the review, and not dismissed as many others have, due to a lack of "real evidence". I would also urge you to see through the complainants and support the Phil and Theresa so that they continue to run a successful pub – which I am sure you know is no easy task.~~

Yours sincerely



HEREFORDSHIRE COUNCIL
Licensing Act 2003

**REPRESENTATION FORM – INTERESTED
PARTIES**

On making your representation please have regard to the 'Making Representations Guidance Notes' which further explains the process and the information that can be considered by the licensing authority.

When completing this form please print clearly and legibly.

Please return this form, and any additional information within the statutory period to:
The Licensing Section,
Blueschool House,
PO Box 233,
Blueschool Street, Hereford,
HR1 2ZB
licensing@herefordshire.gov.uk

| | |
|--|--|
| Your Name: [REDACTED] | Contact Telephone No [REDACTED] |
| Address: [REDACTED] | E-mail address [REDACTED] |
| | Please state your interest in the premises you are making a representation about: Local resident directly affected by activities at the Yew Tree. |
| Name & Address of premises you are making a representation about: Yew Tree Inn, Preston on Wye, Hereford, Herefordshire | |

DATA PROTECTION ACT 1998. Please indicate by ticking here ☒ if you are not content for your personal details to be circulated as necessary prior to any hearing.

A representation must reflect one or more of the licensing objectives, therefore please write the details of your representation in the relevant boxes below:

To Prevent Crime & Disorder

Events verified by licensing 20-DEC-2013 – live band finishing 23:40 and 08-JUN-2013 witnessed by a licensing officer. These are part of many events finishing over time, please see submitted Live Music Log for further details. (25 incidents since November 2012, mix of live and recorded music). As further evidence emails were sent to the licensing department at the time and calls were logged with the Police on 101 on some occasions.

Due to the council not having routine out of hours monitoring, the other events were not verified by licensing.

Public Safety

To Prevent Public Nuisance

Further to music events exceeding the legal hours the volume is also extremely loud throughout the house through double glazing, preventing us from sleeping, having to increase the volume of our own TV and completely unable to have our windows open at all.

As an aside, during the summer months the noise from the beer garden was extremely loud until late on weekday nights as well as weekends causing the above problems, not just when music events are on.



To Prevent Public Nuisance (continued)

We feel it important to point out that we have lived in similar close proximity to busy Public Houses for 5 years whilst living in [REDACTED] with no problems whatsoever and [REDACTED] lived across the road from a large Public House for 14 years, again with no problems.

To Protect Children from Harm

Signed: [REDACTED]

Date: 24/Mar/2014 [REDACTED]

If you have any queries about this form or are unsure of when the statutory period ends please contact the Licensing Helpline on 01432 260105

Representation Form – Interested Parties
Suggested Conditions

Premise: The Yew Tree Inn
Your name: Mark Seabourne

It would help us with this application if you could suggest conditions you would be happy for the premise to operate under to rectify the problems you are experiencing.

All suggested conditions shall be considered in line with the Herefordshire Council Licensing Policy, the Licensing Act 2003 and the Licensing Objectives.

To Prevent Crime and Disorder

Since [REDACTED] licensing have spent over a year trying to get the Pub to adhere to the terms of the Live Music Act (which are not difficult or complicated), without success we feel that they have shown no willingness or ability to comply despite us being very reasonable throughout, and therefore suggest that they be prevented from having any music events.

Public Safety

Prevent Public Nuisance

Following the TEN review held in AUG-2013, the landlords of the Yew Tree handed us a

copy their "Prevention of Public Nuisance Management Controls" document as discussed with Environmental Health, in which they state "Noise or vibration shall not emanate from the premises at an unreasonable level to cause a nuisance to our immediate neighbours". We do not consider being kept awake until the early hours by yelling and shouting groups in the beer garden weekdays and weekends as complying with this. Since they have an unwillingness/inability to control this also we would suggest a beer garden curfew of 10:30pm and installation of sound control fencing around the premises.

Protect Children from Harm

Signed: 

Date: 24 MAR 2014

If you have any queries about this form or are unsure of when the statutory period ends please contact the Licensing Helpline on 01432 260105

Made of behalf of the DEFENDANT

By Witness : [REDACTED]

Number of Statement : One

Number of Exhibits :

Date Signed :

CASE NUMBER :

IN THE..... COUNTY COURT

BETWEEN:

Herefordshire Council

Claimant/Applicant

- and -

Phillip Pugh and Theresa Brandeberry

Defendant/Respondent

WITNESS STATEMENT Of : [REDACTED]

Address : [REDACTED]

Date of Birth [REDACTED]

Occupation : [REDACTED]

1.

2.

3.

I believe that the facts stated in this witness statement are true. Signed... [REDACTED]

4. We moved into the house February 2012.
5. The house is about 100 metres from the Yew Tree Inn, Preston-on-Wye.
6. The house is not directly opposite but is in line of sight.
7. The pub prior to Autumn 2012 had unlicensed live music which we reported but was infrequent.
8. However in Autumn 2012 new owners moved into the pub.
9. The new owners were Theresa Brandeberry and her partner Phillip Pugh.
10. I am aware that the premises are not licensed for Live or Recorded Music although I know that there is an exemption if any Live Music finishes before 11 pm.
11. I have recorded details of events which have taken place and had compiled a log sheet which shows the date of the event, the time that it finished and how loud it was. This I produce as reference MS1.
12. I have made numerous complaints to the Council's Licensing Department and Environmental Health Department and the pub.
13. The noise on many occasions, particularly during the summer months, was excessive and prevented us enjoying our house and garden.
14. Often we found it difficult to sleep, even with the doors and windows closed.
15. On Friday 20th December the premises held a further live music event.
16. The Environmental Health department had installed noise monitoring equipment in our house.
17. I recorded the noise which was coming from the Live Music event being held at the Yew Tree Inn.
18. I am absolutely positive that the noise recorded on the tape came from the pub and was not coming from any other source.

2

I believe that the facts stated in this witness statement are true.

Sign

Dated 24 FEB 2014

19. The music on this occasion eventually stopped at 11.40 pm.

20. I am sure that the tape will support this.

21. I am willing for this statement to be shown to the Licensing Committee and also to any court should the matter be appealed.

I confirm that I have been given the opportunity to amend or alter this statement before signature. Any such correction has been initialed.

I believe that the facts stated in this witness statement are true

Signed.....

Date.....

24/FEB/2018

3

I believe that the facts stated in this witness statement are true.

Sign

Dated ...24/FEB/2018

Statement Template

Live Music Log for Yew Tree Pub

| Date | End Time | Comments |
|------------|-------------|--|
| 15/11/2012 | 01.00 | Extremely loud, heard through village. |
| 23/11/2012 | 01.00 | V. loud |
| 08/12/2012 | 23.40 | V. loud |
| 15/12/2012 | 00.40 | V. loud |
| 16/12/2012 | 01.00 | Recorded music, extremely loud. |
| 08/02/2013 | 23.45 | Loud |
| 22/02/2013 | 00.00 | V. loud |
| 02/03/2013 | 23.00-01.00 | Live music then v. loud recorded music |
| 03/05/2013 | 23.45 | Loud |
| 05/05/2013 | 23.20 | Loud |
| 25/05/2013 | 00.10 | Extremely loud |
| 27/05/2013 | 00.37 | Extremely loud |
| 08/06/2013 | - | Witnessed by licensing |
| 22/06/2013 | 00.10 | Moderate |
| 13/07/2013 | 23.20 | Moderate |
| 27/07/2013 | 23.40 | Loud |
| 24/08/2013 | - | Monitored by recording device, other premises. |
| 21/09/2013 | 23.50 | V. loud |
| 27/09/2013 | 23.20 | Loud |
| 09/10/2013 | 00.00 | V. loud |
| 31/10/2013 | - | Loud recorded music in marquee |
| 13/12/2013 | 00.20 | Loud |
| 20/12/2013 | 23.40 | Monitored by recording |
| 24/01/2014 | 00.00 | Moderate |
| 08/02/2014 | 23.45 | Moderate |

EXHIBIT

Exhibit Number

MS/1

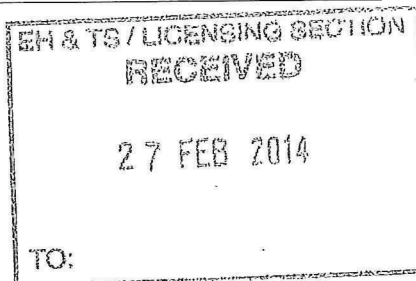
Description

List of events held at
the Yew Tree Inn

Dated

24.Feb.2014

Signed

EAD419(OC
T 02)

The Yew Tree Inn, Preston-on-Wye
08.06.13

21:30 – Left home

21:55 – Arrived at the premise. Can hear live music playing from the car park. Entered the premise, there was a trio singing. Microphones, speakers, guitars and a Bongo. No drinks being sold outside but drinks (including alcohol) consumed outside. A marquee was in the garden but was not being used.

22:05 – Music stopped – singers having a break

22:18 – Music started again

22:35 – Music still playing, can be heard outside in beer garden. People outside drinking and smoking quite loud. Approx 20 people.

Drove to green behind pub, as it is a locals pub where everyone knows everyone and quite awkward.

22:50 – Drove to green behind pub, approx 80m away. Can hear music in background, though wouldn't have thought you could hear it from inside a house if windows and doors closed unless you lived in house opposite. Can't hear it from inside car with windows closed and radio on and off. People outside seem louder than the music. Live music and karaoke can be heard in opposite direction of pub. Went to investigate. Party in Village Hall with PA system and recorded music. Village Hall approx 200m from pub. This music can be heard from the green approx 120m away but different from music at pub. Can distinguish between the two.

23:01 – Music still playing at pub, customers still outside drinking and chatting. People outside quite loud

23:11 – Live Music still playing, can be heard from green with windows down in car.

23:15 – People outside getting louder. Cheering, chatting, laughing.

23:19 – Live Music can be heard clearly when people outside quietened down.

23:27 – Live Music still being played, drinking games outside pub. Customers cheering, shouting and clapping.

23:40 – Live Music still being played. People outside still causing a noise nuisance. Music can't be heard in car with windows done up but can hear the customers.

00:02 – People outside drinking, chatting, shouting and swearing.

00:05 – Live Music stopped and band packing away. People still with drinks outside chatting (approx 20).

00:30 – arrived home.

The Yew Tree Inn, Preston-on-Wye
29.03.2014

22:15 – Left home

22:50 – Can hear live music playing from the pub whilst in the car park. Premise door and windows open. Noise levels reasonable.

22:55 – drove to the green by the pub (approx 80m away) and waited until just past 23:00 to check for music.

23:07 – walked up to pub from the green, can only hear people who were outside talking. Music seems to have stopped. Didn't enter premise.

23:45 – arrived home.

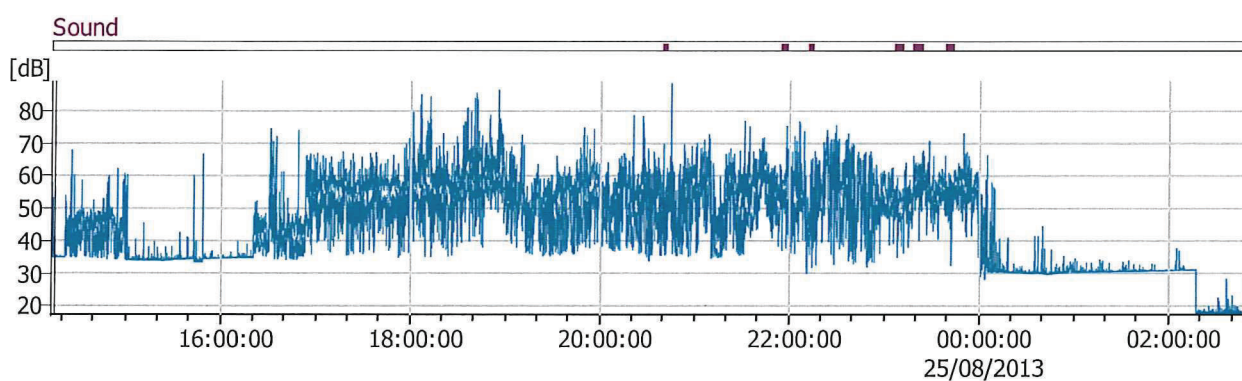
Report 1

Environmental Health - Yew Tree Inn Noise Monitoring Report – 24th August 2013

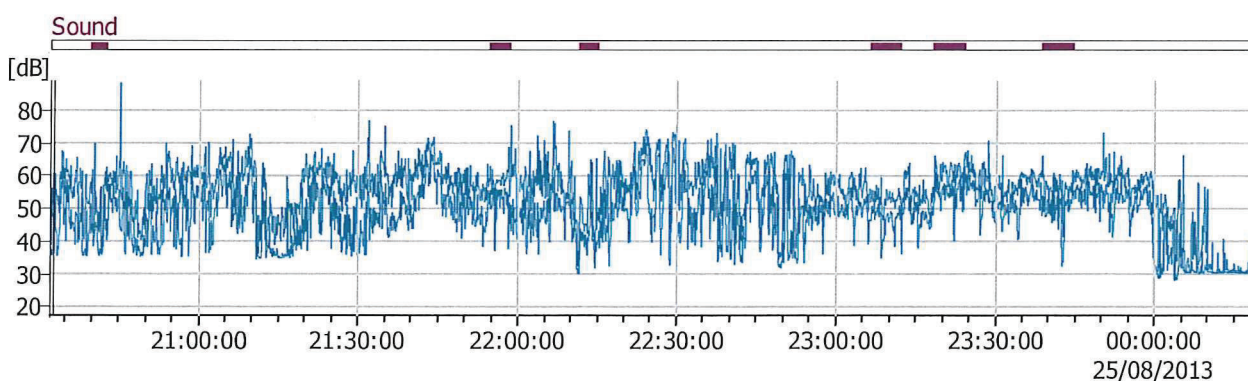
Installation of the Sound Meter:- Calibrated Bruel & Kjaer 2250 sound meter was installed at complainants premises on the 22 August 2013 to 6th September 2013. The sound meter was set to the actual time. The equipment was installed in a ground floor habitable room, with the window facing the road and pub. The equipment was enclosed in a taper proof bag with microphone sited next to the TV and window, with the trigger switch available for operation. Instruction provided to take readings with the window open and closed to demonstrate difference in sound levels. Sound clip recordings set for maximum of 5 minutes with a 30 second pre-recording when recording trigger started.

Log Sheet: Complainants log of noise recordings was provided. See attached Appendix 1.

Graph 1 - Sound recording over the evening of the 24th August 2013



Graph 2 - Sound recording and Sound Clip Markers



| Clip | 1 | 2 | 3 | 4 | 5 | 6 |
|------|---|---|---|---|---|---|
|------|---|---|---|---|---|---|

Officers assessment of recording:- The evening of the 24th August 2013 was the only date where sound clip recordings were made on the equipment. This was a TENS music event held outside the Yew Tree Inn property in a Marquee (Appendix 2 site plans). From Graph 1 the sound levels at 16.00 were at LAeq 35 dB the levels started to significantly increase between 16.20 and 17.00. The sound levels then started to decline between 00.00 and 00.16 on 25th August 2013. At 00.30 the noise levels were LAeq 30dB.

Between 20.30 and 23.45 six sound clips were recorded by the complainant. The clips demonstrated the sound in the room with the window open and closed. The base, music and lyrics were clearly audible on the recordings with both the windows open and closed. However when the windows were opened there was a significant increase in volume and clarity. The levels recorded with the windows open and closed were sufficiently loud and intrusive to indicate a significant noise issue, which would indicate a 'Statutory Nuisance' was likely. Officer's notes on sound clips detailed below:-

Table 1 Officer notes on sound recording clips.

| Clip | Time Start - Finish | Comments |
|-------------|--------------------------------|--|
| 1 | 20.39 - 20.42 | People talking in the room and TV on. The base beat of music clearly was heard in the room (LAeq - 43dB). When the TV was turned down the music was clearer and vocals could be heard. When the music stopped the room went quiet (LAeq - 36dB). When the TV was on the room volume was LAeq 50 db. |
| 2 | 21.54 - 21.58 | Music, base and lyrics clearly heard in the room; songs heard ' Girl I want to be with you all of the day and all of the night' & 'Help I need someone'. When music playing the LAeq was 56-59dB break between the songs room volume dropped to LAeq 40 dB. |
| 3 | 22.11 - 22.15 | The window was closed and the TV was on quietly in the background. The Music base beat, tune and vocals could be heard clearly in the room. The base was a dominant sound in the room, LAeq 50dB. |
| 4 | 23.06 - 23.12 | The window was open, the music was very clear in the room, songs heard were 'Tainted Love' and 'We're caught in a trap', LAeq 49-55dB. Between the songs the level dropped to LAeq - 35dB. |
| 5 | 23.18 - 23.24 | The window was closed at start of the recording. Lyrics and music clearly heard as well as the band member talking to the crowd. The window was then opened and the music level increased considerably. Sounded like the event was in the room LAeq 49 – 51 dB. |
| 6 | 23.38 - 23.44 | The TV was on with faint music in the background then the music starts up and was clearly heard over the TV. People talking in the room but the music was also clearly heard in the room too, LAeq 49 – 55dB. At the end of the track a few people at the Yew Tree event could be heard cheering. When the music stopped the sound levels dropped to LAeq 32 dB. |

Case Officer : Elisabeth Laughland

Principal Environmental Health Officer

Date : 11 April 2014

Yew Tree Inn

Received 5/9/13



Herefordshire
Council

ENVIRONMENTAL PROTECTION ACT 1990

RECORD OF NUISANCE

NAME AND ADDRESS WHERE ALLEGED NUISANCE TAKES PLACE.....

.....
.....
.....

NAME OF COMPLAINANT:

ADDRESS OF COMPLAINANT:

.....

SOURCE OF NUISANCE:

.....

I HEREBY DECLARE THAT THE INFORMATION GIVEN ON THIS FORM IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF AND I HEREBY SUBMIT IT KNOWING THAT IF IT IS TENDERED IN EVIDENCE I SHALL BE LIABLE TO PROSECUTION IF I HAVE WILFULLY STATED IN IT ANYTHING WHICH I KNOW TO BE FALSE OR DO NOT BELIEVE TO BE TRUE.

SIGNED:

DATE:.....

ON COMPLETION PLEASE RETURN TO:

**ENVIRONMENTAL HEALTH AND TRADING STANDARDS
BLUESCHOOL HOUSE, BLUESCHOOL STREET, HEREFORD, HR1 2ZB**

By: / / (at the latest)

SP-Card \ 130822001

Started at half 8

| Date | Day | Time | | How Inconvenienced/Comments |
|---------|-----|--------------------------|-------|------------------------------------|
| | | From | To | |
| 24/8/13 | | 9.55 | 10.00 | Window open. |
| | | 10.10 | 10.05 | Window closed. |
| | | 11.00 | 11.12 | |
| | | 11.20 | 11.35 | Window open. |
| | | 11.40 | 11.45 | Seems to have got louder since |
| | | | | 11.30 |
| | | between 10.30 - 11.00 | | DJ saying do you want it louder |
| | | | | Did stop at 12pm |

| | | |
|-----------------|---------------|--|
| OFFICE USE ONLY | REF NO: | |
| | DATE OF ISSUE | |

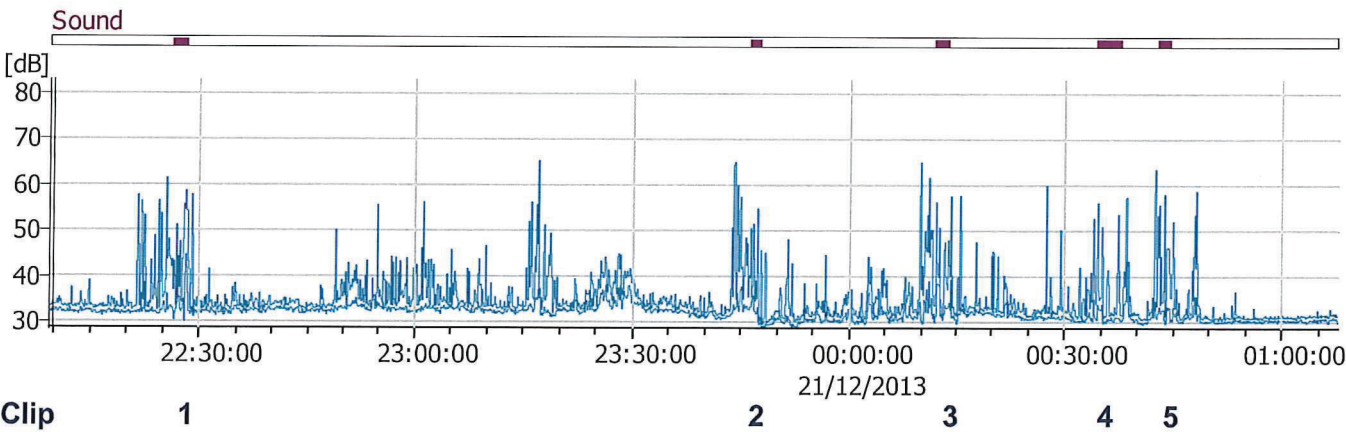
Report 2.

Environmental Health – Yew Tree Inn Noise Monitoring Report – 20th December 2013

Installation of the Sound Meter:- Calibrated Bruel & Kjaer 2250 sound meter was installed at complainants premises on the 20th December 2013 to 7 January 2014. The sound meter was set one hour ahead of actual time. The equipment was installed in a ground floor habitable room, with the window facing side on to road and pub The equipment was enclosed in a taper proof bag with microphone sited on table next to window and trigger switch available for operation. Instruction provided to take readings with the window open and closed to demonstrate difference in sound levels. Sound clip recordings set for maximum of 5 minutes with a 30 second pre-recording when recording trigger started.

Log Sheet: Complainants log of noise recordings was provided. See attached Appendix.

Graph Sound recording and Sound Clip Markers



Officers assessment of recording:- The evening of the 20th December 2013 was the only date where sound clip recordings were made on the equipment. This was reported to be a music event held inside the Yew Tree Inn property. Five sound clips were recorded by the complainant. All clips demonstrated the sound in the room with both the window open and closed. A faint music beat was audible and was slightly clearer when the window was opened. From the recording the music tracks were not identifiable. The room was otherwise very quiet with the only other audible noise source being the person moving around the room and opening the window. The levels recorded were not sufficiently loud or intrusive to indicate a ‘Statutory Nuisance’ was occurring. Officer’s notes on sound clips lips detailed in Table below:-

Table Officer notes on sound recording clips.

| Clip | Time (<i>Actual Time</i>) Start - Finish | Comments |
|-------------|---|--|
| 1 | 22.26 (21.26) - 22.28 (21.28) | Faint base beat of music heard in room and when a sound of window opening the music beat was slightly more audible. LAeq readings – 33 dB Window closed & 36 dB Window open |
| 2 | 23.45 (22.45) - 23.47 (22.47) | Faint base beat of music heard in room and when a sound of window opening the music beat was slightly more audible. LAeq readings – 33 dB Window closed & 35 dB Window open |
| 3 | 00.11 (23.11) - 00.13 (23.13) | Faint base beat of music heard in room and when a sound of window opening the music beat was slightly more audible. LAeq readings – 32 dB Window closed & 39 dB Window open |
| 4 | 00.34 (23.34) – 00.37 (23.37) | Faint base beat of music heard in room and when a sound of window opening the music beat was slightly more audible. LAeq readings – 31 dB Window closed & 33 dB Window open |
| 5 | 00.42 (23.42) – 00.44 (23.44) | Faint base beat of music heard in room and when a sound of window opening the music beat was slightly more audible. LAeq readings – 33 dB Window closed & 31 dB Window open |

Case Officer : Elisabeth Laughland

Principal Environmental Health Officer

Date : 11 April 2014

RECORDING NOTES

→

20/DEC/2013 INITIALLY WINDOW SHUT

→ 9:24 PM THEN ON VENT

THEN OPEN

→ CLOSED AGAIN

22:45 → BAND (DESPITE
RESTARTED SURSTED TO

→ WINDOW OPEN STOP AT

THEN CLOSED II

23:10 → STILL GOING

WINDOW OPEN

THEN CLOSED

AND 23:13

23:33

BAND

STILL GOING

WINDOW OPEN

THEN CLOSED

23:41

VOLUME INCREASE

WINDOW OPEN

NO SIGN
OF STOPPING

THEN CLOSED

| Yew Tree Inn Facebook posts | Music Log - date/end time | Police Complaint Log | Warning Letters sent | Temporary Event Notice | LA Compliance visit | EHO Recordings |
|--------------------------------|------------------------------|---|---|---------------------------|---------------------------|-------------------|
| No posts available | | 12.08.2012 03:40 noise and nuisance from customers leaving pub | | | | |
| | 24.08.2012 | Application for transfer of licence to current holders received | | | | |
| pre 17.01.13 | | | re alleged unlicensed event on 14.09.12 | | | |
| | | 01.10.2012 Live Music Act 2012 commences | | | | |
| | | 02.11.12 22:06 excessive music noise | | | | |
| | 15.11.12 01:00 | | | | | |
| | | | 21.11.12 invite to vary licence | | | |
| | 23.11.12 01:00 | | | | | |
| | 08.12.12 23.40 | | | | | |
| | 15.12.12 00:40 | | | | | |
| | 16.12.12 01:00 | | | | | |
| 17.01.13 Wassail | | | | | | |
| 18.01.13 BBC Acoustic band | | | | | | |
| 25.01.13 Beggars Belief | | | | | | |

| | | | | | | |
|--|-------------------|---|--|--|--|--|
| 08.02.13 Nice & Sleazy | 08.02.13 23:45 | 08.02.13 12:00 PCSO visit - advised re playing music after 2300 and to change DPS | | | | |
| 15.02.13 Valentine's Bad taste party | | | | | | |
| 22.02.13 Dave Luke | 22.02.13 00:00 MN | | | | | |
| 01.03.13 Lyny Wood-Cole | 02.03.13 01:00 | 02.03.13 0043 Music noise - breach of licence | | | | |
| 03.05.2013 Nice & Sleazy | 03.05.13 23:45 | | | | | |
| 04.05.2013 Dave Luke | | | | | | |
| 05.03.13 Application to vary licence to specify current DPS received | | | | | | |
| 15.03.13 BBC Acoustic band | | | | | | |
| 31.03.13 Nice & Sleazy | | | | | | |
| 03.05.13 Nice & Sleazy | 03.05.13 23:45 | | | | | |
| 04.05.13 Dave Luke | | | | | | |

| | | | | | | | |
|-------------------------------|-------------------|--|---|--|----------------------|---|--|
| 25.05.13 Fabulous Undertakers | 25.05.13 00:10 | 25.05.13 23:27 excessive music noise | | | | | |
| 26.05.13 Lyny Wood-Cole | 27.05.13 00:37 | | 31.05.13 re 25.05.13 'beer festival' also advising variation of licence | | | | |
| 08.06.13 BBC Acoustic band | 08.06.13 | | 13.06.13 requesting response to visit on 08.06.14 | | 08.06.13 21:55-00:05 | | |
| | 22.06.13 00:10 | 22.06.13 Music noise - breach of licence | | | | | |
| 13.07.13 Party | 13.07.13 23:20 | 13.07.12 23:12 Excessive music noise | | Late TEN 13-14.07.13 19:30-01:00 Engagement party | | | |
| 27.07.13 Dave Luke | 27.07.13 23:40 | | | 27.07.13 Late TEN rejected following EHO objection | | | |
| 24.08.13 Fabulous Undertakers | 24.08.13 | | | 24.08.13 19:30-00:00 Anniversary party | | ✓ | |
| 14.09.13 R&B Band | | | | | | | |
| 21.09.13 Lyny Wood-Cole | 21.09.13 23:50 | | | | | | |
| | 09.10.13 00:00 MN | | | | | | |

| | | | | | | |
|----------------------------|------------------------------------|--------------------------------------|--|--|-------------------------|---|
| 27.09.13 BBC Acoustic band | 27.09.13 23:20 | | | | | |
| 11.10.13 Nice & Sleazy | | | | | | |
| 19.10.13 Wyld Bird seed | | | | | | |
| Halloween Kids Disco | 31.10.13 recorded music in marquee | 31.10.13 18:19 excessive music noise | | | | |
| 01.11.13 Dave Luke | | | | | | |
| 29.11.13 BBC Acoustic band | | | | | | |
| 06.12.13 Glam sparrows | | | | | | |
| 13.12.13 Dave Luke | 14.12.13 00:20 | | 18.12.13 re alleged unlicensed event advised to submit variation application | | | |
| 20.12.13 Nice & Sleazy | 20.12.13 23:40 | | | | | ✓ |
| 17.01.14 Wassail | | | | | | |
| 24.01.14 Dave Luke | 24.01.14 00:00 MIN | | | | | |
| 08.02.14 BBC Acoustic band | 08.02.14 23:45 | | | | | |
| 15.03.14 Mirror ball | | | | | | |
| 29.03.14 Sam Huffer | | | | | 29.03.14 22:50 23:07 | |
| 30.03.13 Osh | | | | | | |

Appendix 23

Poole, Ady

From: [REDACTED]
Sent: 01 April 2014 10:38
To: Spriggs, Fred
Subject: RE: Yew Tree Inn, Preston on Wye
Follow Up Flag: Follow up
Flag Status: Completed

Hi Fred,

~~I'm not familiar with this case but I have had a look on Civica for you and I note that Lisa has closed the case citing no breach of planning control. I have copied her recent letter to the owners of the pub to you and I note that she has referred this case to Building Control for investigation into the bunk house accommodation.~~

If the marquee appears this seasons on a long term basis, a breach would occur again. I hope this helps.

Kind regards,

[REDACTED]

Economy, Communities and Corporate Directorate

Director: Geoff Hughes

Mr Phillin Pugh and Ms Theresa Brandeberry

[REDACTED]

Your Ref:

Our Ref: E/2013/140501/ENS

Please ask for: Miss Lisa Hughes

Direct Line / Extension: 01432 260141

E-mail: lhughes@herefordshire.gov.uk

14 February 2014

Dear Ms Brandeberry and Mr Pugh

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
RE: ALLEGED UNAUTHORISED SITING OF MARQUEE IN PUB GARDEN. SHED USED FOR ACCOMMODATION AT YEW TREE INN, PRESTON-ON-WYE, HEREFORD, HEREFORDSHIRE, HR2 9JT

Thank you for the return of the PCN. Based on last year's use it is likely the siting of the marquee would have required planning permission. This is because due to it's size, degree of permanence and physical attachment to the ground it is considered a building.

If this year you put it up for a christening in April, take it down again and then it goes up for say half a dozen weekends over the course of the year then it wouldn't be development needing planning permission because it would not be classed as a building.

I use the above as an example. There is no 'golden number' of times and duration it goes up to tip the balance from temporary structure used ancillary to the pub use to a building not requiring permission to a building requiring planning permission and any judgement as to whether it has become 'development' are a matter of fact and degree.

Regardless of the planning regulations, if there is a noise nuisance the use of the marquee can be prohibited by service of a notice by Environmental Health. Furthermore I understand the TENS notices you submitted last year did not cover the marquee and should you continue to operate licensable activities in the marquee you should either ensure that a TENS covering the area is submitted or consider a variation of the premise licence to cover this area.

I note your response that the bunkhouse was not questioned at the time when you purchased the property, however as it has been converted to living accommodation building regulations are required and my colleagues in this department will be following this up with you. I will not however be requiring a planning application because it can be considered ancillary use of an existing building to the use of the pub as such and therefore no planning permission is required.

Should you wish to use the marquee for extended periods this year it is open to you to make a planning application. However, I must emphasise that this letter must not be taken as an indication that planning permission will be granted. Applications for planning permission are considered in the light of the policies contained in the Development Plan and all other material planning considerations which include the responses from consultation with Environmental Health and Licensing.

Any intended application can be made online. Further information and application forms are available at the planning pages of Herefordshire Council's website: <http://www.herefordshire.gov.uk/>

Yours sincerely,

MISS LISA HUGHES
DEVELOPMENT SUPERVISOR/ ENFORCEMENT OFFICER



From: [REDACTED]
Sent: 22 June 2013 21:39
To: Licensing

Appendix 24

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Emma
Dear Sir/Madam

I am writing in complaint of a local establishment and would like to query why a license to play live music outside on a regular basis has been granted to a public house that is in close vicinity of a residential area.

On the Saturday night of the last May bank holiday the Yew Tree at Preston on Wye, had a live band playing outside on their lawn until quarter past midnight. The sound of the band was that loud that residents that lived locally were unable to hear the TV in their own homes and were unable to sleep. Phone calls were made to the Yew Tree to request the noise level be reduced but there was no answer.

On the Sunday of that weekend also, live music was played outside disturbing local residents .On 22.06.13 again live music was played outside.

The pub has a history of holding live music but only recently has it had bands play outside, the level of noise of people leaving the pub in the early hours of the morning has also increased in the recent months.

There are houses within 500 yards of the pub and therefore feel that it is totally unacceptable that music is allowed to be played at the level that it is and that it is being played outside. Families live within close vicinity with young children and are being disturbed on a regular basis. It is not acceptable that households are unable to watch TV in their own homes due to the lack of respect that the pub has for people living locally.

Yours Sincerely

Local Resident

Herefordshire Council
Environmental Protection – Service Request Summary Sheet

Appendix 25

| | | | |
|----------------------|------------------|--------------------|-------------------|
| Reference | 119815 | LA Ref | CAS-213365-H3B6M1 |
| Date Received | 12 December 2012 | Date Closed | 2 January 2013 |

| | | | |
|--------------------------|-------------------------|------------------------------|---------------|
| How Received | I Info in Herefordshire | First Response Date | 02/01/2013 |
| Receiving Officer | [REDACTED] | Investigating Officer | Vince McNally |
| Category / Type | Consultation - TEN | | |

| | | | |
|----------------------------|------------|----------------------|--|
| Name of Complainant | [REDACTED] | | |
| Address | [REDACTED] | | |
| Telephone Number | | Email Address | |

| | | | |
|----------------------------|--|------------------------|--|
| Name of Premises | YEW TREE INN | Premises Alarm? | |
| Address of Premises | Yew Tree Inn, Preston On Wye, Herefordshire, HR2 9JT | | |
| Telephone number | [REDACTED] | | |

| | |
|--------------------------|--|
| Complaint Details | Advise on opening hours due to opening times |
| Case Text | |

| Case Actions | | | | |
|---|----------------|--------------------|----------------------|-------------------|
| Action Details | Officer | Actual Date | Time (5 mins) | Linked Doc |
| 1AO Request Allocated 12/12/2012 12:35 JSP [REDACTED] calling on behalf of Wyeseide Group Parish Council. She has spoken to licensing [REDACTED] wanted to log call. Concerning Yew Tree Preston on Wye. She wanted licensing to advise new owners of licensing hours, due to noise complaint. Doesn't want to make formal complaint at moment, wanting to give new owners a chance as they may not be upto date with their licensing hours. H | [REDACTED] | 12/12/2012 | 5 | N |
| 1DG Completed | Vince McNally | 11/01/2013 | | N |

REPORT ENDS

**LICENSING ACT 2003
Part A - Premises Licence**

Premises Licence Number PR00211 (App to Vary DPS)

Part 1 - Premises details

| | |
|--|-------------------------|
| Postal address of premises, or if none, ordnance survey map reference or description YEW TREE INN PRESTON-ON-WYE | |
| Post town HEREFORD | Postcode HR2 9JT |
| Telephone number 01981 500359 | |

| |
|--|
| Where the licence is time limited the dates Not applicable |
|--|

| |
|--|
| Licensable activities authorised by the licence 1. Sale by retail of alcohol |
|--|

| |
|---|
| The times the licence authorises the carrying out of licensable activities Monday-Thursday: 12:00 - 00:00 Friday-Saturday: 12:00 - 01:00 Sunday: 12:00 - 23:00 Christmas Eve: 12:00-01:00 New Year's Eve: 12:00-02:00 |
|---|

| |
|--|
| The opening hours of the premises Monday-Thursday: 12:00 - 00:30 Friday-Saturday: 12:00 - 01:30 Sunday: 12:00 - 23:30 Christmas Eve: 12:00-01:30 New Year's Eve: 12:00-02:30 |
|--|

| |
|---|
| Where the licence authorises supplies of alcohol whether these are on and/ or off supplies Both on and off the premises |
|---|

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

Mr Phillip Pugh and Theresa Brandeberry
YEW TREE INN
PRESTON-ON-WYE
HEREFORD
HR2 9JT

Registered number of holder, for example company number, charity number (where applicable)

Not applicable

Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol

Theresa Brandeberry



Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

Licence number: 
Issuing authority: **Herefordshire Council**

Annex 1 - Mandatory conditions (remove where necessary)
Mandatory conditions where licence authorises supply of alcohol

No supply of alcohol may be made under the premises licence-

- (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
- (a) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

The responsible person [as defined by Section 153(4) Licensing Act 2003] shall: -

- take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises
- ensure that no alcohol is dispensed directly by one person into the mouth of another
- ensure that free tap water is provided on request to customers where it is reasonably available.



The responsible person [as defined by Section 153(4) Licensing Act 2003] shall: -

- take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises
- ensure that no alcohol is dispensed directly by one person into the mouth of another
- ensure that free tap water is provided on request to customers where it is reasonably available.

Age verification

- The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
- The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

Smaller measures

The responsible person shall ensure that—

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—

- (i) beer or cider: 1/2 pint;
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
- (iii) still wine in a glass: 125 ml; and

(b) customers are made aware of the availability of these measures

Annex 2 - Conditions consistent with the operating Schedule

Licensing objectives

Licensing conditions

General:

The above restrictions do not prohibit:

- a) during the first twenty minutes after the above hours, the taking of the alcohol from the premises, unless the alcohol is supplied or taken in an open vessel;
- b) consumption of the alcohol on the premises by, or, the taking, sale or supply of alcohol to any person residing in the licensed premises;
- c) the ordering of alcohol to be consumed off the premises, or the dispatch by the vendor of the alcohol so ordered;
- d) the sale of alcohol to a trader or club for the purposes of the trade or club;
- e) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majestys naval, military or air forces;
- f) the taking of alcohol from the premises by a person residing there; or
- g) the supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied; or
- h) the supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises;

Licensing Section, Herefordshire Council

PO Box 233, Hereford, HR1 2ZF

The owner and licensee live permanently on the premises and normally would be within and in charge of the premises during opening hours.

Prevention of Crime:

Staff are trained in the regulations governing the sale of alcohol and are authorised to exclude violent, drunken or abusive customers or those causing a public nuisance.

The provision of a last entry time of 23:30

Public Safety:

Emergency services numbers are displayed behind the bar for staff use. Staff are instructed in the actions to be taken in the event of an emergency. Basic first aid equipment is provided in the staff area. Seating is provided for 50 customers at all times. Drinks glasses are of strengthened glass and are not allowed to be taken off the premises. Free water is always available. The public part of the premises is centrally heated and there are two large electric air extractors. Level access is provided to the premises.

Prevention of Public Nuisance:

On site parking is provided for approximately 12 cars.

Protection of Children:

Staff are trained in the regulations relating to the age of customers on the premises including the Gaming Act 1968.

Annex 3 - Conditions attached after a hearing by the licensing authority

Not applicable

Annex 4 - Plans

As attached

**LICENSING ACT 2003
Part B - Premises licence summary**

Premises licence number PR00211 (App to Vary DPS)

Premises details

| | |
|--|--------------------------|
| Postal address of premises, or if none, ordnance survey map reference or description YEW TREE INN PRESTON-ON-WYE | |
| Post town HEREFORD | Post code HR2 9JT |
| Telephone number 01981 500359 | |

| |
|--|
| Where the licence is time limited the dates Not applicable |
|--|

| |
|--|
| Licensable activities authorised by the licence 1. Sale by retail of alcohol |
|--|

| |
|--|
| The times the licence authorises the carrying out of licensable activities Monday-Thursday: 12:00 - 00:00 Friday-Saturday: 12:00 - 01:00 Sunday: 12:00 - 23:00 Christmas Eve: 12:00-01:00 New Year's Eve: 12:00-02:00 |
|--|

| |
|---|
| The opening hours of the premises Monday-Thursday: 12:00 - 00:30 Friday-Saturday: 12:00 - 01:30 Sunday: 12:00 - 23:30 Christmas Eve: 12:00-01:30 New Year's Eve: 12:00-02:30 |
|---|

| |
|--|
| Name, (registered) address of holder of premises licence Mr Phillip Pugh and Ms Theresa Brandeberry YEW TREE INN PRESTON-ON-WYE HEREFORD HR2 9JT |
|--|

Where the licence authorises supplies of alcohol whether these are on and/ or off supplies

Both on and off the premises

Registered number of holder, for example company number, charity number (where applicable)

Not applicable

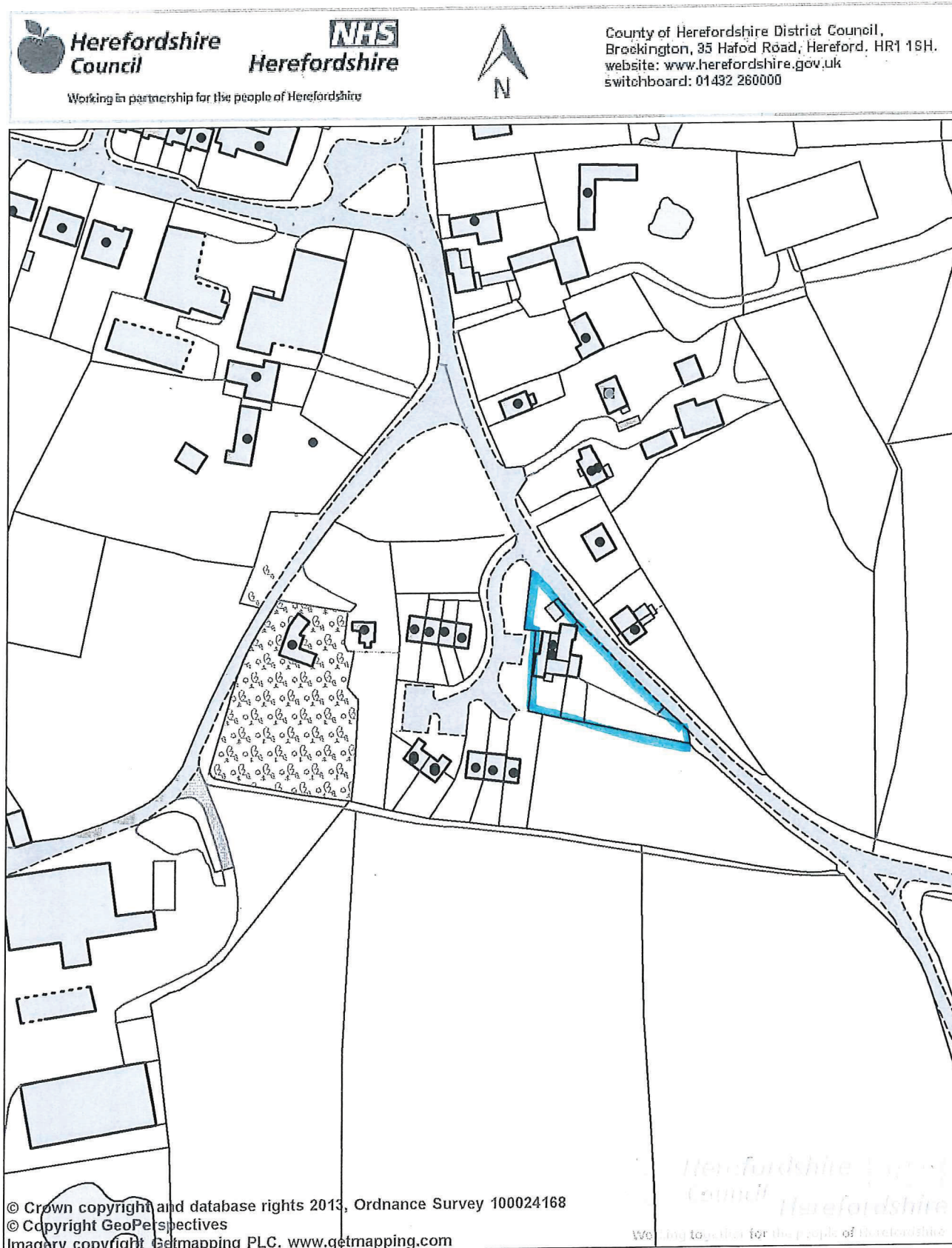
Name of designated premises supervisor where the premises licence authorises for the supply of alcohol

Theresa Brandeberry

State whether access to the premises by children is restricted or prohibited

Protection of Children:

Staff are trained in the regulations relating to the age of customers on the premises including the Gaming Act 1968.



Location: Yew Tree Inn, Preston on Wye, Herefordshire

Description:

Please ask for:

Tel(Direct):

Map Scale 1:1,898 ; Map Centre OS Grid Reference 338,508.4818781:241,426.416192

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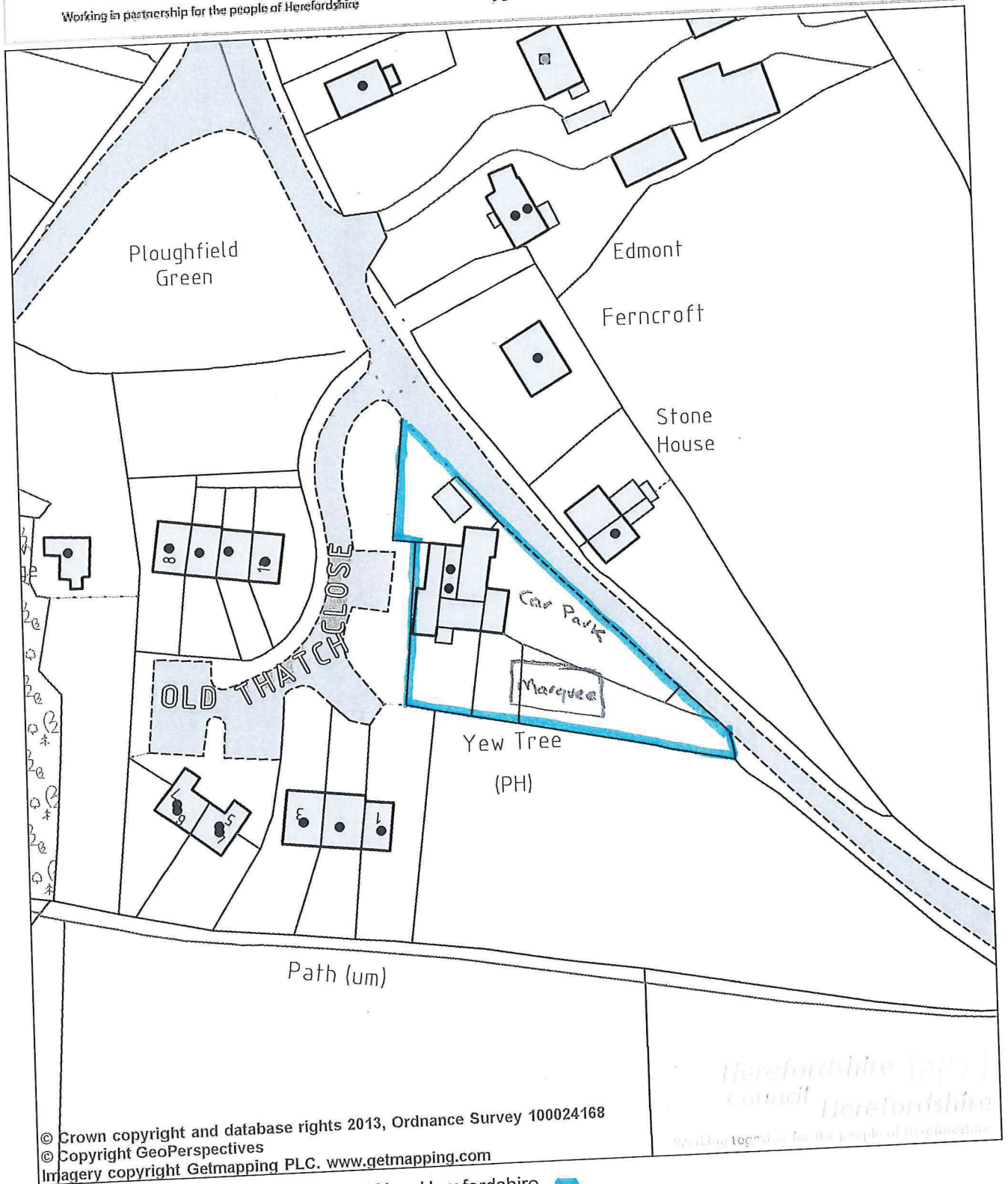
**Herefordshire
Council**

Working in partnership for the people of Herefordshire

**NHS
Herefordshire**



County of Herefordshire District Council,
Brookington, 35 Hafod Road, Hereford. HR1 1SH.
website: www.herefordshire.gov.uk
switchboard: 01432 260000



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*Herefordshire
Council
Working together for the people of Herefordshire*

Location: Yew Tree Inn, Preston on Wye, Herefordshire

Description:

Please ask for:

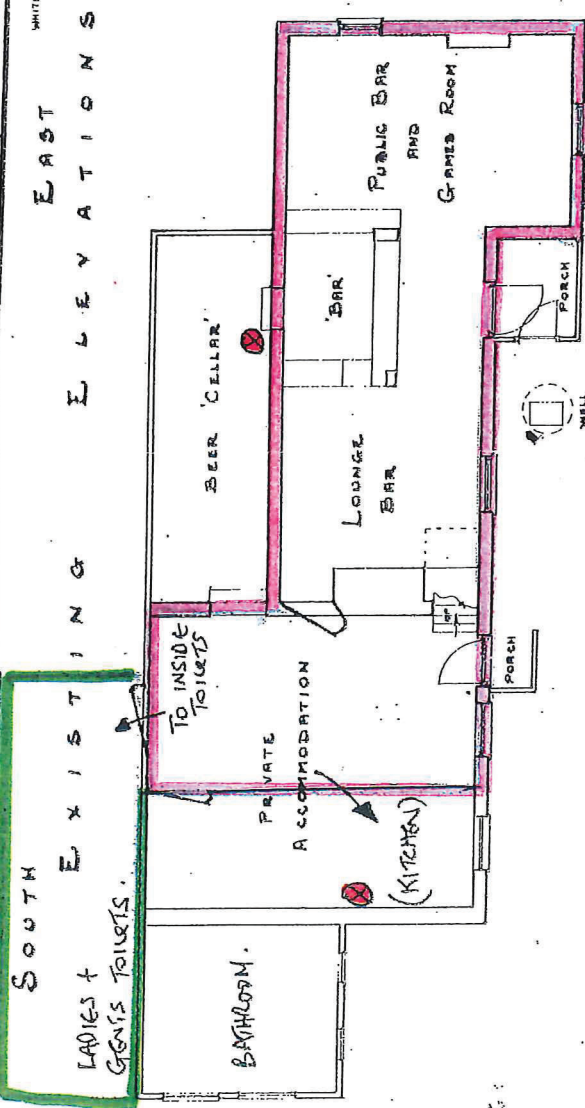
Tel(Direct):

Map Scale 1:949.1 ; Map Centre OS Grid Reference 338,540.724198:241,435.5584246

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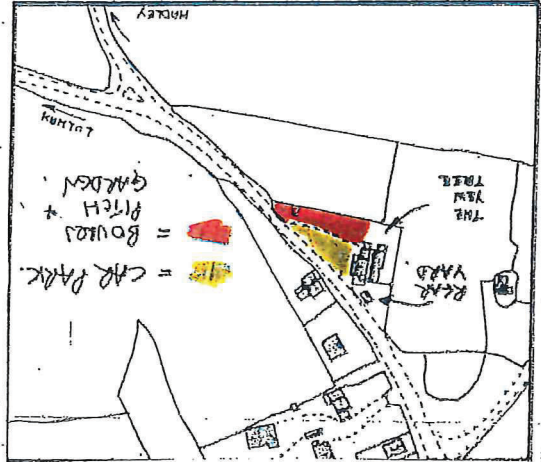
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THE YEW TREE INN
 PRESTON - WME
 HEREGROSHIRE W29JT.

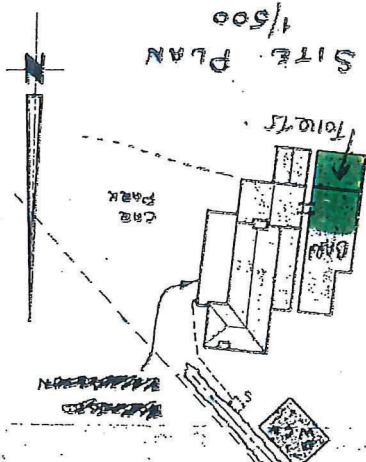


EXISTING GROUND FLOOR PLAN 1/400

- SCOUNDRAUS LICENSED AREA
- INSIDE TOILETS (LADIES + GENTS)
- AVE EXTENSION



LOCATION PLAN 1/2500
 MAP REF.: SO 385 414



SITE PLAN 1/500



Live Music Act 2012

CHAPTER 2

Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

£5.75



Live Music Act 2012

CHAPTER 2

CONTENTS

- 1 Licence review for live music entertainment
- 2 Removal of requirement to license the provision of entertainment facilities
- 3 Exemptions for live music entertainment
- 4 Short title, commencement and extent



Live Music Act 2012

2012 CHAPTER 2

An Act to amend the Licensing Act 2003 with respect to the performance of live music entertainment; and for connected purposes. [8th March 2012]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Licence review for live music entertainment

- (1) In section 177 of the Licensing Act 2003 (dancing and live music in certain small premises)—
 - (a) in subsections (1) and (2), for “the provision of music entertainment” in each place substitute “dancing”,
 - (b) in subsection (2) omit—
 - (i) paragraph (b) and “and” immediately before it, and
 - (ii) in the words following paragraph (b), the words “, in relation to the provision of that entertainment”,
 - (c) omit subsections (3) and (4),
 - (d) in subsection (8)—
 - (i) for “music entertainment” substitute “dancing” and in paragraph (a) of that definition omit “(e) or”, and
 - (ii) omit paragraph (b) of that definition and “or” immediately before it, and
 - (e) in the heading omit “and live music”.

- (2) After that section insert—

“177A Licence review for live music

- (1) Subsection (2) applies where live music takes place on premises authorised to be used for the supply of alcohol for consumption on the premises by a premises licence or club premises certificate, and—

- (a) at the time of the live music, the premises are open for the purposes of being used for the supply of alcohol for consumption on the premises,
 - (b) either –
 - (i) the live music is unamplified, or
 - (ii) the live music is amplified and takes place in the presence of an audience of no more than 200 persons, and
 - (c) the live music takes place between 8am and 11pm on the same day (or, where an order under section 172 has effect, between the hours specified in that order).
- (2) Any condition of the premises licence or club premises certificate which relates to live music does not have effect in relation to the live music, unless it falls within subsection (3) or is added to the licence in accordance with subsection (4).
- (3) A condition falls within this subsection if, on a review of the premises licence or club premises certificate it is altered so as to include a statement that this section does not apply to it.
- (4) On a review of a premises licence or club premises certificate a licensing authority may (without prejudice to any other steps available to it under this Act) add a condition relating to live music as if –
 - (a) the live music were regulated entertainment, and
 - (b) the licence or certificate licensed the live music.
- (5) In this section –
 - “condition” means a condition –
 - (a) included in a premises licence by virtue of section 18(2)(a) or (3)(b), 35(3)(b), 52(3) or 167(5)(b),
 - (b) included in a club premises certificate by virtue of section 72(2)(a) or (3)(b), 85(3)(b) or 88(3),
 - (c) added to a premises licence by virtue of its inclusion in an application to vary the licence in accordance with section 34 or 41A which is granted under section 35(2) or 41B(3) (as the case may be), or
 - (d) added to a club premises certificate by virtue of its inclusion in an application to vary the certificate in accordance with section 84 or 86A which is granted under section 85(2) or 86B(3) (as the case may be);
 - “live music” means entertainment of a description falling within, or of a similar description to that falling within, paragraph 2(1)(e) of Schedule 1;
 - “supply of alcohol” means –
 - (a) the sale by retail of alcohol, or
 - (b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.”

2 Removal of requirement to license the provision of entertainment facilities

- (1) Schedule 1 to the Licensing Act 2003 (c. 17) is amended as follows.

- (2) For paragraph 1(1) substitute –
 - “(1) For the purposes of this Act, the “provision of regulated entertainment” means the provision of entertainment of a description falling within paragraph 2 where the conditions in sub-paragraphs (2) and (3) are satisfied.”
- (3) In paragraph 1(2) omit “, or entertainment facilities are,”.
- (4) For paragraph 1(3) substitute –
 - “(3) The second condition is that the premises on which the entertainment is provided are made available for the purpose, or for purposes which include the purpose, of enabling the entertainment concerned to take place.”
- (5) For paragraph 1(4) substitute –
 - “(4) For the purposes of sub-paragraph (2)(c), entertainment is to be regarded as provided for consideration only if any charge –
 - (a) is made by or on behalf of any person concerned in the organisation or management of that entertainment, and
 - (b) is paid by or on behalf of some or all of the persons for whom that entertainment is provided.”
- (6) In paragraph 1(6) omit paragraph (c).
- (7) Omit paragraph 3.
- (8) For paragraph 4 substitute –
 - “4 The Secretary of State may by order amend this Schedule for the purposes of modifying the descriptions of entertainment specified in paragraph 2, and for this purpose “modify” includes adding, varying or removing any description.”
- (9) For paragraph 7 substitute –
 - “7 The provision of entertainment consisting of the performance of live music or the playing of recorded music is not to be regarded as the provision of regulated entertainment for the purposes of this Act to the extent that it is incidental to some other activity which is not itself a description of entertainment falling within paragraph 2.”
- (10) In paragraph 8 omit “or entertainment facilities”.
- (11) In paragraph 9 omit “or entertainment facilities”.
- (12) In paragraph 10(1) omit “or entertainment facilities”.
- (13) In paragraph 11 –
 - (a) omit “or entertainment facilities”, and
 - (b) omit sub-paragraph (b).
- (14) In paragraph 11A omit sub-paragraph (4).
- (15) In paragraph 12 omit “or entertainment facilities”.

3 Exemptions for live music entertainment

- (1) Schedule 1 to the Licensing Act 2003 (c. 17) is amended as follows.
- (2) In paragraph 11(a) for “a performance of unamplified, live music as” substitute “the playing of live or recorded music that forms”.
- (3) After paragraph 12 insert—

“Live music in licensed venues

12A The provision of entertainment consisting of a performance of live music is not to be regarded as the provision of regulated entertainment for the purposes of this Act on premises authorised to be used for the supply of alcohol for consumption on the premises by a premises licence or club premises certificate, if—

- (a) the requirements of section 177A(1)(a) to (c) are satisfied, and
- (b) conditions have not been included in the licence or certificate by virtue of section 177A(3) or (4).”

- (4) After paragraph 12A (as inserted by sub-paragraph (3)) insert—

“Live music in workplaces

12B The provision of entertainment consisting of a performance of live music is not to be regarded as the provision of regulated entertainment for the purposes of this Act, provided that—

- (a) the place where the performance is provided is not licensed under this Act (or is so licensed only for the provision of late night refreshment) but is a workplace as defined in regulation 2(1) of the Workplace (Health, Safety and Welfare) Regulations 1992,
- (b) the performance takes place in the presence of an audience of no more than 200 persons, and
- (c) the performance takes place between 8am and 11pm on the same day.”

- (5) After paragraph 12B (as inserted by sub-paragraph (4)) insert—

“Live unamplified music

12C The provision of entertainment consisting of a performance of live music is not (subject to section 177A(3) and (4)) to be regarded as the provision of regulated entertainment for the purposes of this Act provided that the music—

- (a) is unamplified; and
- (b) takes place between 8am and 11pm on the same day.”

4 Short title, commencement and extent

- (1) This Act may be cited as the Live Music Act 2012.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) This Act extends to England and Wales only.

| | |
|-------------------------|---|
| MEETING: | REGULATORY SUB-COMMITTEE |
| DATE: | 29 APRIL 2014 |
| TITLE OF REPORT: | APPLICATION FOR A REVIEW OF THE PREMISES LICENCE IN RESPECT OF 'INDIAN SUMMER, 9 HIGH STREET, ROSS ON WYE, HR9 5HL' – LICENSING ACT 2003 |
| REPORT BY: | LICENSING OFFICER |

1. Classification

Open

2. Key Decision

This is not an executive decision

3. Wards Affected

Ross on Wye West

4. Purpose

To consider an application for a review of the premises licence in respect of 'Indian Summer, 9 High Street, Ross on Wye, HR9 5HL'.

5. Recommendation(s)

THAT

The Sub-Committee determine the application with a view to promoting the licensing objectives in the overall interests of the local community. They should give appropriate weight to:

- **The steps that are appropriate to promote the licensing objectives,**
- **The Guidance issued to local authorities under the Licensing Act 2003, and**
- **The Herefordshire Council Licensing Policy.**
- **The Police application for the review**
- **Any other evidence produced in relation to the review**

6. Key Points Summary

- The application requests a review (appendix 1) of the premises licence in order to promote the licensing objective of the prevention of crime.
- The premises were visited by the UK Border Agency as a result of intelligence received and a male was detained by them as an illegal immigrant.
- No representation was received in respect of the application
- No contact has been made by the premises licence holder
- The Licensing Authority wrote to the premises licence holder Mr Ali offering him the option of dealing with the matter by minor variation. Still nothing was heard from Mr Ali.

7. Options

There are a number of options open to the Sub-Committee:

- the modification of the conditions of the premises licence;
- to exclude a licensable activity from the scope of the licence;
- the removal of the designated premises supervisor from the licence;
- the suspension of the licence for a period not exceeding 3 months;
- the revocation of the licence;
- to take no action

8. Reasons for Recommendations

To ensure compliance with the legislation.

9. Introduction and Background

Background Information

| | |
|------------------------|---|
| Applicant | Police Inspector N Semper – West Mercia Police – Hereford Police Station |
| Premise Licence Holder | Mr Awlad Ali |
| Solicitor | Not known |

| | | |
|---|--|--|
| Type of application: Review | Date received: 5th March 2014 | 28 Days consultation 2nd April 2014 |
|---|--|--|

The grounds for the review are:

The employment of illegal immigrants is viewed as a serious criminal activity and the guidance issued under Section 182 of the Licensing Act 2003, indicates that the review process should be used in order to prevent such activity.

The following information was supplied to support the review

At 1900hrs on Thursday 27 February 2014, as a result of intelligence, officers from the UK Border Agency attended a licensed premises known as the Indian Summer Restaurant, 9 High Street, Ross on Wye

The purpose of the visit was to check the right to UK residency and employment status of staff.

At the time of the visit the premises was open and customers were present.

On entering the premises one male ran away from them and was found a short time later hiding at the rear of the premises. It has been confirmed that this male was actually working as a waiter (and dressed accordingly) at the time of the visit. This male was detained and arrested as an illegal immigrant.

It is the view of West Mercia Police that the premises licence holder has failed to comply with his responsibilities with regard to checking the legal status of people prior to them being employed.

10. Current Licence

The current licence (appendix 2) authorises:

Sale by retail of alcohol (For consumption on the premises)

Monday-Saturday: 09:00 - 00:30

Sunday: 09:00 23:30

Late night refreshment

Monday-Saturday: 23:00 - 00:30

Sunday: 23:00 23:30

Non standard timings: None

Seasonal variations: None

Summary of Representations

- No representation has been received

11. Key Considerations

To consider what action should be taken, if any, to promote the four licensing objectives in accordance with the recommendation.

The licensing objectives are:

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

12. Community Impact

The result of the review may have an impact on the Community.

13. Equality and Human Rights

No implications have been identified.

14. Financial Implications

There are unlikely to be any financial implications at this time to the authority.

15. Legal Implications

The Sub-Committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.

The case of 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, Before the Honourable Mrs Justice Black.

In this case it was summed up that: -

A licensing authority must have regard to guidance issued by the Secretary of State under section 182. Licensing authorities may depart from it if they have reason to do so but will need to give full reasons for their actions.

Furthermore the Thwaites case established that only conditions should be attached to a licence with a view to promoting the Licensing objectives and that 'real evidence' must be presented to support the reason for imposing these conditions.

This judgement is further supported in the case of The Queen on the Application of Bristol Council v Bristol Magistrates' Court, CO/6920/2008 High Court of Justice Queen's Bench Division The Administrative Court, 24 February 2009, [2009] EWHC 625 (Admin) 2009 WL 648859 in which it was said:

'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'. (Since the stated case, amendments have been enacted to the Licensing Act which replace the word necessary with appropriate. Members will need to give due consideration to the intended meaning of this change and give weight to the difference as they see fit. Whilst the wording of the judge cannot be altered, it may be useful for Members to read the advice by replacing the words necessary and proportionate with appropriate).

In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

The Decision

The Act 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

Right of Appeal

Schedule 5 gives a right of appeal which states:

Review of premises licence

- 8 (1) This paragraph applies where an application for a review of a premises licence is decided under section 52.
- (2) An appeal may be made against that decision by—
- (a) the applicant for the review,
 - (b) the holder of the premises licence, or
 - (c) any other person who made relevant representations in relation to the application.
- (3) In sub-paragraph (2) “relevant representations” has the meaning given in section 52(7).

Section 9 states that any such appeal must be made to a Magistrates Court for the area in which the premises are situated within 21 days of notification of the decision.

16. Risk Management

No risks have been identified.

17. Consultees

Responsible authorities and persons living within the vicinity or with a business interest within the vicinity of the premises.

A copy of the application was served on the responsible authorities. This was backed up by an email sent to them by the Licensing Authority.

The notice of application was displayed on the premises prior to the start of the consultation period and for a period of 28 days.

The notice was also displayed at the offices of the Licensing Authority at Blueschool House, Hereford.

A copy of the Review Application was also available to be viewed on the Herefordshire Council Website.

18. Appendices

1. Review Application Form
2. Copy of current licence

19. Background Papers

Background papers are available for inspection in the Council Chamber, Brockington, 35 Hafod Road, Hereford 30 minutes before the start of the hearing.

Background Information

HEREFORDSHIRE COUNCIL LICENSING POLICY states;

Section 18: Summary

This section explains who can call for a review of a premises licence and that The Licensing Authority will have expected the premises licence holder to have been consulted prior to the review being called. This section also deals with the action that the authority will take in respect of test purchases.

18 REVIEWS AND COMPLAINTS ABOUT LICENSED PREMISES.

- 18.1** Reviews represent a key protection for the community. Where the licensing authority considers action necessary under its statutory powers it will take necessary steps to support the licensing objectives.
- 18.2** If a premise has an existing licence, a responsible authority or an interested party may apply to the Licensing Authority for a review of a Premises Licence or Club Premises Certificate. Once a review application has been lodged with the Licensing Authority any other responsible authority or interested party may make representations (within the legal deadline) to the Licensing Authority in relation to the premises. The licence holder of the premises may make representations against the review application. Review applications and subsequent representations can only be made on the grounds of one or more of the licensing objectives.
- 18.3** Review applications will be heard by the Licensing Authority's Licensing Committee or

Licensing Sub-Committee, who will determine the outcome of the Licence/Certificate after hearing and considering the application and the representations for and against it. Each case will be decided on its own merits, and the Licensing Authority may take several courses of action (e.g. take no action, revoke the licence, reduce the licensed hours etc) in accordance with the Act.

Guidance issued under Section 182 of The Licensing Act 2003 (relevant Sections)

11. Reviews

The review process

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.5 Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.
- 11.6 Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities. Further information on how licensing authorities should achieve this separation of responsibilities can be found in Chapter 9, paragraphs 9.13 to 9.19 of this Guidance.
- 11.9 Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent written representation. The licensing authority may also agree in advance that the representation need not be given in writing.

- 11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

Powers of a licensing authority on the determination of a review

- 11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.
- 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.
- 11.18 However, where responsible authorities such as the police or environmental health Officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.
- 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:
- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
 - remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
 - suspend the licence for a period not exceeding three months;
 - revoke the licence.
- 11.20 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 that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
- 11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.
- 11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review

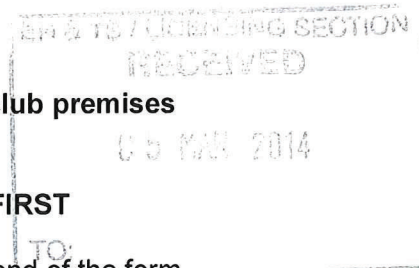
hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

- 11.23 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 an appropriate 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 appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

Reviews arising in connection with crime

- 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 Class A drugs 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 knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter;
 - for unlawful gambling; and
 - for the sale of smuggled tobacco and alcohol.
- 11.28 It is envisaged that licensing authorities, the police 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.

**Application for the review of a premises licence or club premises
certificate under the Licensing Act 2003**



PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.
If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.
You may wish to keep a copy of the completed form for your records.

I Nick SEMPER Police Inspector 0795

(Insert name of applicant)

**apply for the review of a premises licence under section 51 / apply for the
review of a club premises certificate under section 87 of the Licensing Act 2003
for the premises described in Part 1 below (delete as applicable)**

Part 1 – Premises or club premises details

| | |
|--|-------------------------------------|
| Postal address of premises or, if none, ordnance survey map reference or description Indian Summer Restaurant 9 High Street | |
| Post town Ross on Wye | Post code (if known) HR9 5HL |
| Name of premises licence holder or club holding club premises certificate (if known) Awlad ALI | |
| Number of premises licence or club premises certificate (if known) | |

Part 2 - Applicant details

I am

Please tick yes

1) an interested party (please complete (A) or (B) below)

- | | |
|---|--------------------------|
| a) a person living in the vicinity of the premises | <input type="checkbox"/> |
| b) a body representing persons living in the vicinity of the premises | <input type="checkbox"/> |
| c) a person involved in business in the vicinity of the premises | <input type="checkbox"/> |

- d) a body representing persons involved in business in the vicinity of the premises ☐
- 2) a responsible authority (please complete (C) below) x☐
- 3) a member of the club to which this application relates (please complete (A) below) ☐

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick

Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other title
(for example, Rev) ☐

Surname

First names

Please tick yes

I am 18 years old or over

☐

**Current postal
address if
different from
premises
address**

Post town

Post Code

Daytime contact telephone number

**E-mail address
(optional)**

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address

Police Inspector 0795 Nick Semper
Hereford Police Station
Bath Street
Hereford HR1 2HT

Telephone number (if any)

E-mail address (optional)

licensing.herefordshire@westmercia.pnn.police.uk

This application to review relates to the following licensing objective(s)

Please tick one or more boxes

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

x ☐
☐
☐
☐

Please state the ground(s) for review (please read guidance note 1)

The employment of illegal immigrants is viewed as a serious criminal activity and the guidance issue under S182 of the Licensing Act 2003, indicates that the review process should be used in order to prevent such activity.

The employment of illegal immigrants undermines the licensing objective of the prevention of crime and disorder.

Please provide as much information as possible to support the application
(please read guidance note 2)

At 1900hrs on Thursday 27 February 2014, and as a result of intelligence officers from the UK Border Agency attended a licensed premises known as the Indian Summer Restaurant, 9 High Street, Ross on Wye.

The purpose of the visit was to check the right to UK residency and employment status of staff.

At the time of the premises, it was open and customers were present.

On entering the premises one male ran away from them and was found a short time later hiding at the rear of the premises. It has been confirmed that this male was actually working as a waiter (and dressed accordingly) at the time of the visit. This male was detained and arrested as an illegal immigrant.

It is the view of West Mercia Police that the premises licence holder has failed to comply with his responsibilities with regards to checking the legal status of people prior to them being employed.

Please tick yes

Have you made an application for review relating to this premises before ☐

If yes please state the date of that application

Day Month Year

| | | | | | | | |
|--|--|--|--|--|--|--|--|
| | | | | | | | |
|--|--|--|--|--|--|--|--|

If you have made representations before relating to this premises please state what they were and when you made them

Please tick yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate ☒
- I understand that if I do not comply with the above requirements my application will be rejected ☒

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant's solicitor or other duly authorised agent (See guidance note 4). If signing on behalf of the applicant please state in what capacity.

Signature



Date

03/03/14

Capacity Police Inspector

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

Part A - Premises Licence

Premises licence number PR01156 (Transfer and Vary DPS)

Part 1 - Premises details

| | |
|--|-------------------------|
| Postal address of premises, or if none, ordnance survey map reference or description Indian Summer 9 High Street | |
| Post town ROSS-ON-WYE | Postcode HR9 5HL |
| Telephone number 01989 566700 | |

| |
|--|
| Where the licence is time limited the dates Not applicable |
|--|

| |
|---|
| Licensable activities authorised by the licence Provision of refreshment or alcohol 1. Provision of late night refreshment (Indoors restaurant food served to seated clientele with alcohol available) 2. Sale by retail of alcohol (For consumption on the premises) |
|---|

| |
|--|
| The times the licence authorises the carrying out of licensable activities Monday-Saturday: 09:00 - 00:30 Sunday: 09:00 - 23:30 Non standard timings: None Seasonal variations: None |
|--|

| |
|---|
| The opening hours of the premises Monday-Saturday: 09:00 - 00:30 Sunday: 09:00 - 23:30 Non standard timings: None Seasonal variations: None |
|---|

| |
|--|
| Where the licence authorises supplies of alcohol whether these are on and/ or off supplies For consumption on the premises |
|--|

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

**Mr Awlad Ali
48 St Pauls Road
Gloucester
GL1 5AR**

01452 308395

Registered number of holder, for example company number, charity number (where applicable)

Not applicable

Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol

**Mr Awlad Ali
48 St Pauls Road
Gloucester
GL1 5AR**

01452 308395

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

**Licence number: 1101590GLPLC GLPER1000
Issuing authority: Gloucester City Council**

Annex 1 - Mandatory conditions

(1) Supply of alcohol

No supply of alcohol may be made under the premises licence-

- (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
- (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

The responsible person [as defined by Section 153(4) Licensing Act 2003] shall: -

- take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises
- ensure that no alcohol is dispensed directly by one person into the mouth of another
- ensure that free tap water is provided on request to customers where it is reasonably available.

Age verification

- The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
- The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

Smaller measures

The responsible person shall ensure that–

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures–

- (i) beer or cider: 1/2 pint;
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
- (iii) still wine in a glass: 125 ml; and

(b) customers are made aware of the availability of these measures.

Annex 2 - Conditions consistent with the operating Schedule**Licensing objectives**

General:

The premises will be supervised at all times by the owner as a restaurant where all customers are seated and served at the table behaviour supervision is easier to achieve.

Prevention of Crime:

Fully trained staff, dedicated supervision, fully seated customer allow control of crime and disorder. All alcohol is billed to allow monitoring of quantity. All of the table have dedicated serving staff who are trained on licensing objectives.

Public Safety:

Fire alarms, emergency lighting and clearly marked access and egress are all in place. As a restaurant entry and exit happens in a controlled manner and is well spaced. Customers are usually prebooked and records of bookings are kept. Service staff are all uniformed and visible.

Prevention of Public Nuisance:

All areas are fully seated and are mainly for food consumption although alcohol would be available as an extra. Leaving the premises is controlled by booking customers in and is fully supervised. The external area is walled and mainly used during the daytime for food service. Both supervisors have 20+ years experience of licensed trade.

Protection of Children:

The restaurant is no smoking. All children must be accompanied. Suitable high chairs etc are available. All staff will be trained to manage children on the premises

Annex 3 - Conditions attached after a hearing by the licensing authority

Not applicable

Annex 4 - Plans

As attached

LICENSING ACT 2003
Part B - Premises licence summary

Premises licence number PR01156 (Transfer and Vary DPS)

Premises details

| | |
|--|--------------------------|
| Postal address of premises, or if none, ordnance survey map reference or description Indian Summer 9 High Street | |
| Post town ROSS-ON-WYE | Post code HR9 5HL |
| Telephone number 01989 566700 | |

| |
|--|
| Where the licence is time limited the dates Not applicable |
|--|

| |
|---|
| Licensable activities authorised by the licence Provision of refreshment or alcohol 1. Provision of late night refreshment (Indoors resturant food served to seated clientelle with alcohol available) 2. Sale by retail of alcohol (For consumption on the premises) |
|---|

| |
|--|
| The times the licence authorises the carrying out of licensable activities Monday-Saturday: 09:00 - 00:30 Sunday: 09:00 - 23:30 Non standard timings: None Seasonal variations: None |
|--|

| |
|---|
| The opening hours of the premises Monday-Saturday: 09:00 - 00:30 Sunday: 09:00 - 23:30 Non standard timings: None Seasonal variations: None |
|---|

| |
|--|
| Name, (registered) address of holder of premises licence Mr Awlad Ali 48 St Pauls Road Gloucester GL1 5AR 01452 308395 |
|--|

Where the licence authorises supplies of alcohol whether these are on and/ or off supplies

For consumption on the premises

Registered number of holder, for example company number, charity number (where applicable)

Not applicable

Name of designated premises supervisor where the premises licence authorises for the supply of alcohol

Mr Awlad Ali

State whether access to the premises by children is restricted or prohibited

Restricted

All children must be accompanied.

| | |
|-------------------------|---|
| MEETING: | REGULATORY SUB-COMMITTEE |
| DATE: | 29 APRIL 2014 |
| TITLE OF REPORT: | HIGHWAYS ACT 1980, SECTION 118A. PROPOSED RAIL CROSSING EXTINGUISHMENT ORDER FOOTPATH LY9A (PART) IN THE PARISH OF LLANCILLO |
| PORTFOLIO AREA: | CONTRACTS AND ASSETS |

CLASSIFICATION: Open

Wards Affected

Golden Valley South

Purpose

To consider an application under section 118A of the Highways Act 1980, to make a rail crossing extinguishment order in relation to part of the definitive public footpath LY9A in the Parish of Llancillo.

Key Decision

This is not an executive decision.

Recommendation

That a rail crossing extinguishment order is made under the provisions of section 118A of the Highways Act 1980, in relation to part of definitive public footpath LY9A, as shown on drawing number: D443/240-9A, appended to this report, the Sub-Committee being satisfied that it meets the specified statutory criteria in that it is expedient, in the interests of safety of members of the public who use, or are likely to use, the path or way in question that the way in question should be stopped up.

Key Points Summary

- Network Rail have applied for a rail crossing extinguishment order.
- The section of path is a loop to the south of the railway and therefore crosses the railway twice.
- There is an alternative path to the north of the railway so that users do not need to cross the line.
- Inspections of the site by Network Rail have identified that the use of the crossings poses a significant danger.

Further information on the subject of this report is available from
Susan White, Assistant Rights of Way Officer on (01432) 349512

- A pre-order consultation has been carried out and there were no objections to the proposed extinguishment.

Alternative Options

- 1 Under Section 118A of the Highways Act 1980 the Council has the power to make rail crossing extinguishment orders. It does not have a duty to do so. The Council could reject the application on the grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council.

Reasons for Recommendations

- 2 The public path order should be made because it is felt that it meets the criteria set out in section 118A of the Highways Act 1980, as referred to below, and the Council's Public Path Order Policy. In addition, there have been no objections at the informal pre-order consultation stage.

Introduction and Background

- 3 Decisions on these type of matters are presently within the remit of the Regulatory Committee. On 1 February 2011 the Regulatory Committee resolved, inter alia, that the responsibility for those rights of way matters which presently fall within the remit of the Regulatory Committee, be delegated to the Regulatory Sub-Committee.

Key Considerations

- 4 The applicant, Network Rail, made the application in October 2012. The reasons given for making the application were that the lines of sight in both directions is limited and that the crossings pose a significant danger to walkers, and potentially rail users, as a suitable alternative route is already available and in use, and it is felt that the proposed extinguishment does not limit the public's access to the countryside.
- 5 Section 118A of the 1980 Act gives a local authority power to make an order stopping up a footpath crossing a railway, other than by a tunnel or bridge, where it considers the stopping-up expedient in the interests of safety of members of the public who use, or are likely to use, the path or way in question.
- 6 The applicant has carried out all pre order consultation. The proposal has general agreement and the adjoining landowner, Mr A Ling, whose property is also affected by the application, has agreed to the proposals.
- 7 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the extinguishment order.
- 8 The local member, Councillor G J Powell, has stated that, 'These paths have not been used for many years since they cannot be accessed across the railway line and they don't go anywhere useful. I have no issues with the paths being extinguished.'
- 9 It is considered that the proposed order meets the specified criteria as set out in the said Council policy and in section 118A of the Highways Act 1980, in particular that: the proposal is expedient in the interests of safety of members of the public who use, or are likely to use, the path or way

Community Impact

- 10 The applicant has consulted the local Parish Council as part of the pre-order consultation. There were no objections to the proposals from the Parish Council, or any other person or body.

Financial Implications

- 11 Network Rail, who are the applicants, have agreed to pay for the advertising and administration costs and any works necessary for this order. If objections are received and not withdrawn, any costs in relation to dealing with the consequent appeal cannot legally be reimbursed

Legal Implications

- 12 Under the provisions of section 118A of the Highways Act 1980, subject to the statutory criteria being met, as mentioned in this report, the Council may make such an order. However does not have a duty to do so. If the order is made it is then formally advertised for objections and, if any are received and not withdrawn, the matter must be referred to the Secretary of State for a final decision.

Risk Management

- 13 There is a risk that if an order is made, as proposed, it may receive objections. If this occurs then the matter must be referred to the Secretary of State for a decision. Prior to making such a decision the Secretary of State would take a view as to whether any objections could be dealt with by way of written representations or by public inquiry. In either case, this would increase the demands on officer time and resources, which cannot be recouped from the applicant, as only costs in relation to the making of the order can be legally reimbursed.

Equality Implications

- 14 The alternative route is broadly similar to the route to be extinguished except for the fact that users will not need to cross and re-cross the railway. As such, the proposal is considered to comply with the requirements of the Equality Act 2010.

Consultees

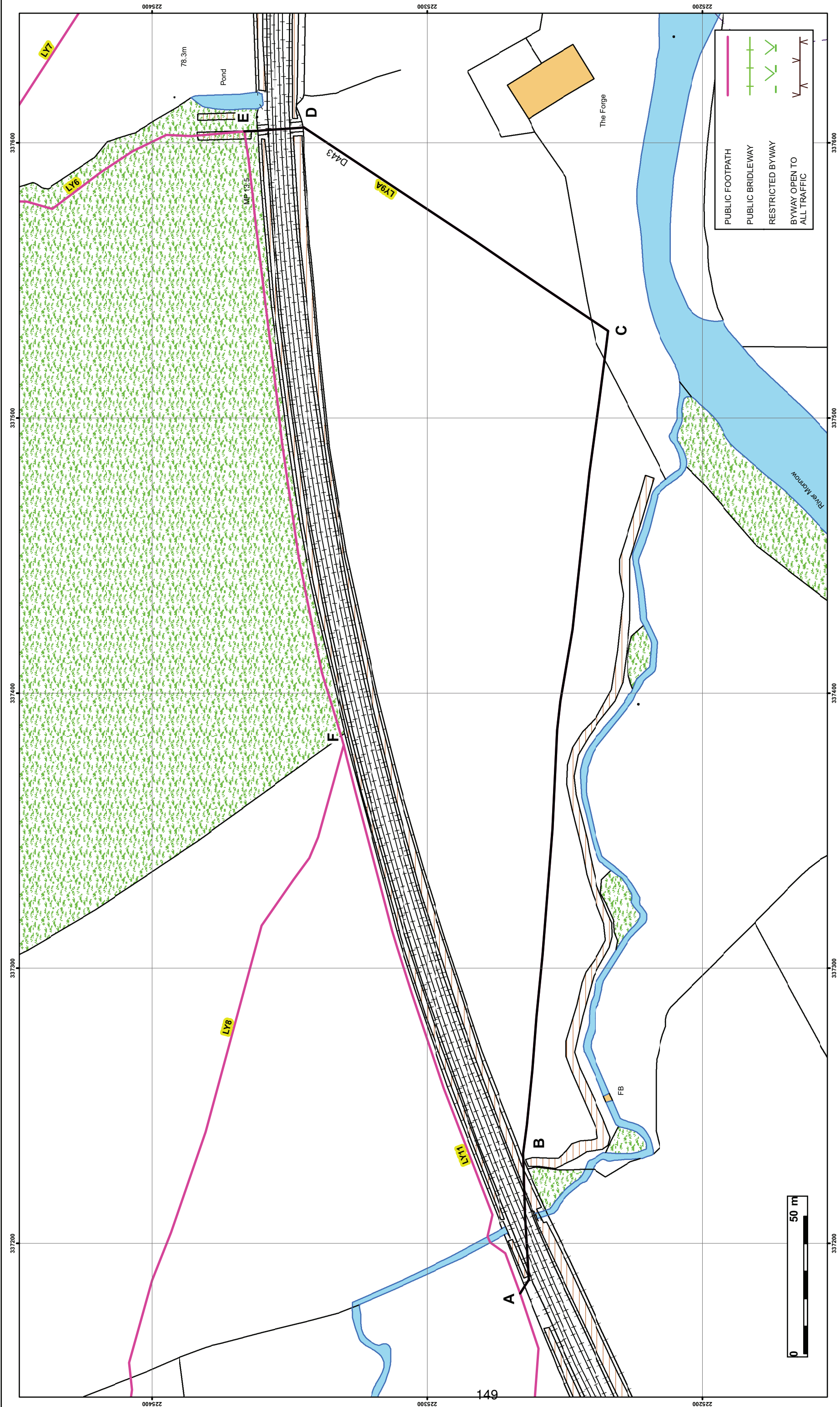
- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
- Local Member – Councillor G J Powell
- Ewyas Harold Group Parish Council.
- Statutory Undertakers.

Appendices

- Order Plan, drawing number: D443/240-9A.

Background Papers

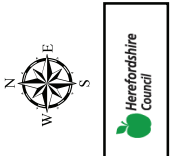
- Defra Rights of Way Circular 1/09.



HIGHWAYS ACT 1980, SECTION 118A
HEREFORDSHIRE COUNCIL - PUBLIC FOOTPATH LY9A (PART)
PARISH OF LLANCILLO
RAIL CROSSING EXTINGUISHMENT ORDER 2014

PROPOSED EXTINGUISHMENT
A — B — C — D — E
ALTERNATIVE ROUTE
A — F — E

Balfour Beatty Living Places
Unit 3, Thorn Business Park
Rotherwas Industrial Estate
Hereford HR2 6JT



SCALE 1:1250 @ A3 Drawing No.: D443/240-9A

