

## APPLICATION FOR REVIEW OF A PREMISE LICENCE ISSUED UNDER THE LICENSING ACT 2003 IN RESPECT OF 'THE HORSE & JOCKEY, 9-10 NEW STREET, ROSS ON WYE, HR9 7DA'.

Report By: Head Of Environmental Health And Trading Standards

### Wards Affected:

Ross on Wye

The application was first considered at a meeting of the Regulatory Sub-Committee on 28 May 2008. The meeting was adjourned after the applicant raised new concerns in respect of the premises that had not been detailed in the application for review. The additional representations are attached to the report as Appendix 1 to Appendix 4.

### 1. Purpose

To consider an application for a review of a premises licence in respect of 'The Horse & Jockey, 9-10 New Street, Ross On Wye, HR9 7DA'.

### 2. Background Information

Applicant	<b>Mrs Janet ROBERTS 8 New Street, Ross on Wye, HR9 7DA</b>	
Premise Licence Holder	<b>Punch Taverns Plc Jubilee House, Second Avenue, Burton Upon Trent, Staffordshire, DE14 2WF</b>	
Solicitor	<b>TLT</b>	
Type of application: <b>Review</b>	Date received: <b>2/04/08</b>	28 Days consultation <b>29/04/08</b>

A notice advertising the review was placed on the premise prior to the start of the statutory consultation period and also displayed in the public area of the Licensing Authority (Bath Street).

### 3. Current Licence

The current licence allows: -  
A performance of live music  
Any playing of recorded music  
Facilities for similar entertainment  
Dancing  
Sale by retail of alcohol

At the times shown: -  
Monday-Wednesday: 11:00 - 23:00  
Thursday-Saturday: 11:00 - 00:00  
Sunday: 12:00 - 22:30

The following non-standard timings apply to all licensable activities listed above: -

Friday, Saturday, Sunday and Monday of all Bank Holiday weekends, Thursday preceding Easter weekend, Christmas Eve, Boxing Day: An additional hour permitted at the end of normal licensing hours.

On New Year's Eve the permitted hours shall extend through from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.

4. **Summary of Application**

The application for review relates to the following licensing objectives: -

- Prevention of Crime & Disorder
- Prevention of Public Nuisance

5. **The grounds for the review are stated by Mrs Roberts are: -**

I wish to request of the Licensing Authority:

1) PREVENTION OF PUBLIC NUISANCE

a) suspension of the pub's music licence and a responsibility put upon the Landlord to reduce the rowdiness of his customers (inside the pub) until it has been satisfactorily sound-proofed.

b) A restriction on drinking and smoking in the pub doorway and on the pavement outside the pub and my front door.

2) PREVENTION OF PUBLIC DISORDER

a) A responsibility put upon the Landlord to ensure customers do not behave in drunk, foul-mouthed and disorderly fashion on the pavement outside the pub and my home.

b) A responsibility put upon the Landlord to ensure customers are refused entry or further drink when they have clearly had enough - this, in the hope that customers will no longer vomit outside my front door.

6. **The information provided to support this application by Mrs Roberts states: -**

The voluntary limitation on noise emissions from the Horse and Jockey pub into my home was never very successful and has now broken down. Due to the recent change of personnel at Punch Taverns and loss of officers in the Environmental Health Dept the matter appears to have been dropped since no-one contacted me, as promised, to progress the matter of sound-proofing. In addition, the pub (in a residential area) has now become a very rowdy town-centre pub with fights, bad language, personal abuse (to me) by drunken people outside my home.

Recent instances of noise nuisance:

Music audible in my bedroom and preventing sleep: Sat 16/2/08, Sat 23/2, Sun 24/2, Sat 1/3, Sat 8/3, Thurs 13/3

Music audible in downstairs rooms - most evenings and/or afternoons

Loud yelling/shouting/laughing by customers, very audible downstairs Tues 11/3, Sun 24/2, Sat 23/2, Wed 20/1, Sat 16/2

Recent instances of customers drinking/smoking/being noisy outside pub and my home: Sat 9/2 two instances of loud noise o/s my front door; Sat 23/2 two instances c a dozen people at 9.30pm; Tue 4/3; 2/2 Sun 10/2 4 or 5 people, one with glass Of beer in hand, one sitting on my windowsill, much bad language; Mon 11/2 Fri 7/3 loud yelling o/s pub.

Recent instances of drunken disorderliness outside pub and my home:

One Jan evening. Two young girls fighting/swearing. When requested to go away, one told me "shut yer f ... ing face or I'll 'it yer, yer f ... ing old granny"

Sun 24/2 8.20pm, drunken customer, much swearing

Tue 4/3 Drunken man, shouting into the pub doorway.

Mon 10/3 4 drunken people, shouting, swearing, quarrelling o/s my front door. On asking them to go away, one woman said 'No, go call the police'. So I did. Incident No. 777S 100308. The officer confirmed he could hear the row over the phone.

Instances of piles of vomit immediately outside my front door (which is about 2 feet away from the pub door, cleared up by Landlady:

Sun 11/11, Mon 31/12

Example of one Saturday (2/2/08) becoming more and more typical:

4-10 pm - c 8pm. Alternate very loud customer noise and music audible in downstairs rooms.

8.15 - 8.25 pm Dog barking loudly o/s my front door. Opened it to investigate and found Landlady's partner in the pub doorway and a chap (dog owner?) with glass of wine in hand leaning against my wall/door and chatting to him. On my objecting, they all moved inside the pub. 8.30 - 9.40pm Loud music and customer noise in downstairs rooms with lots of shrieking young people outside my door c 9.35  
9.40 - 12.00 Music audible everywhere incl. bedroom. Unable to sleep.

Analysis of noise nuisance and public disorder ref:The Horse & Jockey Pub.  
Easter weekend: Fri 23/3 to Mon 24/3 2008

Friday: from 8pm to 11pm	Music with Repetitive Bass Beat (RBB) downstairs in my living room and kitchen)and in Bedroom. Managed to fall asleep C 11pm
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Saturday: from 1.20 - c3.00 pm	Intermittently, TV noise in living room and kitchen
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From 9pm - midnight	Music varying from quiet to loud plus RBB downstairs and in bedroom. Unable to sleep through it.
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Plus, intermittently, loud customer noise downstairs.

- Sunday: A dreadful day with no peace at all for almost 9 hours
- from 2.15 - c 6pm Very loud customer noise (yelling, shouting, cheering, a football match?) downstairs. Also, in street outside my front door on three occasions, noisy customers smoking and drinking.
- From 6pm -c11.00pm Music varying from quiet to loud, downstairs and in bedroom plus customer noise downstairs and yelling outside the pub.
- Monday: from 5 - c6pm and 8-c9pm Loud RBB and 'droning' downstairs in kitchen and l/room.
- From 9,15- c 10.30+ pm. quieter droning with RBB. Managed to fall asleep through it.

## 7. Summary of Representations

Copies of the representations and suggested conditions can be found within the background papers.

### **West Mercia Police, Environmental Health & Fire Authority**

No representation has been received from these.

### **Interested Parties.**

Three letters have been received from local residents support the reviewing of the premise licence.

Five letters have been received from local residents supporting the DPS of the premises and against the review.

One letter was received against the review but contained no house number.

Two letters were received which were considered not to be relevant representations.

## 8. Committees Responsibility

The committee is responsible for promoting the four licensing objectives.

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- The steps that are necessary to promote the licensing objectives;
- The representations (including supporting information) presented by all parties;
- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003
- The Herefordshire Council Licensing Policy

## 9. Options: -

- Take no action
- Take any of the following steps: -

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

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

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

10. **Background Papers**

- a. Letters from Interested parties
- b. Application Form
- c. Location plan

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

**NOTES****RELEVANT, VEXATIOUS AND FRIVOLOUS REPRESENTATIONS**

9.8. A representation would only be “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessman which argued that his business would be commercially damaged by a new licensed premises would not be relevant. On the other hand, a representation that nuisance caused by the new premises would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance were inadequate would be relevant. There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises. Further information for interested parties about the process for making representations is available in “Guidance for interested parties: Making representations” which can be found on the DCMS website.

9.9 The “cumulative impact” on the licensing objectives of a concentration of multiple licensed premises may also give rise to a relevant representation when an application for the grant or variation of a premises licence is being considered, but not in relation to an application for review which must relate to an individual premises.

9.10 It is for the licensing authority to determine whether any representation by an interested party is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. Vexation may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Frivolous representations would be essentially categorised by a lack of seriousness. An interested party who is aggrieved by a rejection of their representations on these grounds may challenge the authority’s decision by way of judicial review.

9.11. Licensing authorities should not take decisions on whether representations are relevant on the basis of any political judgment. This may be difficult for ward councilors receiving complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the subcommittee before any decision is taken that necessitates a hearing. Any ward councilor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.

9.12 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application.

**REVIEWS**

11.7 Representations must be 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.

## 11.22

- A number of reviews may arise in connection with crime that is not directly connected with licensable activities
- Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all.
- Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them.

11.25 There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers 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 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 unlawful gaming and gambling; and
- for the sale of smuggled tobacco and alcohol.

## Section 52

- (11) A determination under this section does not have effect—
- (a) until the end of the period given for appealing against the decision, or
  - (b) if the decision is appealed against, until the appeal is disposed of.

**Licensing Authorities power to exercise substantive discretionary powers.****The British Beer and Pub Association (2) The Association of Licensed Multiple Retailers (3) The British Institute of Inn keeping V Canterbury City Council.**

Contesting the validity of the Licensing policy that asks for certain requirements before the application has been submitted. In the summing up the Judge states; The scheme of the legislation is to leave it to applicants to determine what to include in their applications, subject to the requirements of Section 17 and the Regulations as to the prescribed form and the inclusion of a statement of specified matters in the operating schedule. An applicant who makes the right judgement, so that the application gives rise to no relevant representations, is entitled to the grant of a licence without the imposition of conditions. The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or exercise substantive discretionary powers in relation to it, unless there are relevant representations and the decision – making function under section 18 (3) is engaged.