

APPLICATION FOR REVIEW OF A PREMISES LICENCE ISSUED UNDER THE LICENSING ACT 2003 IN RESPECT OF 'KING CHARLES II, 13 BROAD STREET, ROSS ON WYE, HR9 7EA'.

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Ross on Wye

1. Purpose

To consider an application for a review of a premises licence in respect of 'The King Charles II, 13 Broad Street, Ross On Wye, HR9 7EA'.

2. Background Information

Applicant	Mrs Rowena CLARK 2 Willow Mews, 16a Broad Street, Ross on Wye, HR9 7EA	
Premise Licence Holder	Mr Andrew Gooding, King Charles II, 13 Broad Street, Ross On Wye, HR9 7EA	
Solicitor	Flint Bishop Solicitors, Derby	
Type of application: Review	Date received: 31/10/08	28 Days consultation 28/11/08

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 (the Council's Bath Street Offices).

3. Current Licence

The current licence allows: -

Provision of regulated entertainment (indoors)

Exhibition of film, indoor sporting events, a performance of live music, playing of recorded music, performance of dance.

Provision of regulated facilities (indoors)

Making music & dancing.

Sale by retail of alcohol (For sale both on and off the premises)

At the times shown: -

Monday-Wednesday: 10:00 - 00:00

Thursday-Saturday: 10:00 - 02:00

Sunday: 12:00 - 00:30

Late Night Refreshments (Indoors)

At the times shown: -

Monday-Wednesday: 23:00 - 00:00

Thursday-Saturday: 23:00 - 02:00

Sunday: 23:00 - 00:30

Opening Hours

At the times shown: -

Monday-Wednesday: 10:00 - 00:30

Thursday-Saturday: 10:00 - 02:30

Sunday: 12:00 - 01:00

Non-standard timings

The following non-standard timings apply to all the licensable activities listed above: -
New Year's Eve 10.00 to New Year's Day (terminal hour)

4. Summary of Application

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

- Prevention of Public Nuisance

5. The grounds for the review as stated by Mrs Clark are: -

1) PREVENTION OF PUBLIC NUISANCE

- a) Mrs Clark asks the committee if it could find a solution to curb the unsociable loud noise from drinkers and smokers outside in the garden of the King Charles until the early hours of the morning and to implement it.

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

Mrs Clark states that the current complaints started in about May 2007 whereupon she contacted the Council's Environmental Health Officer for assistance. She states that she lives only one garden away from the rear of the King Charles II and refers to a large recently constructed smoking shelter in the small back garden of the public house and that, at times, a television had been placed inside for customers. She alleges that she and neighbours were not consulted about this.

Mrs Clark states that the resultant noise generated in the garden causes her nuisance. She also states that she and neighbours cannot have their windows open on nights when the King Charles II is trading, and alleges that even double glazing does not keep the noise out. She comments that this year the beer garden seemed to be open only on Fridays, Saturdays and Sundays.

The noise is alleged to get louder and louder as the night goes on and comprises laughter, shouting, screeching, chanting and swearing. She estimates numbers of customers in the garden can be as high as 60 – 70.

She also mentions an externally located air conditioning unit which apparently 'thumps' on and off throughout the night.

Mrs Clark states that the Council's Environmental Health Officers visited on a number of occasions in 2007, alleges that they witnessed the noise themselves and therefore met with the holder of the premises licence, Mr Gooding.

She states that she kept a diary of the noise events from June to November 2007

and sent these to the Council's Environmental Health Officer at regular intervals.

She comments that one of the investigating Environmental Health Officers left the Council in October 2007 and that she decided to wait to see what would happen in 2008 before pursuing the matter further.

In the application for a review, Mrs Clark has included photographs of the garden and smoking shelter, copies of various correspondence with the Council as well as her log sheets for recording noise events.

The full copy of Mrs Clark's application is included in the background papers to this report.

7. Summary of Representations

West Mercia Police & Fire Authority

No representation has been received from these authorities.

Environmental Health

The Council's Environmental Health Officer has made a representation in support of the review of the premises licence. She cites a history of noise complaints and mentions that a retrospective planning application for the smoking shelter has been refused by the Council and will therefore have to be removed. She recommends two conditions to:

- a. prohibit the use of the rear external area between 11.30pm and 10.00am and
- b. to require a dispersion policy to be written and maintained to the satisfaction of the Environmental Health Officer.

Interested Parties

Three written representations have been received from adjacent local residents supporting the review of the premise licence and suggesting solutions.

Suggested solutions from these supporting representations include:

- i. turning the volume of music down so it cannot be heard outside,
- ii. relocate speakers,
- iii. double glaze and sound proof doors,
- iv. monitor noise levels,
- v. include an inner door to keep sound from escaping from within,
- vi. ban smoking outside the front door,
- vii. reduce opening hours, e.g. 12am close rather than 2am,
- viii. utilise door persons to disperse crowds on closing,
- ix. notice to customers requesting noise is kept down,
- x. increase camera surveillance, and
- xi. better joint working with local police to help disperse at closing.

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

8. **Committee's 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;

For this purpose the conditions of the licence would be modified if any of them were to be 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.