

**NAME OF COMMITTEE
LICENSING SUB COMMITTEE HEARING**

**DATE OF COMMITTEE
18th December 2013**

**REPORT OF THE DIRECTOR
ASSETS & ENVIRONMENT**

CONSIDERATION OF THE APPLICATION FOR REVIEW OF A PREMISES LICENCE IN RESPECT OF OLIVERS, 19 LOWER GUNGATE, TAMWORTH, STAFFORDSHIRE, B79 7AT, UNDER THE LICENSING ACT 2003

EXEMPT INFORMATION

None

PURPOSE

To consider the application for review of a premises licence in respect of Olivers, 19 Lower Gungate, Tamworth, Staffordshire B79 7AT.

This application cannot be determined under Officer's delegated powers because the Licensing Act requires that the decision must be made at a licensing hearing provided the application for review and any additional representations are not withdrawn.

RECOMMENDATIONS

If the review application and any representations received as part of the public consultation process have not been withdrawn, the Sub Committee must take any of the following steps it considers appropriate for the promotion of the licensing objectives:

- Take no further action;
- To modify the conditions of the licence. Conditions of the licence are modified if any of them is altered or omitted or any new condition is added. Modifications of conditions may be imposed either permanently or for a period of up to three months;
- To exclude a licensable activity from the scope of the licence. Exclusions of licensable activities may be imposed either permanently or for a period of up to three months;
- To remove the designated premises supervisor;
- To suspend the licence for a period not exceeding three months;
- To revoke the licence.

Paragraph 11.17 of the Home Office Guidance (Appendix 7) states that the Sub Committee may also issue an informal warning to the licence holder and/ or to recommend improvement within a particular period of time. Warnings should be issued in writing to the licence holder.

On this occasion the Police have requested the removal of conditions 5, 8 and 24 from Annex 2 of the premises licence and the addition of twenty new licence conditions. These additional conditions are listed in the review application (Appendix 3). Furthermore, the Police also request that the Licensing Sub Committee issue a written warning to the premises licence holder

EXECUTIVE SUMMARY

An application for review of the premises licence for Olivers has been made by Staffordshire Police.

It has been determined that the review application is “relevant” under the requirements of the Licensing Act 2003.

The applicant for the review has requested that, in view of the evidence presented in their review application, the Licensing Sub Committee modify the conditions on the premises licence and send a written warning to the premises licence holder.

RESOURCE IMPLICATIONS

If the decision of the Licensing Sub Committee is appealed there will be a financial resource implication.

LEGAL/RISK IMPLICATIONS

The following parties are entitled to appeal against the decision of the Licensing Sub Committee

- Staffordshire Police (the applicant for the review),
- Mr David Oliver (the holder of the premises licence), or
- Any other person who made relevant representations in relation to the application.

Although there is no reference in the statute, the appeal to the Magistrates’ Court is a complete rehearing.

Those parties who are affected by the decision of the Licensing Sub-Committee but are excluded from the review process (e.g. the freeholder of the premises) may apply for judicial review.

SUSTAINABILITY IMPLICATIONS

The effective regulation of Licensing activities contribute to the strategic priority of being healthier and safer in Tamworth.

CONCLUSIONS

The Committee is obliged to determine this application for review with a view to promoting the particular licensing objectives which have given rise to the review application, and representations, namely:

- The prevention of crime and disorder; and
- The protection of children from harm.

In making its decision, the Committee must consider the Licensing Authority’s own licensing policy and have regard to the national guidance. In particular, the Committee should have due regard to paragraph 3.1 of the Statement of licensing Policy and paragraph 1.17 of the Home Office guidance which state that each application must be considered on its own merits.

Background

A premises licence is held in respect of Olivers, 19 Lower Gungate. The location of the premises is shown shaded on the location plan given in **Appendix 1**. This particular premises is located within the zone to which a special cumulative impact policy applies.

A copy of the premises licence that existed at the time the review application was made is given in **Appendix 2**. No changes have been made to this licence since the review application was received. The Licensing Sub Committee should note that the version of the premises licence submitted by Staffordshire Police in their supporting information (Appendix 4 – Police additional information Appendix 1) has now been superseded.

The licensable activities permitted by this premises licence are:

- Films;
- Indoor sporting events;
- Live music;
- Recorded music;
- Anything of a similar description to live music, recorded music or performances of dance;
- Late night refreshment; and
- The supply of alcohol for consumption on and off the premises.

This particular licence contains twenty two conditions consistent with the Operating schedule given in Annex 2 of the Premises licence.

Premises Licence Holder and Designated Premises Supervisor

On 24th October 2013, the date the review application was received, the **premises licence holder** was **Mr David Oliver**. The **Designated premises supervisor** was also **Mr David Oliver**. Mr Oliver has held these positions since the requirement to hold a premises licence for licensable activities was introduced on 24 November 2005.

The Home Office Guidance issued under Section 182 of the Licensing Act 2003 states:

“The designated premises supervisor is the key person who will be usually charged with the day to day management of the premises by the premises licence holder, including the prevention of disorder.” (Paragraph 2.6)

“The main purpose of the ‘designated premises supervisor’ ...is to ensure that there is always one specified individual among these personal licence holders who can be identified for the premises where a premises licence is in force.....”(Paragraph 10.26).

“The 2003 Act does not require a designated premises supervisor or any other personal licence holder to be present on the premises at all times when alcohol is sold. However, the designated premises supervisor and the premises licence holder remain responsible for the premises at all times including compliance with the terms of the 2003 Act conditions attached to the premises licence to promote the licensing objectives.” (Paragraph 10.27)

“It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained” (Paragraph 2.7)

Temporary Event Notices

To date, Mr David Oliver has submitted twenty two temporary event notifications in respect of Olivers since 2010. A summary of the temporary event notices received is given in **Appendix 9**.

Objections were raised in respect of ten of the twenty two notifications submitted:

- The notification for an event beginning the 6th May 2012 was rejected because insufficient notice was given prior to the event;
- The Late notification for an event beginning the 10th August 2012 resulted in an objection from the Police on the grounds of the prevention of crime and disorder. A counter notice was issued preventing this event from taking place;
- The standard notification for an event beginning the 3rd November 2012 resulted in an objection from the Police on the grounds of the prevention of crime and disorder and the prevention of public nuisance. The objection was considered at a hearing on the 1st November 2013. The Licensing Sub Committee decided to add conditions to the temporary event notice;
- The standard notification for an event beginning the 1st December 2012 resulted in an objection from the Police on the grounds of the prevention of crime and disorder. However, this objection was withdrawn following mediation and upon Mr Oliver's agreement to add the premises licence conditions to the temporary event notice;
- The standard notification for an event beginning the 23rd December 2012 resulted in an objection from the Police on the grounds of the prevention of crime and disorder. However, this objection was withdrawn following mediation and upon Mr Oliver's agreement to add the premises licence conditions to the temporary event notice;
- The standard notification for an event beginning the 30th December 2012 resulted in an objection from the Police on the grounds of the prevention of crime and disorder. However, this objection was withdrawn following mediation and upon Mr Oliver's agreement to add the premises licence conditions to the temporary event notice;
- The standard notification for an event beginning the 20th January 2013 resulted in an objection from the Police on the grounds of the prevention of crime and disorder. However, this objection was withdrawn following mediation and upon Mr Oliver's agreement to add the premises licence conditions to the temporary event notice;
- The Late notification for an event beginning the 31st March 2013 resulted in an objection from the Police on the grounds of the prevention of crime and disorder and the prevention of public nuisance. A counter notice was issued preventing this event from taking place;
- The standard notification for an event beginning the 26th August 2013 resulted in an objection from the Police on the grounds of the prevention of crime and disorder. However, this objection was withdrawn following mediation and upon Mr Oliver's agreement to add the premises licence conditions to the temporary event notice; and
- The standard notification for an event beginning the 29th September 2013 resulted in an objection from the Police on the grounds of the prevention of crime and disorder and the prevention of public nuisance. The objection was considered at a hearing on the 19th September 2013. The Licensing Sub Committee decided to add conditions to the temporary event notice.

Review Application

At any stage following the grant of a premises licence, a responsible authority or any other person may ask the licensing authority to review the licence. Paragraph 11.1 of the Home Office Guidance stipulates that the proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of a premises licence.

The review application and representations must relate to the particular premises for which a premises licence is in existence and must be relevant to one or more of the licensing objectives.

An application for a review of the premises licence was received on 24th October 2013. The application was made by Sgt Carsley on behalf of Staffordshire Police on the grounds that the premises licence holder was not promoting the statutory licensing objective of the prevention of crime and disorder and the protection of children from harm. A copy of the application for review is given in **Appendix 3**. The information which accompanied the application is given in **Appendix 4**.

The grounds for the review application include the sale of alcohol to children (failed compliance testing). The guidance issued by the Home Office includes the illegal purchase of alcohol by minors in the list of criminal activities which should be treated particularly seriously (see paragraph 11.27 of **Appendix 7**). Furthermore, the Home Office advises that "whilst the designated premises supervisor or a personal licence holder may authorise other individuals to sell alcohol in their absence, they are responsible for any sales that may be made" (paragraph 10.34).

Additional issues raised by the Police in their review application are: 42 incidents of crime and disorder from the 1st September 2012 until 10th October 2013 at the venue including:

- Eight violent assaults;
- One public order incidents;
- Eight incidents of drunkenness;
- Eight anti social behaviour incidents;
- Positive test results from drug swabbing carried out on three occasions;
- Five arrests for being drunk and disorderly after leaving the venue;
- Five crimes have been committed after leaving the venue where an individual in custody has confirmed their last drink was in Olivers; and
- Non compliance with premises licence conditions.

Licensing Officers determined that this review application was relevant under the requirements of the Licensing Act 2003 and a review hearing was necessary.

In accordance with the regulations, officers arranged for a review notice to be displayed for 28 consecutive days at the premises and at the council offices. The period for further written representations to be submitted from other responsible authorities and other persons ended on 21st November 2013. Representations must be in writing and may be amplified at the hearing or may stand in their own right. Any representations received will be reported verbally at the Licensing Sub Committee hearing.

In making its decision with a view to promoting the licensing objectives in the overall interests of the local community, the Licensing Sub Committee is required to give appropriate weight to:

- The steps that are appropriate to promote the licensing objectives;
- The review application;
- any representations presented by all parties (including supporting information);
- The national guidance; and
- The Council's own licensing policy.

When the Home Office Guidance was amended in April 2012 greater weight was given to Police representations. Paragraph 9.12 states:

“In their role as a responsible authority the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder objective, but may also be able to make relevant representations with regards to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny on which they would be subject at a hearing.”

This review does not follow the conviction of offences in the criminal courts. It is not the role of the Sub Committee to determine the guilt or innocence of individuals charged with licensing or other offences committed on licensed premises. The Home Office guidance makes clear at paragraph 11.24 that there “is no reason why representations giving rise to a review of a premises licence need to be delayed pending the outcome of any criminal proceedings”. It is the role of the Sub Committee to determine whether problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives.

Local Policy Considerations

A copy of Tamworth Borough Council's Statement of Licensing Policy can be found in **Appendix 5**. Please refer to **Appendix 6** of this report for a list of paragraphs within the Licensing Policy that are considered relevant to this application.

National Guidance

A copy of the *Home Office Amended Guidance Issued under Section 182 of the Licensing Act 2003* (June 2013) can be found in **Appendix 7**. Please refer to **Appendix 8** of this report for a list of paragraphs within the Home Office Guidance that are considered relevant to this application.

The Licensing Sub Committee must deviate from this national guidance and Tamworth Borough Council's own licensing policy if the facts of the case demand it in the interests of the promotion of the licensing objectives. If the Sub Committee does depart from the guidance and Tamworth Borough Council's policy it must be able to provide full reasons.

Tamworth Borough Council's policy has not been amended to reflect changes in legislation which took effect in April 2012. The Sub Committee may therefore, find it necessary to depart from Tamworth Borough Council's own policy.

Steps the Licensing Sub Committee May Take

In deciding which powers to invoke, the Licensing Sub Committee should, so far as possible seek to establish the cause or causes of concerns which 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.

The Sub Committee must take one or more of any of the following steps it considers appropriate for the promotion of the licensing objectives:

- (a) take no further action;
- (b) to modify conditions of the licence. Conditions of the licence are modified if any of them is altered or omitted or any new condition is added;
- (c) to exclude a licensable activity from the scope of the licence;
- (d) To remove the designated premises supervisor, Mr David Oliver, from his post;
- (e) To suspend the licence for a period of not exceeding three months; and
- (f) To revoke the licence so that it ceases to exist.

The premises licence currently contains two conditions which are pertinent to the prevention of sales of alcohol to children. Part of mandatory condition 1 of Annex 1 of the premises licence places the following minimum duties on the premises licence holder and any responsible person:

- “(1) 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.
- (2) 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.”

In addition, Condition 23 of annex 2 of the premises licence requires the following:

“Suitable proof of evidence of 18 years of age shall be used as evidence to confirm the age of anyone who appears to any member of staff to be under the age of 18. Suitable proof of evidence of 18 years of age shall be any of the following: photographic driving licence; passport or PASS accredited proof of age card.”

Police have requested several conditions to address the issue of supply of alcohol to minors:

- that the challenge 18 policy be replaced with a challenge 25 policy;
- Staff training on the challenge 25 policy;
- the use of a date of birth check card;
- the use of a refusal of sales book; and

- the replacement of the condition 24, which bestows discretion on the designated premises supervisor to determine the times children are permitted on the premises, with a condition which prohibits children under the age of 17 to be permitted on the premises after 21:00 hours if licensable activities are taking place.

The Home Office guidance states that “it is completely unacceptable to sell alcohol to children (paragraph 2.26) and “licensing authorities should give considerable weight to representations about child protection matters” (paragraph 2.32) and it recommends that conditions restricting access to children should be strongly considered where a member or members of the current management have been convicted for serving alcohol to minors, the premises has a reputation for allowing underage drinking, there is a known association with drug taking or dealing, and the premises are used primarily for the sale of alcohol for consumption on the premises.

Paragraph 12.10 of Tamworth Borough Council’s licensing policy (**Appendix 5**) advises of the options the licensing authority may consider where concerns are identified and it is felt that access to children should be restricted.

The Police have also requested the addition of more stringent conditions in respect of door supervisors, staff training, the provision of CCTV at the venue, and the keeping of an incident register.

Modification of conditions may be imposed either permanently or for a temporary period of up to three months. Consequently, if the Licensing Sub Committee decides to amend the licence conditions they will need to confirm whether the changes are permanent or, if temporary, the duration the conditions will be in effect.

At the time of writing this report there have been no requests to remove licensable activities from the scope of the licence. Additionally, there have been no requests to remove the designated premises supervisor from his post.

The designated premises supervisor has a key role in ensuring compliance with the requirements of the licence and the Licensing Act 2003 generally. Paragraph 4.29 of the Home Office guidance (**Appendix 7**) confirms that the Police can at any stage after the appointment of a designated premises supervisor seek a review of a premises licence on any grounds relating to the licensing objectives if problems arise relating to the performance of the designated premises supervisor.

The Home Office guidance indicates at paragraphs 11.21 and 11.22 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. However, the Licensing Sub Committee also need to consider that poor management may be due to poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate remedy.

There have been no requests for the suspension of the premises licence. When considering the suspension of the licence regard should be had to paragraph 11.23 of the Home Office guidance which states that “it will always be important that any detrimental financial impact that may result from the licensing authority’s decision is appropriate and proportionate to the promotion of the licensing objectives”.

The revocation of the premises licence is not being sought by the Police. The Home Office advises that “the Licensing Authority should not hesitate, where appropriate, to do

so, to take tough action to tackle problems at the premises and, where other measures are deemed insufficient, to revoke the licence”.

Paragraph 11.17 of the Home Office guidance (**Appendix 8**) states that the Sub Committee may also issue an informal warning to the licence holder and/ or to recommend improvement within a particular period of time. The Police have requested that a written warning be sent to the premises licence holder to make clear that the sale of alcohol to children is considered particularly serious and any further sales of alcohol to children will result in a further review of the premises licence by Staffordshire Police. However, the Home Office guidance warns that where responsible authorities have already issued warnings requiring improvement - either orally or in writing – that have failed as part of their own stepped approach to address concerns, the Sub Committee should not merely repeat that approach and should take this into account when considering what further action is appropriate. Staffordshire Police will be asked to report verbally whether they have already issued warnings to the licence holder requiring improvement.

Right of Appeal

There is a right of appeal against the decision made by this Licensing Sub Committee. The Sub Committee is therefore expected to record in full the reasons for any decision that it makes.

An appeal against the Licensing Sub Committee’s decision may be made by:

- Staffordshire Police (the applicant for the review),
- Mr David Oliver (the holder of the premises licence), or
- Any other person who made relevant representations in relation to the application.

Any such appeal must be made to the Magistrates’ court within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

The determination made by the committee does not have effect until the end of the 21 day appeal period, or if the decision is appealed against, until the appeal is disposed of.

REPORT AUTHOR

The report author is Dawn Grove

If Members would like further information or clarification prior to the meeting please contact Dawn Grove Environmental Health Officer

Telephone: 01827 709419.”

Email: dawn-grove@tamworth.gov.uk

Or

Colin John, Environmental Health Officer

Telephone: 01827 709429

Email: colin-john@tamworth.gov.uk

LIST OF BACKGROUND PAPERS

- Tamworth Borough Council Licensing Policy, 2011-2014 (see **Appendix 5**)
- Home Office Guidance June 2013 – Amended Guidance Issued Under Section 182 of the Licensing Act 2003 (see **Appendix 7**)

APPENDICES

Appendix 1	Location plan
Appendix 2	The existing premises licence
Appendix 3	Application for a review of a premises licence under the Licensing Act 2003.
Appendix 4	Additional information submitted by the review applicant
Appendix 5	Local policy guidance (full document)
Appendix 6	Local policy guidance summary table
Appendix 7	National policy guidance document (full document)
Appendix 8	National policy guidance summary table
Appendix 9	Temporary Event Notice Register Entries.