

**NAME OF COMMITTEE
LICENSING SUB COMMITTEE HEARING**

**DATE OF COMMITTEE
10th JANUARY 2014**

**REPORT OF THE DIRECTOR
ASSETS & ENVIRONMENT**

**CONSIDERATION OF THE APPLICATION FOR REVIEW OF A PREMISES LICENCE IN
RESPECT OF ST GEORGE, 81 CALEDONIAN, TAMWORTH STAFFORDSHIRE B77
2ED UNDER THE LICENSING ACT 2003**

EXEMPT INFORMATION

None

PURPOSE

To consider the application for review of a premises licence in respect of **ST GEORGE, 81 CALEDONIAN, TAMWORTH STAFFORDSHIRE B77 2ED**.

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must be made at a licensing hearing provided the application for review and any additional representations are not withdrawn.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If the review application and representations have not been withdrawn, the Sub Committee must take any of the following steps it considers appropriate for the promotion of the licensing objectives: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.

Staffordshire police have requested that 12 conditions be placed on the premises licence to ensure that the licensing objectives are upheld. The proposed conditions are detailed at Appendix 1 to this report.

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. Warnings should be issued in writing to the licence holder.

Staffordshire Police have requested that the notice of determination records that the Premise Licence Holder has been given clear warning that the Licensing Committee considers the sale of alcohol to children to be particularly serious and that any further sales of alcohol to children will result in a subsequent review of the Premises Licence by Staffordshire Police.

EXECUTIVE SUMMARY

An application for review of the premises licence for **ST GEORGE, 81 CALEDONIAN, TAMWORTH STAFFORDSHIRE B77 2ED** 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 take the actions as detailed in the last two paragraphs of the recommendations within this report.

No representations have been received as a result of consultation of responsible authorities. Representations have been received from interested parties in support of the premises as follows:

Two letters dated 15 November 2013 from the same address;

One letter dated 21 November 2013

A petition dated 9 December 2013 with 109 signatures.

RESOURCE IMPLICATIONS

If the decision of the Licensing Sub Committee is appealed there will be a financial resource implication which cannot be quantified at present.

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),
- **Admiral Taverns Piccadilly Limited**(the holder of the premises licence), or
- **The Petitioners and Letter writers** (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 objective(s) which have given rise to the review application, and representations, namely:

- The prevention of crime and disorder;
- Public safety; 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 **ST GEORGE, 81 CALEDONIAN, TAMWORTH STAFFORDSHIRE B77 2ED**. The location of the premises is shown shaded on the location plan given in **Appendix 2**. **(Please note that on the plan the premise is shown under a former name, The Flying Scotsman).**

A copy of the premises licence that existed at the time the review application was made is given in **Appendix 3**. No changes have been made to this licence since the review application was received.

The licensable activities permitted by this premises licence are Films, Indoor Sporting Events, Live Music, Recorded Music, Performances of Dance, Late Night-Refreshment, Supply of Alcohol (On and Off Supplies). This particular licence contains:

- conditions consistent with the Operating schedule numbered 1 to 13 – Annex 2 of the Premises licence

Premises Licence Holder and Designated Premises Supervisor

On 11 November 2013, the date the review application was received, the **premises licence holder** was **Admiral Taverns Piccadilly Limited**. The **Designated premises supervisor** was **Michelle Jayne Briggs**.

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.” (Para 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.....”(Para 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.” (Para 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” (Para 2.7)

There have been several changes to the designated premises supervisor named on the premises licence in question. The following table summarises the changes to the premises licence.

ST GEORGE, 81 CALEDONIAN, TAMWORTH STAFFORDSHIRE B77 2ED

From	To	Name of Designated Premises Supervisor (DPS)
13 December 2010	22 March 2012	Paul Casey
23 March 2012	22 November 2012	James Davey
23 November 2012	6 February 2013	Victoria Patricia Jones
7 February 2013	Present Date	Michelle Jayne Briggs

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. Para 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 11 November 2013. The application was made by **PC 4025 D Evans** 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, public protection and the protection of children from harm. A copy of the application for review is given in **Appendix 4 (parts a to e)**.

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 10 December 2013. On this occasion, no further representations were received during the consultation period from responsible authorities. However positive representations were received from interested parties in support of the premises as follows:

Two letters dated 15 November 2013 from the same address;
One letter dated 21 November 2013
A petition dated 9 December 2013 with 109 signatures.

Copies of their representations are enclosed at **Appendix 5**.

Representations must be in writing and may be amplified at the hearing or may stand in their own right.

The review application has arisen as a result of crime that is not directly connected with licensable activities as well as contraventions directly connected with licensable activities. The issues identified in the review application are briefly summarised in the following table.

Non-compliance with the Premises licence
27 September 2013 – Sale of alcohol to a person under the age of 18 years
Incidents of Crime and Disorder etc.
11 recorded incidents at the premises in the last 12 months involving drunkenness, crime and disorder, assault, injury and notable drugs readings.
20 March 2013 – an incident relating to an assault on a 16 year old female who was inside the premises with other children
25 August 2013 – an incident involving large scale disorder which had started in the premises resulting in Staffordshire Police having to close the premise to prevent further disorder issues. Connected to this incident were public order offences, assaults involving pool cues, an aggravated burglary and the commitment of every Police resource available in the area and from other towns. A firearms Taser deployment was also authorised.
The premises has a notable drugs problem from readings obtained this year.

The police submission also states that the premises already has conditions on the existing premises licence relating to under age sales and has an outdated challenge 21 policy albeit the seller has been trained in the challenge 25 policy now being operated in the Staffordshire area. At this time, the St George is failing to meet the licensing objectives and is contributing to crime and disorder in the Tamworth area. The Police request that the existing premises licence be improved and updated in order that the licensing objectives are achieved and ask that 12 conditions are upgraded and included on the premises licence. The conditions are detailed at **Appendix 1** of this report.

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:

- 8(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.
- 8(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 13 of annex 2 of the premises licence requires the following:

“Staff must require sight of suitable evidence of age from any person appearing to those selling or supplying alcohol to be under 21 years and who is attempting to buy alcohol. Staff must not sell or supply alcohol to anyone appearing to be aged under 21 years who does not produce a suitable form of evidence of age.”

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

- that the challenge 21 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;

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 6**) advises of the options the licensing authority may consider where concerns are identified and it is felt that access to children should be restricted.

As detailed previously in the report, the Police have also requested the addition of more stringent conditions in respect of staff training, improved documentation and staff training on the use of CCTV at the venue, and the keeping of an incident register and a refusals register. The Police also request the addition of more stringent conditions in respect of the prevention of drugs use on the premises.

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.

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 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 6**. Please refer to **Appendix 7** 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 8**. Please refer to **Appendix 9** 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 necessary 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. The licensable activities permitted by the premises licence are:

Films, Indoor Sporting Events, Live Music, Recorded Music, Performances of Dance, Late Night-Refreshment, Supply of Alcohol (On and Off Supplies)

- (d) To remove the designated premises supervisor, **Michelle Jayne Briggs** from their post.
- (e) To suspend the licence for a period of not exceeding three months;
- (f) To revoke the licence so that it ceases to exist.

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.

Staffordshire Police have requested that the notice of determination records that the Premise Licence Holder has been given clear warning that the Licensing Committee considers the sale of alcohol to children to be particularly serious and that any further sales of alcohol to children will result in a subsequent review of the Premises Licence by Staffordshire Police

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),
- **Admiral Taverns Piccadilly Limited**(the holder of the premises licence), or
- **The Petitioners and Letter writers** (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

"If Members would like further information or clarification prior to the meeting please contact Steve Lewis, Head of Environmental Health

Telephone: 01827 709437."

Email: stephen-lewis@tamworth.gov.uk

LIST OF BACKGROUND PAPERS

- Tamworth Borough Council Licensing Policy, 2011-2014 (see **Appendix 6**)
- Home Office Guidance June 2013 – Amended Guidance Issued Under Section 182 of the Licensing Act 2003 (see **Appendix 8**)

APPENDICES

Appendix 1	Conditions proposed by Staffordshire Police
Appendix 2	Location plan
Appendix 3	The existing premises licence
Appendix 4(a)	Application for a review of a premises licence under the Licensing Act 2003.
Appendix 4(b)	Premises licence
Appendix 4(c)	Statements from officers
Appendix 4(d)	Interview notes of seller
Appendix 4(e)	Incident list and drugs readings
Appendix 5	Relevant representations
Appendix 6	Local policy guidance (full document)
Appendix 7	Local policy guidance summary table
Appendix 8	National policy guidance document (full document)
Appendix 9	National policy guidance summary table

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