

Crawley Borough Council

	Report No: ES/219	A
--	------------------------------------	----------

Report to **Licensing Sub Committee**
Wednesday 2nd September 2009

Review of a Premises Licence

Licensing Act 2003;

Rose & Crown

61-63 Ifield Road

West Green

Crawley

West Sussex

RH11 7AS

Angela Tanner – Head of Regulatory Services

1. Details of Application

- | | | |
|-----|---|---|
| | | Reference Documents and Guidance |
| 1.1 | On the 08 th July 2009, Sussex Police as a 'responsible authority' submitted an application to the Council as the Licensing Authority for the Borough of Crawley for a REVIEW of above mentioned premises licence. | Appendix A
Copy of the Review Application plus supporting material |
| 1.2 | Sussex Police has requested a review on the grounds that the licence holder is not promoting the statutory objective(s) of:-
(I) Preventing crime and disorder
(II) The protection of children from harm | s.51 – LA03
Information pack
Part 7 |
| 1.3 | The Police have advised that additional material comprising of witness statements and other documents in support of the review application is to follow and these have not as yet been received by the Council. | Appendix B |

- 1.4 The 'Rose & Crown' currently has a premises licence for the sale by retail of alcohol for consumption on and off the premises together with certain regulated entertainment and the provision of late night refreshments. **Appendix C**
Copy of the current premises licence
- 1.5 The premises licence was granted in accordance with the provisions of the Act to:
"Enterprise Inns Plc" **Appendix C**
- 1.6 The 'designated premises supervisor' (DPS) named on the licence is:-
Mr Sean Reynolds **Appendix C**

2 Consultation

- 2.1 In accordance with legislation the Council, as the relevant Licensing Authority, is required to advertise any application for a review of a premises licence by displaying prominently a notice:
- (a) on or near the site of the premises to which the application relates where it can be conveniently read from the exterior of the premises by the public.
 - (b) at the offices of the Council in a central and conspicuous place.
 - (c) on the Council's website if so available.
- 2.2 This notice must be displayed for no less than 28 consecutive days starting on the day after the application was received by the licensing authority.
- 2.3 The notice in accordance with legislation was posted in and immediately outside of the premises by the Council's Licensing Staff on the 09th July 2009. The notice was also posted on the Town Hall notice board and on the Council's website.
- 2.4 On the 4th August 2009, Mr. Rob Burns visited the premises in his capacity as an officer of the Council and became aware that the 'public notices' within the premises had been removed. On raising this matter, Mr. Reynolds produced one of the notices, gave an explanation for the absence and displayed the notice accordingly. A copy of the 'file note' from Mr. Burns is attached. **Appendix D**
Copy of File Note
- 2.5 A representation was received from Mr Rob Burns, Senior Environmental Protection Officer, with Crawley Borough Council as a result of the public notice. This representation was made on behalf of the Council in its capacity as the responsible authority as provided for in section 13(e) of the Act, that is, the local authority by which statutory functions are exercisable in any area in which the premises are situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health. Mr. Burns representation was submitted on the grounds of 'Prevention of Public Nuisance' in accordance with the provisions of the Licensing Act 2003, a copy of the document is attached **Appendix E**
Copy of the relevant representation

for Members consideration and as such is a 'relevant representation' and is one of the documents which Members must have had regard to prior to making a determination of the application for review.

- 2.6 The Council has also received a representation from Mr Reynolds who is an interested party and as such is a 'relevant representation' and is one of the documents which Members must have had regard to prior to making a determination of the application for review.
(Please note: Certain information considered by the Council to be personal information has been redacted from this documents.)
- Appendix F
Copy of the supporting document**
- determination**
- 2.7 Representations were also received from other interested parties in support of the premises and copies of these submissions are attached as appendices.
(Please note: Certain information considered by the Council to be personal information has been redacted from these documents.)
- Appendices G - L
Copies of the supporting documents**
- ### 3 Background
- 3.1 The Council is the 'relevant licensing authority' in relation to any premises within the Borough of Crawley which is to be used for one or more 'licensable activities' in accordance with the Licensing Act 2003 ("the Act").
- Information Pack
Part 3**
- 3.2 Section 51 of the Act states where a premises licence has effect, an interested party or a responsible authority may apply to the relevant licensing authority for a review of a licence provided that the grounds for the review are relevant to the 'licensing objectives' are not frivolous, vexatious or repetitious.
- s.51 – LA03
Information pack
Part 7**
- 3.3 The proceedings set out in the Act for reviewing premises licenses represent a key protection for the community where problems associated with the licensing activities are occurring after the grant or variation of a premises licence.
- S182 – Guidance
11.1**
- 3.4 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, amongst others, the use of licensed premises for the purchase and consumption of alcohol by minors which impacts of the health, educational attainment, employment prospects and propensity for crime of young people.
- S182 – Guidance
11.25**
- 3.5 Upon receipt of an application for the review of a premises licence the licensing authority must hold a hearing to consider it and any relevant representations.
- Section 52(2)**
- 3.6 The licensing authority must, having regard to the application and any relevant representations, take such of the steps below (if any) as it considers necessary for the promotion of the licensing objectives:-
- Section 52**
- Modify the conditions of the premises licence (*that is, to alter or omit any existing conditions or to add any new conditions*)

- Exclude a licensable activity (*permanently or for a temporary period not exceeding 3 months*)
- Remove the designated premises supervisor,
- Suspend the licence (*for a period not exceeding 3 months*),
- Revoke the licence.

3.7 The following parties may appeal the decision of a licensing authority on any application for review of a premises licence:

- the applicant for the review,
- the holder of the premises licence,
- any other person who made a relevant representation in relation to the application.

3.8 On an appeal against a decision of a licensing authority a magistrates court may:

- dismiss the appeal,
- substitute for the decision appealed against any other decision which could have been made by the licensing authority, or
- remit the case to the licensing authority to dispose of in accordance with the direction of the court,

and make such order as to costs as it thinks fit.

3.9 It is therefore important that licensing authorities should give comprehensive reasons for its decisions. Failure to give adequate reasons could itself give rise to grounds for an appeal.

3.10 It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and the Secretary of State's Guidance issued under section 182 of the Act.

**'Statement of Policy'
Information Pack
Part 1**

3.11 In determining applications for review it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the application identifies. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

**S182 – Guidance
11.18**

4 Staffing, Financial and Legal Implications

4.1 There are no extra staffing or financial implications to the Council, save for those laid out in Part 10 of the Information Pack in respect of possible appeals.

**Information Pack:
Part 10
(General)**

4.2 The Council is required to consider the impact any decision may have on an individual's Human Rights. **Information Pack:
Part 10
(General)**

4.3 The Council is required to consider the impact any decision may have on crime and disorder in the area.
(Section 17, Crime and Disorder Act, 1998).

5 Community Strategy and Corporate Plan

5.1 See part 10 (General); Information pack **Information Pack:
Part 10**

6 Considerations to be Addressed in Accordance with Licensing Guidance issued under section 182 of the Licensing Act 2003

6.1 Members must give due consideration to the merits of each individual case. Attention is drawn to the following sections of the 'Members' Information Pack';

Council's Licensing Policy,
LACORS Guidance,
CBC Hearing Procedures,
Premises Guidance,
Licensing Act (premises),
Regulations (premises),
Conditions (premises)

**Part 1
Part 2
Part 2
Part 3
Part 3
Part 3
Part 8 & 9**

6.2 The aim of the Council's policy is to promote the licensing objectives set out in the Act whilst securing the safety and amenity of residential communities and facilitating a sustainable entertainment and cultural industry. **CBC Alcohol
Licensing Policy
1.2**

6.3 Members should also consider the Guidance under section 182 of the Act, issued by the Secretary of State, in particular the following parts of it:

Reviews: Section 11

Conditions: Annex D
Crime & Disorder Part 1
Prevention of Public Nuisance Part 4
Protection of Children Part 5

6.4 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. **S182 – Guidance
11.26**

- 6.5 Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crime, it is expected that revocation of the licence – even in the first instance – should be seriously considered. **S182 – Guidance 11.26**
- 6.6 Section 4 of the 2003 Act provides that in carrying out its functions, a licensing authority must ‘have regard to’ guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. **S182 – Guidance 1.8**
- 6.6.1. However, nothing in the Guidance should be taken as indicating that any requirement of licensing law or any other law may be overridden (including the obligations placed on the authorities under human rights legislation). The Guidance does not in any way replace the statutory provisions of the Act or add to its scope and licensing authorities should note that interpretation of the Act is a matter for the courts.
- 6.7 The guidance cannot anticipate every possible scenario or set of circumstances that may arise and as long as licensing authorities have properly understood the Guidance they may depart from it if they have reason to do so as long as they are able to provide full reasons. **S182 – Guidance Page 10**
- 6.8 Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken. **S182 – Guidance Page 10**
- 6.9 Each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case. **Section 182 Statutory Guidance 1.15**
- 6.10 In addition, when considering a new premises licence or following reviews that have identified problems with a particular premises, licensing authorities may consider imposing conditions as appropriate such as door supervisors, CCTV etc **Section 182 Statutory Guidance 1.27**
- 6.11 All local authorities must fulfil their obligations under section 17 of the Crime and Disorder Act 1998 when carrying out their functions as licensing authorities under the 2003 Act. **Section 182 Statutory Guidance 1.28**
- 6.12 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 (if any), including supporting information, presented by all the parties;
 - section 182 Guidance;
- Section 182 Statutory Guidance 9.25**

- its own statement of licensing policy.

6.13	Conditions which relate to the four licensing objectives could be used where necessary and appropriate to the particular circumstances of an individually licensed premises. It is important that they should not be applied universally and treated as standard conditions irrespective of circumstances.	Section 182 Statutory Guidance 10.5
6.14	The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. This rules out standardised conditions which ignore these individual aspects. It is important that conditions are proportionate and properly recognise significant differences between venues.	Section 182 Statutory Guidance 10.13
6.15	Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they are not only necessary but realistic, practical and achievable so that they are capable of being met but must not go further than what is needed for that purpose.	Section 182 Statutory Guidance 10.14 Annex D (4)
6.16	Examples of conditions which may assist in the promotion of the licensing objectives can be found in the information pack.	Information Pack: Part 1, Policy Part 9, conditions

7 Recommendations

Section 52

- 7.1 Having had regard to the application and any relevant representations the Sub-Committee must take one or more of the following steps which the Sub-Committee considers necessary for the promotion of the licensing objectives. Those steps are:
- 7.1.1 Modify the conditions of the premises licence (*alter or omit any existing conditions or to add any new conditions*).
 - 7.1.2 Exclude a licensable activity from the scope of the premises licence (*permanently or for a temporary period not exceeding 3 months*).
 - 7.1.3 Remove the designated premises supervisor from the premises licence.
 - 7.1.4 Suspend the premises licence (*for a period not exceeding 3 months*).
 - 7.1.5 Revoke the premises licence.
- 7.2 Alternatively, if the Sub-Committee does not consider that any of the steps (as set out in 7.1.1 to 7.1.5 above) are necessary for the promotion of the licensing objectives, then the Sub-Committee should take no action.

Background Papers

All associated paper work regarding this application.

The information pack

Statutory Guidance

Statement of Policy

Contact officer Mike Lyons

Direct Line 01293 438698