

Agenda Item No: 1 – Summary of Report

Licence Reference MAID0185/LPRM/1698
Report To: LICENSING SUB – COMMITTEE
(UNDER THE LICENSING ACT 2003)

Date: 26TH NOVEMBER 2009

Report Title: BREDHURST NURSERY, DUNN STREET,
BREDHURST, GILLINGHAM, ME17 3ND

Application for Review of a Premises Licence

Report Author: Lorraine Neale

Summary:

1. The Applicant for Review – Mrs Pamela Newman
2. Type of application applied for: Review of a Premises Licence.
3. Grounds for Review

Prevention of Public Nuisance

The review is being applied for due to the breach of licence conditions namely:-

H) No music events will take place outdoors including in any marquee or similar structure.

I) No loud speakers will be positioned outdoors.

J) All doors and windows will be kept closed after 21:00 hours when live or recorded music or karaoke or amplified sound or voice is taking place.

K) The volume of music or sound will be controlled so that no noise is discernible at the façade of or inside the nearest noise sensitive dwellings.

The breaches of conditions mentioned have been many over the past years since the premise licence was determined on 20.09.05. Letters have been written to Environmental and Enforcement Officers by residents of Dunn Street complaining of music and noise emanating from the Nursery Restaurant in spite of the conditions laid down on granting the premise licence. Complaints have also been many to both Boxley and Bredhurst Parish Councils. After the events of the August Bank Holiday when a band played out in the open at the nursery disturbing a beautiful afternoon, the tolerance levels of the residents has evaporated and a Review is sought.

Affected Wards: Boxley Ward

Recommendations: **The Committee is asked to determine the application and decide whether to take such steps as members consider necessary for the promotion of the licensing objectives.**

Policy Overview: The decision should be made with regard to the Secretary of State's Guidance and the Licensing Authority's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and that such departure be supported by proper reasons.

**Other Material
Implications:**

HUMAN RIGHTS: In considering this application it is necessary to consider the rights of both the applicant and other parties, such as “**responsible authorities**” and/or “**interested parties**” (objectors). The hearing procedure for reviewing premises licences has been formulated to ensure a fair hearing for all parties.

LEGAL: Under the Licensing Act 2003 the **Licensing Authority** has a duty to exercise licensing control of relevant premises.

Background Papers:

Licensing Act 2003
DCMS Guidance Document issued under section 182 of The Licensing Act 2003 as amended
Maidstone Borough Council Statement of Licensing Policy

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Application for Review of a Premises Licence

Purpose of the Report

1. The report advises Members of an application for the review of a premises licence, brought by Mrs Pamela Newman Appendix A). There are letters of support included with the application from other Residents/Interested Parties Appendix B). There have been no representations received from any Responsible Authorities.

Issue to be Decided and Options

1. Members must, having regard to the application and any relevant representations, take such steps mentioned below as members consider necessary for the promotion of the licensing objectives.
2. The steps are:
 - To modify the conditions of the licence (including for a period not exceeding 3 months);
 - To exclude a licensable activity from the scope of the licence (including for a period not exceeding 3 months);
 - To remove the designated premises supervisor;
 - To suspend the licence for a period not exceeding 3 months;
 - To revoke the licence.
 - To issue a warning or caution.
 - To take no action.

Background

3. The relevant statutory provisions are sections 51 to 53 inclusive of the Licensing Act 2003. the Licensing Objectives are as follows:
 - The prevention of crime and disorder;
 - Public Safety;
 - The prevention of public nuisance; and
 - The protection of children from harm
4. The current premises licence was granted on 7th September 2009 a copy is attached as Appendix C.

5. The application has been correctly advertised with a notice displayed on the premises and at the Council offices for the required period.
6. The applicant is requesting that the Sub-Committee consider and take such steps as they consider to be appropriate as set out at 2 in order to address the Prevention of Public Nuisance objective.
7. **Members are advised that they may only modify premises licences if it is necessary to promote the licensing objectives.**
8. Relevant sections of **The Guidance issued under section 182 of The Licensing Act 2003;**

**Chapter 10
Chapter 11**

**Conditions attached to Premises Licences
Reviews**

Annex D, part 4

Pool of conditions relating to the prevention of public nuisance

9. Relevant policy statements **contained in The Licensing Authority's Statement of Licensing Policy (Jan 2008);**

22. Prevention of Public Nuisance

Licensed premises can cause adverse impacts on communities through public nuisance. The Licensing Authority wishes to maintain and protect the amenity of residents and other businesses from any nuisance caused by the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

The Licensing Authority will interpret 'public nuisance' in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.

Concerns

When addressing the issue of prevention of public nuisance, the applicant should consider those factors arising from the premises or the activities of their customers within the vicinity of the premises that may impact on the likelihood of public nuisance. These may include:-

- The location of the premises and their proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship.
- The hours of operation, particularly if between 23.00 and 07.00.
- The nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises.
- The design and layout of premises and in particular the presence of noise limiting features.
- The occupancy capacity of the premises.
- Last admission time.
- The steps the applicant has taken or proposes to take to ensure that staff leave the premises quietly.
- The steps the applicant has taken or proposes to take to prevent disturbance by patrons arriving or leaving the premises.

- Whether routes to and from the premises, on foot or by car or service or delivery vehicles, pass residential premises within the vicinity of the Premises.
- Whether other measures have been taken or are proposed such as the use of CCTV or the employment of registered door supervisors.
- The arrangements made or proposed for parking by patrons, and the effect of this parking on local residents.
- The likelihood of any violence, disorder or policing problems arising if a licence were granted.
- Whether taxis and private hire vehicles serving the premises are likely to disturb local residents.
- The siting of external lighting, including security lighting that is installed inappropriately.
- Whether the operation of the premises would result in increased refuse storage or disposal problems or additional litter in the vicinity of the premises and any measures or proposed measures to deal with this.
- The history of previous nuisance complaints proved against the premises, particularly where statutory notices have been served on the present licensees.

Additional Steps

The following examples of additional steps are given as examples for applicants to consider in the preparation of their Operating Schedule, having regard to their particular type of premises or activities:-

- Effective and responsible management of premises.
- Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance.
- Control of operating hours for all or parts (e.g. garden areas) of premises, including such matters as deliveries.
- Adoption of best practice guidance (e.g. Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by Institute of Acoustics).
- Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices.
- Management of people, including staff, and traffic (and resulting queues) arriving and leaving premises.
- The incorporation of measures for ensuring the safe and swift dispersal of patrons away from premises and events without causing nuisance or public safety concerns to local residents.
- Effective ventilation systems to prevent nuisance from odour.

N.B. Where relevant representations are received which the Licensing Sub Committee consider material particular consideration will be given to the impact on residential amenity of proposals for the provision of late night refreshment where these are either located in, or encourage people to move through, residential areas.

10. Members of The Licensing Act 2003 – Licensing Sub – Committee are reminded of their duty under section 17 of the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the Licensing Authority's responsibility to co – operate in the reduction of crime and disorder in the Borough.

Section 17 of the Crime and Disorder Act 1998 states:

“Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with

due regard to the likely effect of the exercise of those function on, and the need to do all that it reasonably can to prevent, crime and disorder in its area”

Implications Assessment

11. The decision should be made with regard to the Secretary of State's Guidance and the Licensing Authority's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal / challenge is increased.
12. **Human Rights:** While all Convention Rights must be considered, those which are of particular relevance to the application are:
 - Article 8 - Right to respect for private and family life
 - Article 1 of the First Protocol - Protection of Property
 - Article 6(1)- Right to Fair Hearing
 - Article 10 – Freedom of Expression

The full text of each Article is given in the attached Appendices.

Conclusion

Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

List of Appendices

13. Appendix A Application for Review
Appendix B Supporting evidence supplied by Mrs Newman
Appendix C Copy of Premises Licence
Appendix D Plan of the premises
Appendix E Plan of the area
Appendix F Human Rights Article
Appendix G Order of Proceedings

Appeal

14. **The applicant, any interested party and the licence holder may appeal the Licensing Act 2003 Sub Committee's decision within 21 days beginning with the day on which the Appellant is notified. All any appeals must be lodged with the Magistrates' Court.**

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