

WILTSHIRE COUNCIL

NORTHERN AREA LICENSING SUB COMMITTEE

DATE OF MEETING 5th January 2012

**Application for Review of a Premises Licence; Borough Arms, 7 Oxford Street,
Malmesbury, Wiltshire, SN16 9AX**

1. Purpose of Report

- 1.1 To determine an application for a Review of a Premises Licence in respect of the Borough Arms, 7 Oxford Street, Malmesbury, Wiltshire, made by Ms L Penfold, a local resident living in the vicinity of the premises.

2. Background Information

- 2.1 An application for the Review of the Borough Arms Premises Licence has been made by Ms L Penfold. Following advertisement of the application 7 relevant representations have also been received.
- 2.2 Wiltshire Council (as the Licensing Authority) must hold a hearing to consider the review application and any representations received. In accordance with Section 52 (3) of The Licensing Act 2003 the Licensing Sub Committee is required to take such steps as it considers necessary for the promotion of the licensing objectives.
- 2.3 The licensing objectives are:
- i) The Prevention of Crime and Disorder;
 - ii) Public Safety;
 - iii) The Prevention of Public Nuisance; and
 - iv) The Protection of Children from Harm.
- 2.4 Such steps are:
- i) To modify the conditions of the licence.
 - ii) To exclude a licensable activity from the scope of the licence.
 - iii) To remove the designated premises supervisor.
 - iv) To suspend the licence for a period not exceeding three months.
 - v) To revoke the licence.
 - vi) To determine that no steps are necessary

Government Guidance issued under s.182 of the Licensing Act 2003 states that:

“Licensing Authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of

the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as a necessary means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives”

- 2.5 The premise benefits from a Premises Licence issued under the Licensing Act 2003 since 24th November 2005 and this is attached as **Appendix 1**.
- 2.6 Ms K Driscoll held the premises licences in partnership with Mr J Driscoll until September 2008 when the licence was transferred and is now held by Ms K Driscoll and Ms G Riggs.
- 2.7 Since 2008 a number of complaints have been received by Wiltshire Council Public Protection Noise and Licensing Teams from local residents regarding noise nuisance from the premises, and disturbance caused by patrons in and around the premises. Complaints have also related to antisocial behaviour of patrons on entering and leaving the premises and on their way home from the premises.

3. Details of the Grounds for Review

- 3.1 The review of the licence has been requested on the grounds that the premises have been conducted in such a manner as to prejudice the licensing objectives. The grounds for review are:
 - Prevention of Crime and Disorder: the patrons of the premises stand and drink on the street, fight, break windows and behave in a threatening manner
 - Public Safety: the patrons of the premises stand in the street and present a danger to late night traffic.
 - Prevention of Public Nuisance: the noise levels from the premises and its patrons are very high.
- 3.2 The application for review is attached as **Appendix 2**

4. Consultation and Representations

- 4.1 The review process requires a public notice to be posted on the premises for a period of 28 days together with a copy of the notice posted at the offices of Wiltshire Council, Monkton Park, Chippenham. During the consultation period 7 relevant representations have been received. Four (4) from residents living in the vicinity of the premises (interested parties), one (1) from the local residents association, one (1) from a local Councillor and one (1) from Wiltshire Constabulary (responsible authority).

- Mr R Budgen Malmesbury & St Paul Without Residents' Assoc.
- Ms N Oughton 18 Cross Hayes, Malmesbury
- Mr B Wilson 20 Cross Hayes, Malmesbury
- Ms A Sykes Tower House, Oxford Street, Malmesbury
- Mr P Lindrea Old Brewery House, Market Cross, Malmesbury
- Cllr Simon Killane Elected Councillor
- Wiltshire Police Polebarn Road, Trowbridge, Wiltshire

The relevant representations are attached as **Appendix 3**

All representations support the issues raised in the application for review of the premises licence.

A location map of premises and surrounding area is attached as **Appendix 4**.

A list of other licensed premises in the town of Malmesbury and their hours for supply of alcohol is attached at **Appendix 5**.

- 4.2 The Sub Committee can take into account documentary or other information presented at the hearing with the consent of all other parties.
- 4.3 The representations included the following suggestions on how to address the concerns raised.
- Hours of opening are restricted to closure at 11pm on all nights of the week.
 - Licensee formally warned that disturbances of any kind will result in immediate withdrawal of the licence.
 - Withdrawal of the Licence.
 - Restriction on opening hours.
 - Revocation of the Licence.
 - Engage constructively with local police to address issues mentioned in representations.

5. Legal Implications

- 5.1 This hearing is governed by the Licensing Act 2003 (Hearings) Regulations. These provide that hearings should be held in public unless the Licensing Authority considers that the public interest in excluding the public outweighs the public interest in the hearing taking place in public.

6. Officer Recommendations

- 6.1 Officers are not permitted to make a recommendation – the decision is to be reached by the members of the Licensing Sub Committee.

7. Right of Appeal

- 7.1 It should be noted that the Premises Licence Holder, the party that applied for the review and any Responsible Authority or Interested Parties who have made representations may appeal the decision made by the Licensing Sub Committee to the Magistrates Court. The appeal must be lodged with the Magistrates Court within 21 days of the notification of the decision.
- 7.2 The decision of the Licensing Sub Committee does not take effect until the end of the period for appealing against that decision. In the event of an appeal being lodged, the decision made by the Licensing Sub Committee does not take effect until any appeal is heard and finally determined.
- 7.3 The Premises Licence Holder and all Interested Parties have been informed of the date, time and location of the hearing and their right to attend and be represented.
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Date of report 8th December 2011

Background Papers Used in the Preparation of this Report

- **The Licensing Act 2003**
- **The Licensing Act (Hearings) Regulations 2005**
- **Guidance issued under Section 182 of the Licensing Act 2003**
- **Wiltshire Council Licensing Policy**

Appendices

- 1 Current Premises Licence**
- 2 Application for Review by Ms L Penfold**
- 3 Copies of Relevant Representations**
- 4 Location Plan of the premises and surrounding area**
- 5 List of other Licensed Premises in Malmesbury**