

**WILTSHIRE COUNCIL**

**NORTHERN AREA LICENSING SUB COMMITTEE**

**DATE OF MEETING 9<sup>TH</sup> August 2011**

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**Application for Review of a Premises Licence; Pheonex Bar 4 High Street  
Wootton Bassett, Wiltshire SN4 7BS**

**1. Purpose of Report**

- 1.1 To determine an application for a Review of a Premises Licence in respect of Pheonex Bar 4 High Street Wootton Bassett made by Ms P Evans and Ms L Sefton local residents living in the vicinity of the premises.

**2. Background Information**

- 2.1 An application for the Review of Pheonex Bar Premises Licence has been made by Ms P Evans and Ms L Sefton. Following advertisement of the application 8 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 3<sup>rd</sup> March 2008 and this is attached as **Appendix 1**.
- 2.6 The premises also benefits from a Club Premises Certificate issued under the Licensing Act 2003 since November 2005.
- 2.7 Mr Kerr and Mr Morris took over the ownership of the building in 2007 and carried out major renovations before applying for a premises Licence to run alongside the existing Club Premises Certificate. At the time the Premises Licence application was made one resident expressed concern over the possible miss use of the Fire Exit to the rear of the property by patrons of the premises. The applicants agreed to amend their application and condition the use of the fire exit and no hearing was necessary to determine the application.
- 2.8 Since the grant of the Premises Licence in 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. The use of the front walkway for smoking has also attracted complaints of noise and litter. The Licence holders have on each occasion been advised of residents concerns, and have attempted to address the issues with sporadic success.

A copy of written correspondence with the premises Licence holder is attached at **Appendix 2**

### **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:
  - Noise Nuisance caused by entertainment held at the premises
  - Antisocial behaviour by patrons of the premises (shouting, swearing, urinating, fighting) in the vicinity of the premises and neighbouring residential area.
- 3.2 The application for review is attached as **Appendix 3**

#### **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 from residents living in the vicinity of the premises (interested parties) and one from the local divisional member (Councillor).

- Councillor Peter Doyle Local Divisional Member
- Miss C Clark 168 High Street Wootton Bassett
- Mr N Burden 5 High Street Wootton Bassett
- Mr M Lympany 6 High Street Wootton Bassett
- MJ & ME Penny 157 High Street Wootton Bassett
- Drs B Hardman & A Repton 158 High Street Wootton Bassett
- Miss V Munnely & Mr A Foster 164 High Street Wootton Bassett
- Mr J Wilks 159 High Street Wootton Bassett

The relevant representations are attached as **Appendix 4**

During the consultation period Mr John Freegard Senior Public Protection Officer (Pollution) held a site visit with the premises licence holder Mr Kerr. Mr Freegard's observations are attached as **Appendix 5**

On the 18<sup>th</sup> July 2011 an email was received by the Licensing Authority from Mr Kerr advising of the steps the premises licence holders will be taking to address the complaints of the residents. This is attached as **Appendix 6**

A location map of premises and surrounding area is attached as **Appendix 7**.

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.

- Removal of the No smoking sign on footpath and repositioning of this on private property inside the premises.
- Regular cleaning of footpath.
- No customers permitted to return to the premises within 2 hours.
- Music to cease at a reasonable hour especially on week days.
- SIA door stewards to control front access.
- All doors and windows to be closed with entertainment taking place.

#### **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 28<sup>th</sup> July 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 Correspondence with Premises Licence holder**
- 3 Application for a Review by Ms P Evans and Ms L Sefton**
- 4 Copies of Relevant Representations**

- 5 Observations of Mr J Freegard Senior public protection Officer**
- 6 Email from Premises licence holder advising of steps to be taken**
- 7 Location Plan of the premises and surrounding area**