

Application to review the Premises Licence for The Nine Elms, Old Shaw Lane, Swindon

Licensing Panel

Date: 9 October 2013

Author: Licensing Manager

Wards Affected: Shaw

Purpose

- To consider an application made by Mr Dennis Law, 27 Harvester Close, Middleleaze, for the review of a premises licence in respect of The Nine Elms Public House, Old Shaw Lane, Swindon, SN5 5PD.

Recommendation

The Licensing Committee is required to:

- In the light of the application, to determine any action that they deem necessary, having regard to the extensive remedial powers available.

1. Reasons

- 1.1 The Licensing Panel has a statutory duty to undertake the functions of the Licensing Authority, where these have been delegated by the Licensing Committee.

2. The Review of the Premises Licence

- 2.1 The Council must hold a review of the Premises Licence within 28 days after the day of receipt of the application and reach a determination on that review. This must take place even if the Applicant asks to withdraw his/her application or representations.
- 2.2 At the hearing, the Licensing Authority must consider any steps it considers necessary for the promotion of the licensing objectives.
- 2.3 The options available to the Licensing Committee are as follows:-
 - The modification of the conditions of the Premises Licence; and/or
 - The removal of one or more of the licensable activities authorised by the licence; and/or
 - The removal of the Designated Premises Supervisor from the licence; and/or
 - The suspension of the licence for a period not exceeding three months; or
 - The revocation of the licence.
- 2.4 The Committee can impose any one or a combination of the above options.

Application to review the Premises Licence for The Nine Elms, Old Shaw Lane, Swindon

Licensing Panel

Date: 9 October 2013

- 2.5 Modification of the conditions of the premises licence can include altering or modifying existing conditions or adding any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place.

3. Summary of the application

- 3.1 On 13 August 2013 The Licensing Authority for Swindon Borough Council received an application for a review of a premises licence relating to the Nine Elms, Old Shaw Lane, Swindon, SN5 5PD. The application to review the premises licence specifically relates to the licensing objective in respect of the prevention of public nuisance.
- 3.2 A copy of the application is attached as Appendix A
- 3.3 The documentation was sent to all responsible authorities and a blue notice was affixed to the premises for 28 days advertising the application as required by regulations. A copy of the blue notice is attached as Appendix B
- 3.4 The application for review application is in respect of the prevention of public nuisance. licensing objective. The application states: *'The premises plays excessively loud 'amplified' music in the garden area of pub, usually from within the marquee. The entertainment usually takes the form of live bands and pre-recorded club, dance music or discos – but they also accommodate acoustic entertainment. The pub's beer garden, with its marquee, is located to the rear of the pub within, and adjacent to a large residential area. It currently has a licence to play music and provide outdoor entertainment from 11am until 11pm 7 days per week but often extends their licence at weekends until midnight. Whilst an event might not be scheduled until later in the day, some entertainers perform sound checks on their equipment too, out of the prescribed licensed entertainment hours. This has resulted in loud music being played for an unacceptable duration usually of about 12 to 13 hours and without respite when an event is being hosted.'*
- 3.5 Full details are contained within the review application submitted by Mr Dennis Law which is attached as Appendix A of this report.

4. Background and operation of the premises

- 4.1 A premises licence was granted in respect of The Nine Elms, Old Shaw Lane, Swindon on 30 August 2005. The current premises licence is attached as Appendix C
- 4.2 The current permitted licensable activities are as follows:

Application to review the Premises Licence for The Nine Elms, Old Shaw Lane, Swindon

Licensing Panel

Date: 9 October 2013

- Sale of alcohol 10.00 hours until midnight Monday to Wednesday, 11.00 until 01.00 Thursday to Saturday and midday until 23.30 on Sundays;
- Regulated entertainment 11.00 until 23.00 every day

4.3 There have been previous complaints received by Environmental Health but no noise nuisance has been substantiated.

5. Relevant Considerations

5.1 The Licensing Act 2003 states that the licensing authority can only consider representations if they are relevant to one of the Government's four licensing objectives:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

5.2 Members may only consider matters that have been raised with them based on the grounds of the review and representations made by either the premises licence holder, the responsible authorities or 'other persons' within the prescribed consultation period. Members may not consider any other matters when making their decision.

5.3 The review in this case has been requested on the basis of the Prevention of Public Nuisance Licensing Objective.

6 Other Representations

6.1 There have been five other representations from other persons and also a petition. These are attached as Appendix D

6.2 There have also been four letters of support for the premises and these are attached as Appendix E.

7 References/Considerations

In making their decision Members must have regard to the following:-

7.1 Guidance Published by the Government under Section 182 of the Act

7.1.1 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

Application to review the Premises Licence for The Nine Elms, Old Shaw Lane, Swindon

Licensing Panel

Date: 9 October 2013

- 7.1.2 Para 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.
- 7.1.3 Para 11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.
- 7.1.4 Para 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:
- to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
 - to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
 - to suspend the licence for a period not exceeding three months;
 - to revoke the licence.
- 7.1.5 Members should have regard to the Hearings Regulations published by the Government under the Licensing Act 2003.

8. Human Rights Act 1998

- 8.1 The Human Rights Act provides that “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.” The term “possession” includes a Licence as well as a home and the things it contains.
- 8.2 The Act further provides:
- ” (1) it is unlawful for a public authority to act in a way which is incompatible with a Convention right.

Application to review the Premises Licence for The Nine Elms, Old Shaw Lane, Swindon

Licensing Panel

Date: 9 October 2013

(2) Subsection (1) does not apply to an act if-

as the result of one or more provisions of primary legislation, the authority could not have acted differently; or

in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions."

- 8.3 However, it is recognised that the Council's Statement of Licensing Policy and Statutory Guidance cannot anticipate every possible scenario or set of circumstances that may arise. Therefore subject to both the Policy and Guidance having been properly and carefully considered, licensing authorities may depart from them if they have a justifiable reason to do so. If doing so, licensing authorities will need to give full reasons for their actions.

9 Legal Considerations

- 9.1 A Premises Licence lasts for the lifetime of the business, unless it lapses due to the death or insolvency of the licence holder, is surrendered by the applicant, is suspended, or is revoked.
- 9.2 However, the Government have introduced a review mechanism where licensed premises are found to be contravening one of the licensing objectives.
- 9.3 The Statutory Guidance issued under section 182 of the Licensing Act states at 11.2, "At any stage, following the grant of a premises licence, a responsible authority, or an interested party, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives."
- 9.4 The applicant for review, holder of the Premises Licence, or any other person who made relevant representations to the application may appeal against the Council's decision to the Magistrates Court within 21 days beginning with the day on which the appellant was notified by the Council of the decision being appealed against.
- 9.5 The decision of the Council, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the appeal is disposed of. Any interim steps taken will remain in force over these periods.
- 9.6 The Statutory Guidance under section 182 of the Licensing Act 2003 states at 12.10 "It is important that licensing authorities should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could

Application to review the Premises Licence for The Nine Elms, Old Shaw Lane, Swindon

Licensing Panel

Date: 9 October 2013

itself give rise to grounds for an appeal. 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 licensing policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act.

Alternative Options

It would be possible to defer a decision or to defer the hearing itself to a later date but either step should be seen as an exceptional measure

Risk Management

Financial and Procurement Implications

There are no direct financial implications arising from the report. Failure to reach a reasonable conclusion, based on the facts, could lead to breach of the licensing objectives or to unwarranted damage to the business in question. Either scenario could raise issues of compensation. In the case of an appeal, the Council could become liable for costs. The Council provides training for Members who sit on the Licensing Committee, as one of the measures to mitigate financial risk.

Legal / Human Rights Implications A declaration has been made by the Secretary of State, that the Licensing Act is compliant with the Human Rights Act.

Links to Corporate Plans and Policies (in particular to Swindon 2010 Promises)

The determination of the application will be made in accordance with set legal principles. The exercise of licensing powers by the Panel relates particularly to the LAA outcome of reducing crime and the fear of crime.

Consultees

- No parties other than the responsible authorities have been consulted directly but there was a statutory consultation period of 28 days, following the application for review.
- The Director of Finance (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted on all reports.

Background Papers and Appendices

•

Appendix A	Review application
Appendix B	Public Notice
Appendix C	Premises Licence
Appendix D	Representations and petition

Further information on the subject of this report can be obtained from Kathryn Ashton on 01793 466113 or e-mail kashton@swindon.gov.uk.

**Application to review the Premises
Licence for The Nine Elms, Old Shaw Lane, Swindon**

Licensing Panel

Date: 9 October 2013

Appendix E Letters of support