

LICENSING HEARING PANEL

13 MARCH 2018

LICENSING ACT 2003 CONSIDERATION OF INTERIM STEPS FOLLOWING AN APPLICATION FOR SUMMARY REVIEW OF A PREMISES LICENCE

**PRINCE OF WALES, 90 CECIL ROAD, ROCHESTER, KENT
ME1 2HS**

Report from: Perry Holmes, Assistant Director Legal and Corporate Services

Author: Mandy Francis, Senior Licensing and Enforcement Officer

Summary

An application has been received from Superintendent Lukey, on behalf of the Chief Officer of Kent Police, for an Expedited Review of the premises licence at Prince of Wales, 90 Cecil Road, Rochester, Kent ME1 2HS, as the premises has been associated with serious crime and disorder.

The relevant provisions within the Licensing Act 2003 allow a quick process for attaching interim conditions to a licence and a fast track licence review when the police consider that the premises concerned is associated with serious crime or serious disorder, or both.

The Act requires expedited premises licence review applications to be considered within 48 hours, pending a full hearing of the issues within 28 days of the date that the application was served.

1. The application

- 1.1 On 12 March 2018 the Council received an application for an expedited review of the premises licence in respect of Prince of Wales, 90 Cecil Road, Rochester, Kent ME1 2HS as they consider it necessary to take interim steps pending determination of the review of the premises licence.
- 1.2 The details of the association of the above premises with serious crime, serious disorder is attached at Appendix A.

2. Background

- 2.1 The summary review powers under sections 53A to 53C of the Licensing Act 2003 allow the police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both); and allows the licensing authority to respond by taking interim steps quickly, where appropriate, pending a full review.
- 2.2 The current Premises Licence for Prince of Wales, 90 Cecil Road, Rochester, Kent ME1 2HS is held by Mr Alfred Martin and Mrs Rita Martin who are resident at the premises.
- 2.3 The Designated Premises Supervisor (DPS) is Mr Alfred Martin, who holds a Personal Licence issued by Medway Council, licence number Medway 05 PL-0071 Medway Council
- 2.4 Without prejudice, the Officer would like to draw to Members attention issues that they may wish to consider:

The following conditions are already added to the premises licence:

Mandatory Conditions

Condition 1

No supply of alcohol maybe made under this licence:-

- a) At a time when there is no designated premises supervisor in respect of it or
- b) At a time when the designated premises supervisor does not hold a personal licence or his/her personal licence is suspended.

Every retail sale or supply of alcohol made under this licence must be made or authorised by a person who holds a personal licence.

Condition 2

Only individuals licensed by the Security Industry Authority (SIA) maybe used at the premises to guard against:-

- (a) Unauthorised access or occupation (e.g. through door supervision)
- (b) Outbreaks of disorder
- (c) Damage

Condition 3

- (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale of supply of alcohol for consumption on the premises

- (a) Games or other activities which require or encourage, or are designed to require or encourage, individuals to
 - (i) Drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol) or
 - (ii) Drink as much alcohol as possible (whether within a time limit or otherwise)

- (b) Provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
- (c) Provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries significant risk of undermining a licensing objective;
- (d) Selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
- (e) Dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

Condition 4

The responsible person must ensure that free potable water is provided on request to customers where it reasonably available.

Condition 5

- (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either
 - (a) a holographic mark, or
 - (b) an ultraviolet feature

Condition 6

The responsible person must ensure that:-

- (a) Where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures:-
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25ml or 35 ml; and
 - (iii) still wine in a glass: 125ml; and
- (b) These measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
- (c) Where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

Condition 7

- (1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price, which is less than the permitted price.
- (2) For the purpose of the condition set out in paragraph 1:-
- (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979(6);
 - (b) "permitted price" is the price found by applying the formula:- $P = D + (D \times V)$ where:-
 - (i) P is the permitted price,
 - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
 - (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence:-
 - (i) the holder of the premises licence
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
 - (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
 - (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994(7)
- (3) Where the permitted price given by Paragraph (b) of paragraph (2) would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
- (4) (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph (2) on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.
- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Conditions consistent with the Operating Schedule

Condition 8

CCTV cameras installed and maintained with an incorporated recording facility. Recordings to be stored for an appropriate period (generally one month - but to be agreed with Police and Licensing Authority). The CCTV system to be fully operationally throughout the hours that the premises are open for any licensable activities. Recordings to be made available to Police and Local Authority on request.

Condition 9

Children are not allowed on the premises after 22:00 (10pm).

Condition 10

A notice is displayed at the entrance/exit of the premises to remind customers to leave the premises quietly.

Condition 11

Recorded Music events ceasing at 00:30 will be limited to 5 days a year.

Annex 3 – Conditions attached after a hearing by the licensing authority

Condition 12

When regulated entertainment, which generates significant noise, is taking place, doors and windows will be kept shut after 23:00 (11pm).

Condition 13

All staff to be trained to the BIIAB Level 1 Responsible Alcohol Retailing Qualification in order to support the DPS and Personal Licence Holder to retail alcohol responsibly and within 21 days. Evidence must be available to the Licensing Team and Police that staff have been enrolled on such courses.

Condition 14

A record of regular staff training be kept and updated by the management of the premises. The records to be made available for inspection to Police and other relevant authorities upon request.

Condition 15

A refusals and incident log be kept and maintained by management and staff at the premises. To be made available for inspection to Police and other relevant authorities upon request.

Condition 16

A Personal Licence Holder to be present on the premises at any time the premises is open for business.

Condition 17

All customers appearing to be under the age of 21 are required to provide proof of age before being supplied with alcohol.

Condition 18

Maintain existing CCTV system to cover the exterior of the premises and that staff are trained on the use of such equipment.

3. Risk Management

- 3.1 The Council has to consider and determine this application, which is a function relating to licensing and registration as set out in Schedule 1 to the Functions Regulations, the Licensing Act 2003, Gambling Act 2005 and other licensing functions reserved by law to the Council's Licensing and Safety Committee and its Sub-Committees, in accordance with the law (both statutory and case law), relevant statutory guidance and statements of policy.

4 Financial and legal implications

- 4.1 There are no direct financial requirements at this time.

- 4.2 This hearing is regulated by The Licensing Act 2003 (Hearings) Regulations 2005 (as amended).
- 4.3 There is the possibility of a challenge by way of appeal to the decision by either the applicant or objector. Legal advice will be given to members as appropriate at the hearing. However, whatever the decision of the panel members, this must be based on the evidence placed before it and the panel must decide what weight to attribute to this information.

5. Recommendations

- 5.1 Having regard to Licensing Act 2003, the statutory guidance issued under S182, the Council's Licensing Policy and all matters before it, both written and oral, The interim steps the Panel must consider taking are:

- (a) the modification of the conditions of the premises licence;

(Modification of the conditions of the premises licence can include the alteration or modification of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place. Further examples of possible licensing conditions, including those aimed at tackling crime and disorder, can be found in the amended guidance issued under section 182 of the 2003 Act.)

- (b) the exclusion of the sale of alcohol by retail from the scope of the licence;

- (c) the removal of the designated premises supervisor from the licence;

- (d) the suspension of the licence

Lead officer contact:

Mandy Francis – Senior Licensing and Enforcement Officer
Telephone: 01634 331922 Email: mandy.francis@medway.gov.uk

Appendices

Appendix A – Certificate
Appendix B – Application for Summary Review
Appendix C - Photographic Evidence (Exempt Item)

Background papers

None

Kent Police
Force Headquarters, Sutton Road, Maidstone, Kent ME15 9BZ

CERTIFICATE UNDER SECTION 53A (1) (b) OF THE LICENSING ACT 2003

I hereby certify that in my opinion the premises described below are associated with serious crime.

Premises:

Prince of Wales, 90 Cecil Road Rochester ME12QT

Premises licence number (if known): MEDWAY-05-PREM-0003

Name of premises supervisor (if known): Mr Alfred Martin

I am a Superintendent in the Kent Police Force

I am giving this certificate because I am of the opinion that the premises are associated with serious crime and that other procedures under the Licensing Act are inappropriate.

Although the premises have not come to the attention of the licensing committee before, Kent Police Licensing have been monitoring this premises for some time with regards to drug use concerns and non-compliance of the premises licence namely: operating beyond licenced hours. The nature of this offence is so serious as to justify the immediate decision to call an expedited review. Other powers under the licensing act, or other acts, are not appropriate and do not address the issue with immediate effect, a standard licence review would not suffice as it will take 28 days to come to hearing and may be appealed prior to application. Allowing the public house to continue operating will fuel the risk of further serious crime occurring before sufficient measures can be put into place to allay such fears.

The benefits of dealing with this by way of an expedited review allows an interim step of suspension to apply immediately, thereby safeguarding members of the public and preventing further offences.

On Saturday 10th March 2018 at approximately 01:20 hours police were called to reports of a violent disturbance occurring inside the Prince of Wales public house. As a result of the disturbance a male has received a significant head injury having been cut from the top of the head down the left side of the face, passing close to the eye and down the cheek ending just shy of the jaw bone resulting in over a litre of blood loss and requiring 40 stitches. At this stage it is suspected that a large knife or machete was used as a weapon to cause the injury and the suspect is currently unknown. CCTV at the venue was not recording at the time of the incident. This amounts to a breach of condition attached to the premises licence. The lack of CCTV could have potential implications in this investigation regarding the identification of the offender and evidence of the offence.

The premises is licenced to sell alcohol each Friday and Saturday from 10:00 - 00:00 and opening hours are 10:00 - 00:30. This incident occurred whilst the venue was operating outside licensable hours, again in breach of the premises licence.

The crime scene (bar area and blood) was cleaned by staff prior to police arrival potentially hindering the investigation and possible forensic opportunity.

Kent Police are of the opinion that if the premises were to remain open to the public it may be a flashpoint for further incidents of serious crime and disorder. Furthermore, the Police wish to see this premises closed until a full review of the facts can be undertaken by the

Council Licensing Committee with regard to the management of the premises. This enables consideration to be given as to whether further controls are required at the premises so as to prevent serious crime and disorder. Until this consideration is undertaken the Police consider that there is a risk of serious crime and disorder reoccurring at the premises.

Given the above Police are seeking the temporary suspension of the premises licence followed by a full review and are of the opinion that this is the appropriate course of action under the Licensing Act 2003 to preventing serious crime and disorder from reoccurring.

Superintendent

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FORM FOR APPLYING FOR A SUMMARY LICENCE REVIEW

[Insert name and address of relevant licensing authority and its reference number (optional)]

Medway Council, Gun Wharf, Dock Rd, Chatham, Kent ME4 4TR

Application for the review of a premises licence under section 53A of the Licensing Act 2003 (premises associated with serious crime or disorder)

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing the form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. **Use additional sheets if necessary.**

I Superintendent Lukey [on behalf of] the chief officer
of police for
the North Division police area apply for the review
of a premises licence under section 53A of the Licensing Act 2003.

1. Premises details:

Postal address of premises, or if none or not known, ordnance survey map reference or description:

**Prince of Wales
90 Cecil Road
Rochester
Kent**

Post town: Rochester

Post code (if known): **ME12QT**

2. Premises licence details:

Name of premises licence holder (if known): Mr Alfred Martin

Number of premises licence holder (if known): Medway-05-PREM-0003

3. Certificate under section 53A(1)(b) of the Licensing Act 2003 [Please read guidance note 1]:

I confirm that a certificate has been given by a senior member of the police force for

the police area above that in his opinion the above premises are associated with serious crime or disorder or both, and the certificate accompanies this application.

(Please tick the box to confirm) ☒

4. Details of association of the above premises with serious crime, serious disorder or both:

[Please read guidance note 2]

On Saturday 10th March 2018 at approximately 01:20 hours police were called to reports of a violent disturbance occurring inside the Prince of Wales public house.

As a result of the disturbance:

A male has received a significant head injury having been cut from the top of the head down the left side of the face, passing close to the eye and down the cheek ending just shy of the jaw bone resulting in over a litre of blood loss and requiring 40 stitches.

At this stage it is suspected that a large knife or machete was used as a weapon to cause the injury.

The suspect is currently unknown.

CCTV at the venue was not recording at the time of the incident. This amounts to a breach of condition attached to the premises licence. The lack of CCTV could have potential implications in this investigation regarding the identification of the offender and evidence of the offence.

The premises is licenced to sell alcohol each Friday and Saturday from 10:00 - 00:00 and opening hours are 10:00 - 00:30. This incident occurred whilst the venue was operating outside licensable hours, again in breach of the premises licence.

The crime scene (bar area and blood) was cleaned by staff prior to police arrival potentially hindering the investigation and possible forensic opportunity.

Signature of applicant:

Date: 12 March 2018

Capacity: Superintendent - North Division

Contact details for matters concerning this application:

**Address: PC 11044 Dan Hunt - North Divisional Licensing Officer
Community Safety Unit
Medway Police Station
Purser Way
Gillingham
Kent
ME7 1NE**

Telephone number(s): 01634 792388

Email: daniel.hunt@kent.pnn.police.uk

Notes for guidance:

1. A certificate of the kind mentioned in the form must accompany the application in order for it to be valid under the terms of the Licensing Act 2003. The certificate must explicitly state the senior officer's opinion that the premises in question are associated with serious crime, serious disorder or both.

Serious crime is defined by reference to section 81 of the Regulation of Investigatory Powers Act 2000. In summary, it means:

- conduct that amounts to one or more criminal offences for which a person who has attained the age of eighteen and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; or
- conduct that amounts to one or more criminal offences and involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

Serious disorder is not defined in legislation, and so bears its ordinary English meaning.

2. Briefly describe the circumstances giving rise to the opinion that the above premises are associated with serious crime, serious disorder, or both.