

Louise Dewberry

From: Neil Williamson
Sent: 08 February 2023 09:40
To: Licensing
Subject: Review of Licence - The Fox Inn, Patching

Follow Up Flag: Follow up
Flag Status: Flagged

The Licensing Authority acting as a Responsible Authority, is making representations in respect of the Review application for The Fox Inn, Patching, due to the risk of the licensing objectives being undermined.

The Licensing Act 2003 provides a clear focus on the promotion of four statutory objectives, which are:

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

Further to this, Section 1.5 of the Home Office guidance, *Revised Guidance issued under Section 182 Guidance of the Licensing Act 2003 – December 2022*, (S.182 Guidance) states:

However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:

- *protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;*
- *giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;*
- *recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;*
- *providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and*
- *encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them*

Officers have made a number of interventions at this premises since the current licence holder took over, and yet concerns regarding operations remain.

Since the licence was issued on the 15 March 2022, multiple reports of noise being caused by the premises have been received, and warnings have been issued regarding the failure to comply with the requirements of the premises licence and the Environmental Protection Act 1990.

On 9 May 2022, Licensing Officer Andrew Burrows attended the premises in company with PC Lucas of Sussex Police Licensing. Complaints had been received regarding noise from the premises.

The proprietor, S & S@The Fox Patching Ltd, had at that time just taken over the premises licence from the previous operators. The officer noted that there appeared to be an ongoing dispute with a neighbour

and management were warned that they must comply with their licence conditions and find a mutually agreed way of resolving their differences.

Visits have been made to the premises by both Licensing and Environmental Health Officers. Including, on 12 August 2022, when Licensing and Environmental Health both attended. The Environmental Health Officer advised the licensee of the action that could be taken if a statutory nuisance was found to be occurring, and recommended they employ an acoustic consultant to provide advice on noise mitigation measures. The licensee advised that he was happy to turn the music down a bit and that they were happy to work with the council.

On 25 August 2022, a letter was sent to the premises by Environmental Health advising that a nuisance had been witnessed (on 13 and 20 August) and they were given until 1 September to provide evidence of the measures that they had employed to demonstrate best practicable means, prior to a notice being served. No response was received, and an Abatement Notice was issued by Environmental Health on 7 September 2022.

On 2 and 9 December 2022 noise nuisances were witnessed by Environmental Health from loud recorded music in the marquee at the premises. Further nuisances were identified from noise recordings made on the Council's noise equipment on 10 and 15 December 2022, all of which were in breach of the abatement notice issued.

The operation of the marquee for a licensable activity on 2 and 9 December is contrary to the premises licence conditions (attached), and in particular:

In the licence under **Conditions consistent with the Operating Schedule, General Objectives**, it states,

Any condition or restriction referring to Licensable Activities outside includes the marquee. All outside Licensable Activities to encompass a marquee erected for the period 01 April to 31 October annually, for pre booked functions only.

And under **Prevention of Public Nuisance**, it states;

All regulated entertainment will end before we cease to supply alcohol - see operating schedule. Regular noise checks during performances or regulated entertainment and appropriate action taken. Customer notices re leaving the premises quietly. Outside areas kept clean and tidy. Bins emptied regularly. No drinks taken off site apart from off-sales. Regulated entertainment activities held outside to cease at 23.30 hours Friday, Saturday and Sunday. The sale, supply of alcohol conducted outside to cease at 23.30 hours. The provision of late-night refreshment outside to cease at 00.00 hours. Noise Management plan in place for the occasional, and seasonal only, use of a marquee in the gardens of the Fox Inn for pre booked functions and wedding receptions.

Section 11.18 of the S.182 Guidance states:

‘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.’

On 7 December 2022, a warning letter was sent to operator by Licensing, regarding the use of the marquee. The letter reads:

Re: Alleged breach of premises licence 6672. Use of Marquee.

The purpose of this letter is to advise you that it has come to the Authority’s notice that the Marquee erected at your premises is being used contrary to the conditions of your premises licence.

The premises licence permits the use of the marquee between the 1st of April and the 31st of October and for pre-booked functions only. Use outside of these dates, without authorisation, would be a breach of your premises licence. The penalty for breaching a premises licence is 6 Months imprisonment, an unlimited fine or both.

The use of the marquee, should you be using it for licensable activities, is to cease immediately. Failure to comply could result in enforcement action being taken against you, the designated premises supervisor or staff operating within the marquee. Enforcement action could include a review of your premises licence and, or prosecution.

A copy of this letter has also been mailed to the designated premises supervisor.

If you wish to discuss the contents of this letter, or if there is anything you do not understand, please contact me.

Yours Sincerely

Andy Burrows
Licensing Officer

In a subsequent telephone conversation with Mr Boxall, one of the Directors of the company operating the business, Mr Boxall stated to the Licensing Officer that the premises had pre-planned events for the marquee and that regardless of the premises licence conditions, he was willing to hold the events and face the consequences. He further stated that the events were necessary to keep the business operating.

It is evident that the purpose of this Review is to seek the premises licence holder to comply with the conditions of their premises licence and to permit their neighbours to have enjoyment of their property.

Section 11.19 of the S.182 Guidance states:

Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- *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;*
- *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);*

- *remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
- *suspend the licence for a period not exceeding three months;*
- *revoke the licence*

Whilst there have been clear breaches of the premises licence conditions, and a persistent failure by the licensee to uphold the licensing objectives, the Licensing Authority does not seek the revocation of the premises licence. However, a period of suspension is considered appropriate under the circumstances.

Authorities have highlighted some key issues which are having an impact on the local community, and the licence holder has failed to adequately respond to informal interventions, making it necessary to seek more formal resolution to ensure promotion of the licensing objectives.

Suspension of the premises licence would not only act as a deterrent to irresponsible operation of the business, but would allow time for the licence holder to review procedures and take action to effectively remedy the issues identified.

Modifying the conditions of the premises licence alone is unlikely to remedy the concerns, given the disregard the licensee has already shown for the conditions attached to their licence. However, if Committee is minded to, options such as reducing the hours or days on which outdoor entertainment is permitted, or excluding certain licensable activities outdoors altogether, from the scope of the licence, as well as any conditions that Environmental Health may wish to recommend in relation to noise mitigation, for example relating to commissioning of a noise assessment and installing sound insulation, could be considered to address noise concerns.

Further guidance on use of conditions can be found at Section 1.16 of the S.182 Guidance which states:

Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met;
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format

Neil Williamson
Environmental Health Team Manager, Technical Services

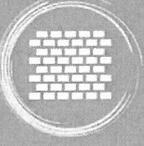
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