

Licensing Sub-Committee

9 November 2021

Application to Review the Premises Licence of Ye Olde Two Brewers Inn, Shaftesbury

For Decision

Portfolio Holder: Cllr L Miller, Customer and Community Services

Local Councillor(s): Cllrs D Beer and T Cook

Executive Director: J Sellgren, Executive Director of Place

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Report Status: Public

Recommendation: The Sub-Committee determines the application in the light of written and oral evidence and resolves to take such steps as it considers appropriate and proportionate for the promotion of the licensing objectives of;

- a) The prevention of crime and disorder
- b) The prevention of public nuisance
- c) Public safety
- d) The protection of children from harm

Reason for Recommendation: The Sub-Committee must consider the oral representations and information given at the hearing before reaching a decision.

1. Executive Summary

An application has been made to review the premises licence for Ye Olde Two Brewers Inn in Shaftesbury. The application has been out to public consultation and has attracted relevant representations. A Licensing Sub-Committee must consider the application and representations at a public hearing.

2. Financial Implications

Any decision of the Sub-Committee could lead to an appeal by any of the parties involved that could incur costs.

3. Climate implications

None

4. Other Implications

Public Health and Community Safety

5. Risk Assessment

Having considered the risks associated with this decision, the level of risk has been identified as:

Current Risk: Medium

Residual Risk: Medium

6. Equalities Impact Assessment

Not Applicable

7. Appendices

Appendix 1 - Review Guidance

Appendix 2 - Application

Appendix 3 - Licence

Appendix 4 - Submission by Licence Holder and Freeholder

Appendix 5 - Representations Supporting the Review

Appendix 6 - Representations Supporting the Licence

8. Background Papers

[Licensing Act](#)

[Live Music Act](#)

[Section 182 Guidance](#)

[Dorset Council Licensing Policy](#)

9. Details of the Application

9.1. Section 51 of the Licensing Act gives any person the right to apply for a review of a premises licence.

9.2. On the 21 September Patrick Riley applied to review the premises licence

9.3. The grounds for the review within the application form is: -

Regular, frequent live music in garden of Two Brewers pub

Amplified music regularly exceeding 75dB

Music is audible outside and inside homes in a wide radius, up to 1.5 miles

Events are having a distressing effect on residents and are entirely inappropriate in a quiet residential area of historical importance.

Serious noise pollution dominating entire area, people prevented from enjoying the amenity of their gardens

Rowdy behaviour of pub's customers in St James' St on nights when live entertainment is put on.

The full application with these reasons amplified is at appendix 2 of the report.

9.4. Mr Riley served the application on the licence holders and it has been advertised on the site and on the Council's web pages, in line with Regulations.

9.5. The premises have been licensed under the Licensing Act since 2005 and before that had a Justices Licence under the 1964 Licensing Act. The Licence was transferred to the current licence holder in September 2020.

9.6. The licence is included at appendix 3 of the report and permits (amongst other activities): -

Live and Recorded Music (indoors and outdoors)

Monday to Thursday 19:00 to 22:30

Friday and Saturday 12:00 to 22:30

Sunday 15:00 to 21:00

10. Submission from Licence Holder

10.1. The Licence Holder and the Solicitor for EI Group who hold the freehold for the building have made submissions which are included in full at appendix 4.

11. Responsible Authorities

11.1. Section 13 of the Licensing Act 2003 contains the list of Responsible Authorities who must be consulted on each application. Dorset Police, Dorset and Wiltshire Fire Service, Public Health Dorset, the Immigration Authority, Dorset Council Trading Standards, Dorset Council Children's Services and Dorset Council Health and Safety Team have all been consulted and offered no representations or comments on this application.

11.2. Planning have not made a representation but have commented that any permanent structures, such as shelters, or outside bars may require planning permission as the building is Grade II Listed.

11.3. Environmental Protection have also not made a representation but have commented; -

A noise nuisance investigation has been carried out for Mr Riley. (referred to in point 5 of his review.)

A full investigation has been carried out and whilst the noise is an annoyance to Mr Riley it does not amount to statutory nuisance under the definition of the act. Environmental Health have also considered the investigation against the Antisocial Behaviour Crime & Policing Act 2014 provisions, and we believe the behaviour of the premises does not meet the legal tests to enable further action under this Act either. Mr Riley has been informed he can take his own action under section 82.

12. Representations from other bodies and other persons

12.1. There have been 112 representations from other persons including one from the Town Council.

12.2. Shaftesbury Town Council have commented; -

Officer report 1021PH6 was received and it was RECOMMENDED to Dorset Council that Shaftesbury Town Council notes the concerns on both sides and request that Dorset Licensing consider the matter with sensitivity and that the licensee review on an event-by-event basis the sounds emanating from the premises to reduce any public nuisance. To refer to the licencing department the Council's feeling is that the current frequency of outdoor events is too high.

12.3. Twelve representations of support for the review were received and they are attached in full at appendix 5.

12.4. A further 99 representations were received supporting the pub and the current licence holders. The letters are included in full at appendix 6.

12.5. The representations contain some matters which do not directly relate to the review which is purely focussed on the provision of outside live and recorded music and the resulting disturbance from that entertainment in the garden area of the premises.

13. Considerations

13.1. All applications and decisions are made with due regard to the [Licensing Act 2003](#) (the Act), the [Revised Guidance issued under Section 182 of the Licensing Act 2003](#) (the Guidance) and the [Dorset Council Statement of Licensing Policy](#) (the Policy).

13.2. Chapter 11 of the Guidance on Reviews is contained in full at appendix 1 of this report. Paragraphs 11.1 and 11.2 the Guidance states that

The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.

At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.

13.3. Paragraphs 11.16 to 11.17 and 11.19 to 11.23 of the Guidance sets the powers of the Authority should decide what actions are appropriate.

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.

The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting 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.

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.

In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

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 an appropriate means of promoting the licensing objectives or preventing illegal working. 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 appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

13.4. Section 13 of the Policy contains guidance on how the Authority will deal with enforcement and reviews. Paragraph 13.1 states; -

The Licensing Act contains measures to ensure that the council, and responsible authorities, are able to deal with premises that wilfully and persistently undermine the licensing objectives. The council and responsible authorities are committed to encouraging a thriving day time and night-time licensed economy but will not tolerate those premises whose activities break the law or infringe upon the quality of life for local residents and businesses.

13.5. Paragraph 13.9 states

The council will seek to establish the cause or causes of the concern and remedial action will be targeted at such causes. Any action will be proportionate to the problems involved.

13.6. The Live Music Act 2012 inserted s177A into the Licensing Act. This allows that on a Review of a premises the Licensing Authority may (without any prejudice to any other steps available to it under the Act) add a statement to any condition that the provisions of the Live Music Act do not apply to the said condition.

13. Recommendation

13.1. The Sub-Committee determines the application in the light of written and oral evidence and resolves to take such steps as it considers appropriate and proportionate for the promotion of the licensing objectives of;

- a) the prevention of crime and disorder
- b) the prevention of public nuisance
- c) public safety
- d) the protection of children from harm.

13.2. Any steps that the Sub-Committee consider should relate to the issues raised in the review, in this case the music outside. The steps that the Sub-Committee may take are:

- a) take no action
- b) modify the conditions of the licence
- c) exclude a licensable activity from the scope of the licence
- d) remove the designated premises supervisor
- e) suspend the licence for a period not exceeding three months, or,
- f) revoke the licence.

13.3. The Sub-Committee should also consider whether to apply a statement to any of the conditions currently on the licence, or, imposed as a result of the review, to disapply the provisions of the Live Music Act 2012.

Footnote:

Issues relating to financial, legal, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.