

# Licensing Sub-Committee

## Premise Licence Appeal Hearings – Review of Premises Licence

23 February 2012

### Report of the Head of Public Protection and Development Management

#### PURPOSE OF REPORT

The purpose of this report is to provide an outline of an application for the review of a Premises Licence in relation to Chapel, 11 Horsefair, Banbury and detail the representations received from relevant authorities that has resulted in a hearing to determine the application.

This report is public

#### Recommendations

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There is no recommendation. In considering the application received and what is appropriate for the promotion of the licensing objectives, the options open to the Sub-Committee are, in broad terms:

1. modify the conditions of the Premises Licence;
2. exclude a licensable activity from the scope of the Premises Licence;
3. remove the Designated Premises Supervisor from the Premises Licence;
4. suspend the Premises Licence for a period not exceeding three months;
5. revoke the Licence;
6. any combination of the above;
7. none of the above.

#### Executive Summary

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##### Introduction

- 1.1 On 06 January 2012, the Licensing Authority received an application for the review of the premises licence held in respect of The Chapel, 11 Horsefair, Banbury.
- 1.2 The Licensing Act 2003 provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.

- 1.3 The licensing objectives are:
- The prevention of crime and disorder.
  - Public safety.
  - The prevention of public nuisance.
  - The protection of children from harm.
- 1.4 The application was made by Laura Morris, Licensing Officer on behalf Thames Valley Police who are the Responsible Authority with responsibility for the Crime & Disorder objective under the Licensing Act 2003.
- 1.5 The application regards concerns that the Premises Licence Holders are not promoting the Prevention of Crime and Disorder
- 1.6 A copy of the review application which gives details of the grounds for review and supporting documentation is to be found at **Appendix 1** of this report.
- 1.7 In accordance with the regulations of the Licensing Act 2003, the Licensing Authority displayed the Notice of Review for a period of 28 days starting from the day after the date on which the application was served. The notice was displayed at the premises in question and at Cherwell District Council offices.
- 1.8 The consultation period for the review ended on 03 February 2012.
- 1.9 During the consultation period a response was received from Oxfordshire Fire and Rescue Service stating that they had no adverse comments to make. A copy of the response is attached as **Appendix 2** to this report
- 1.10 On 10 January 2012, email notification was received from Mr John Birch informing us that he will be advising Friday's Daventry. A copy of this email is attached as **Appendix 3** to this report.
- 1.11 On 10 January 2012 Laura Morris of the Thames Valley Police Licensing department discussed with Natasha Barnes, Licensing & vehicle Parks Manager the fact that the premises licence had previously been the subject of a review application. Although the premise was trading under a different name and under a previous Management structure, for completeness Laura Morris submitted by email an updated page 5 to the review application. A copy of this email and the amended page 5 is attached as **Appendix 4** to this report.
- 1.12 The new page 5 was forwarded to the Premises Licence Holder and all of the relevant responsible authorities and John Birch confirmed by email his acceptance of the service of amendment. A copy of this email is attached as **Appendix 5** to this report.

## **Background Information**

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- 2.1 The current Premises Licence holder (PHL) is Fridays Banbury Ltd of 12 High Street, Daventry, Northamptonshire, NN11 4HT.
- 2.2 The current Designated Premises Supervisor (DPS) in respect of this premises licence is Ryan Thomas Williams-Mold.

- 2.3 A copy of the current Premises Licence that is in force which gives details of the licensable activities permitted and the conditions attached to it is attached as **Appendix 6** to this report.
- 2.4 A location map of the premises is attached as **Appendix 7** to this report.
- 2.5 The premises licence first came into force on 24 November 2005 and was originally held by Reginald Howe and David James Davies. The licence was granted further to an application under Grandfather Rights to convert and vary the various existing Justices and Public Entertainment Licences held in respect of the premises.
- 2.6 During the consultation period for the conversion and variation, Thames Valley Police made a representation stating that they did not object to the granting of the licence subject to the addition of 8 conditions from the Pool of Conditions to promote the Crime and Disorder Licensing Objective.
- 2.7 These conditions required that the licence holder become actively involved in a PubWatch Scheme, instigate a proof of age scheme and install CCTV with further various conditions relating to the use of the CCTV and management of CCTV data.
- 2.8 Reginald Howe confirmed his agreement of the conditions and the Premises Licence was duly granted.
- 2.9 On 17 November 2005, a Variation application was submitted by Bower & Bailey Solicitors on behalf of their clients. The variation application submitted requested for the following condition to be removed;
- No person shall be admitted or re-admitted to the premises after 01:00 on a Thursday, Friday or Saturday or after midnight on a Sunday so as to permit admission and re-admission up to 30 minutes before the premises closes to the public and no person shall be admitted or re-admitted after such time.***
- 2.10 Both Thames Valley Police and Environmental Protection made representations against the granting of the variation on the grounds that the licensing objectives of prevention of crime and disorder and the prevention of public nuisance respectively could not be achieved.
- 2.11 Further to discussions all parties agreed to have a “last admission” time of 02:00am with the application of further condition to promote the licensing objectives. These conditions included the development of queue management and dispersal policies, use of door supervision, staff training and notices displaying any entry restrictions.
- 2.12 The variation to the Premises Licence was duly granted subject to the agreed amendments and conditions.
- 2.13 On 02 February 2006, a Variation application was submitted by Reginald Howe and David James Davies. The variation application submitted requested that the plans be amended to reflect the movement of the Bar further to a refit of the premises.

- 2.14 No representations were received during the consultation period and the variation to the Premises Licence was duly granted.
- 2.15 On 18 April 2006, an application was received to vary the person named as the DPS from David James Davies to Reginald Howe.
- 2.16 No representations were received during the consultation period and the variation to the Premises Licence was duly granted.
- 2.17 On 19 January 2006 a letter was received from the PLH to notify the Licensing Authority that the premises would no longer be known as "52 Degrees North" and would now be called "Confessions"
- 2.18 On 09 May 2006, an application was received to transfer Premises Licence from Reginald Howe and David James Davies into the sole name of Reginald Howe.
- 2.19 No representations were received during the consultation period and the transfer of the Premises Licence was duly granted.
- 2.20 On the 09 June 2007, the Licensing authority received an application for the review of the Premises Licence from Oliver Wright, Licensing Officer on behalf of Thames Valley Police.
- 2.21 The grounds for the application for review were;

***Confessions has been operating to the detriment of, and has been failing to uphold, the following licensing objectives:***

- ***The prevention of crime and disorder***
- ***The protection of children from harm***

- 2.22 During the consultation period the Licensing Authority received a Notification of Interest from Arrow Pubs Ltd who stated they had a legal interest in the premises as a freeholder or leaseholder. The Notification was authorised for 1 year in accordance with the Licensing Act 2003.
- 2.23 The Licensing Sub-Committee met on 1 August 2007 to determine the application for review. All parties were given an opportunity to present evidence and the Sub-Committee determined to:

**Decision**

- ***Suspend licence for a period of six weeks***
- ***On resumption amended conditions***

**Conditions**

- 1) ***Replace condition 14 with an absolute ban on drinks promotions***
- 2) ***All persons entering the premises who do not appear to be 21 years of age shall be required to produce age identification before they shall be admitted to the premises.***

**Reasons**

***The sub-committee has limited its consideration of this review to the relevant evidence that has been produced in the review documents and the bundles that have been presented this morning. The evidence shows considerable problems associated with persons who resort to***

***this property and these problems appear in many cases to be despite involvement of the management of the premises.***

***The sub-committee would expect an operation such as this to have a proper management policy in existence but this does not appear to have been so. Indeed some of the examples of practices introduced recently are practices that are automatically included in policies elsewhere. However, even with the new practices the recent test purchase shows a failure to properly identify an under-age person by both door staff and bar staff. The Premises Licence Holder needs to seriously consider how these premises are to be managed in the future.***

***The sub-committee did consider whether the Designated Premises Supervisor should be replaced but felt that this was an insufficient sanction to the evidence presented. However, relieving the Premises Licence Holder of the legal requirements imposed on a Designated Premises Supervisor may be a suitable option for Premises Licence Holder to consider for the future management of the premises.***

***The sub-committee felt that a measure of suspension was the only sanction that was appropriate to the circumstances presented at the hearing. In fixing the period of suspension the sub-committee took into account the potential financial hardship that would be encountered by the Premises Licence Holder and balanced this against the need for an appropriate sanction. The changes to the conditions reflect, in the first case, the offer made by the Premises Licence Holder and, in the second, a stronger version of the practice recently adopted at the premises. The sub-committee did not feel that a minor amendment of the licensing hours would make any real change.***

- 2.24 On 19 September 2007, an application was received to transfer Premises Licence from Reginald Howe into the sole name of Xhetan Bushi. A simultaneous application was also received to vary the person named as the DPS from Reginald Howe to Xhetan Bushi. The applications also confirmed that the premises would no longer be known as "Confessions" and would now be known as "Arena".
- 2.25 No representations were received during the consultation periods for either of the applications and both the transfer and the variation to the Premises Licence was duly granted.
- 2.26 On 13 November 2008, an application was received to transfer Premises Licence from Xhetan Bushi into the sole name of Dritan Heta. The application also confirmed that the premises would no longer be known as "Arena" and would now be known as "The Cross Venue".
- 2.27 No representations were received during the consultation period and the transfer of the Premises Licence was duly granted.
- 2.28 During the consultation period, on 18 November 2008, an application was received to vary the person named as the DPS from Xhetan Bushi to Dritan Heta.

- 2.29 No representations were received during the consultation period and the variation to the Premises Licence was duly granted.
- 2.30 Also on 18 November 2008 a Variation application was submitted by Dritan Heta. The variation application submitted requested the addition of Live Music and Boxing and wrestling licensable activities, to extend the hours at Bank Holidays and to remove the condition relating to drinks promotions.
- 2.31 Both Thames Valley Police and Environmental Protection made representations against the granting of the variation on the grounds that the licensing objectives of prevention of crime and disorder and the prevention of public nuisance respectively could not be achieved.
- 2.32 Further to discussions all parties agreed to the application of further conditions to promote the licensing objectives. These conditions included:
- the development of a policy in relation to drinks promotions and refusal policy;
  - the removal of a permission to hold underage parties on a Friday evening;
  - a latest admission time of 1 hr prior to the cessation of licensable activities;
  - a minimum requirement for door supervision levels at particular days and times;
  - no “unlimited drinks” promotions;
  - ensure that a personal licence holder is on duty at the premises at all times;
  - further CCTV conditions; and
  - a restriction on the hours for boxing and wrestling entertainment to 18:00 – 22:00hrs, limited to 3 events per month, with 10 days prior notification to the police.
- 2.33 The variation to the Premises Licence was duly granted subject to the agreed amendments and conditions.
- 2.34 On 19 March 2009 the Licensing Authority received a Notification of Interest from Arrow Pubs Ltd who stated they had a legal interest in the premises as a freeholder or leaseholder. The Notification was authorised for 1 year in accordance with the Licensing Act 2003.
- 2.35 On 12 June 2009, an application was received to transfer Premises Licence from Dritan Heta into the name of Arrow Pubs Ltd.
- 2.36 No representations were received during the consultation period and the transfer of the Premises Licence was duly granted.
- 2.37 On 04 September 2009, an application was received to transfer Premises Licence from Arrow Pubs Ltd into the name of Fridays Banbury Ltd. A simultaneous application was also received to vary the person named as the DPS from Dritan Heta to Ryan Thomas Williams-Mold. The applications also confirmed that the premises would no longer be known as “The Cross Venue” and would instead be known simply by its address, 11 Horsefair, for licensing purposes.

- 2.38 No representations were received during the consultation periods for either of the applications and both the transfer and the variation to the Premises Licence was duly granted.
- 2.39 On 18 September 2009 a Variation application was submitted by Fridays Banbury Ltd. The variation application submitted requested a change of the capacity limit condition, removal and replacement of conditions on the premises licence and extension to the permitted hours for sale of alcohol.
- 2.40 Thames Valley Police made a representation against the granting of the variation on the grounds that the licensing objective of prevention of crime and disorder could not be achieved.
- 2.41 Further to discussions all parties agreed to the application of further conditions to promote the licensing objectives. These conditions included:
- that the DPS would be contactable at all times;
  - further CCTV requirements to cover all external areas;
  - an amendment to the minimum requirement for door supervision levels at particular days and times; and
  - a requirement for a Youth Policy in respect of under 18 events.
- 2.42 Further to a meeting between Thames Valley Police and Ryan Thomas Williams-Mold on 11 November 2010 and subsequent email correspondence, Fridays Banbury Ltd agreed to submit a minor variation to volunteer further conditions agreed with Thames Valley police to be added to the Premises Licence.
- 2.43 The application for Minor Variation to the Premise licence was received on 11 January 2011. The minor variation application submitted requested conditions relating to
- the use of polycarbonate glassware;
  - the use of intoximeters for under 18s events;
  - extra bins in public areas;
  - regular toilet and fire exit checks;
  - completion of door book recording all incidents relating to the venue;
  - continuation of new door staffing policy as agreed with Thames Valley Police; and
  - use of 2 glass collectors on Saturday nights and other busy nights.
- 2.44 The minor variation to the Premises Licence was duly granted subject to the agreed amendments and conditions.
- 2.45 On 10 June 2011 a Variation application was submitted by Fridays Banbury Ltd. The variation application submitted requested to extend opening hours for all licensable activities until 04:00 am on Thursdays, Fridays and Bank Holiday Sundays, to run youth events until midnight and to add the licensable activities of performance of dance and late night refreshment.
- 2.46 No representations were received during the consultation period and the variation to the Premises Licence was duly granted.

## **Key Issues for Consideration/Reasons for Decision and Options**

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3.1 The Licensing Act 2003 states that all licensing matters must promote the four Licensing Objectives, they are:

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

3.2 Guidance issued under Section 182 of the Licensing Act 2003 states:

*Each objective is of equal importance. It is important to note that there are no other licensing objectives, so that these four objectives are paramount considerations at all times. But 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:*

- *the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting licensed premises of entertainment;*
- *the introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet customers' expectations;*
- *greater choice for consumers, including tourists, about where, when and how they spend their leisure time;*
- *the encouragement of more family friendly premises where younger children can be free to go with the family;*
- *the further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns and cities.*

3.3 The relevant sections of the Guidance and Licensing Authority Policy issued under the Licensing Act 2003, which are applicable to the representations for this case are as follows:

### **GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003, OCTOBER 2010:**

Sections	11.1 – 11.11	The Review Process
Sections	11.16 – 11.22	Powers of a Licensing Authority on the determination of a review
Sections	11.23 – 11.28	Reviews arising in connection with Crime
Sections	2.1 – 2.18	Crime & Disorder
Sections	10.7 – 10.18	Proposed Conditions, Consistency with Steps Described in Operating Schedule, Imposed Conditions, Proportionality, Duplication with other statutory provisions
Sections	10.19 – 10.21	Hours of Trading
Annex D		Core Principles
Annex D	Part 1.	Conditions relating to the prevention of crime & disorder

**CHERWELL DISTRICT COUNCIL STATEMENT OF LICENSING POLICY,  
JANUARY 2010:**

Page 1	Policy GN 1	Section 1.1.1	Objectives
Pages 3 - 4	N/A	Sections 2.5.1 – 2.5.13	Fundamental Principles
Page 8	N/A	Sections 2.10.1 – 2.10.2	Non-Licensing Issues
Page 19 - 20	Policies LA 5	Sections 7.3.12	Addressing Local Concerns
Page 21	Policy LA 6	Section 7.3.13	General Management and Control
Pages 30 – 31	Policy DPS 1	Sections 7.6.1 – 7.6.5	Designated Premises Supervisor
Page 40	Policies RE1 – RE4	Sections 10.1.1 – 10.1.3	Reviews

Members have been issued with copies of the Guidance, the Statement of Licensing Policy and the Council's pool of conditions and are asked to bring them with them to the meeting.

The following options have been identified. The approach in the recommendations is believed to be the best way forward

- Option One**                      Modify the conditions of the Premises Licence;
  
- Option Two**                      Exclude a licensable activity from the scope of the Premises Licence;
  
- Option Three**                      Remove the Designated Premises Supervisor from the Premises Licence;
  
- Option Four**                      Suspend the Premises Licence for a period not exceeding three months;
  
- Option Five**                      Revoke the Licence;
  
- Option Six**                      Any combination of the above;
  
- Option Seven**                      None of the above.

The Licensing Act 2003 at Section 52, Paragraph 11 states:

*“A determination under this section does not have effect-  
(a) until the end of the period given for appealing against the decision, or  
(b) if the decision is appealed against, until the appeal is disposed of.”*

Schedule 5 of the Act, Section 9 Paragraph 2 states

*“An appeal under this Part must be commenced by notice of appeal given by the appellant to the justices' chief executive for the magistrates' court within the period of 21 days....”*

Therefore any decisions taken at the Review Hearing by the Licensing Sub-Committee will not take effect until the period within which an appeal can be brought has passed, and then following which until the determination of any such appeal.

## **Consultations**

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Full consultation in accordance with the requirements of the Licensing Act 2003 was carried out for a period of 28 days from the date of application for review, ending at midnight on 03 February 2012.

## **Implications**

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<b>Financial:</b>	There are no financial implications of this report  Comments checked by Leanne Lock, Trainee Accountant, 01295 227098
<b>Legal:</b>	The decision must comply with relevant legislation and Council Policy. All parties have a right of Appeal to the Magistrates Court against the decision Comments checked by Paul Manning, Solicitor Advocate, 01295 221691
<b>Risk Management:</b>	There is a risk that if policy and legislation has not been correctly followed, any resulting appeal could be successful.  Comments checked by Claire Taylor, Corporate Performance Manager, 01295 221563

## **Wards Affected**

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Bicester Town Ward

## **Document Information**

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<b>Appendix No</b>	<b>Title</b>
<b>1</b>	Application from Thames Valley Police for the review of a premises licence in respect of the Chapel, 11 Horsefair, Banbury
<b>2</b>	Response from Oxfordshire Fire and Rescue Service
<b>3</b>	Email from John Birch, Licensing Consultant confirming that he is advising the PLH.
<b>4</b>	Email from Laura Morris of Thames Valley Police re-submitting Page 5 of the application.

<b>5</b>	Email from John Birch, Licensing Consultant confirming his agreement with the service of re-submitted page 5.
<b>6</b>	Current Premises Licence in respect of the Chapel.
<b>7</b>	Location Map of the premises.
<b>Background Papers</b>	
Members have been issued with copies of the Guidance, the Statement of Licensing Policy and the Council's pool of conditions and are asked to bring them to the meeting.	
<b>Report Author</b>	Natasha Barnes, Licensing & Vehicle Parks Manager
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