

Licensing Sub-Committee

Agenda

Date:	Monday, 8th February, 2010
Time:	10.00 am
Venue:	Committee Suite 2/3 - Westfields, Middlewich Road, Sandbach, CW11 1HZ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Appointment of Chairman**

To appoint a Chairman for the meeting.

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests and for Members to declare if they have pre-determined any item on the agenda.

3. **Review of Premises Licence - The Fox Inn, London Road, Elworth CW11 3BF**
(Pages 5 - 22)

To consider an application for a review of the premises licence for The Fox Inn, London Road, Elworth.

For requests for further information

Contact: Julie Zientek

Tel: 01270 686466

E-Mail: julie.zientek@cheshireeast.gov.uk

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CHESHIRE EAST COUNCIL

PROCEDURE FOR HEARINGS – LICENSING ACT 2003

The Licensing Committee

The full Licensing Committee consists of fifteen elected Members of the Council. From this full Committee will be drawn sub-committees of three members to deal with licensing functions under the Licensing Act 2003. The Chairman and Vice Chairman of the Licensing Committee shall have the discretion to refer a matter up to a hearing of the full Licensing Committee.

Officers at Hearings

- **The Committee Officer** introduces all parties and records the proceedings
- **The Legal Adviser** provides independent advice to the Members on legal matters and procedure.
- **The Licensing Officer** will introduce the matter and outline the application; the officer will also answer any questions Members may have.

PROCEDURE

NOTE: If the Sub-Committee has not already elected a Chairman, that will be the first item of business.

1	Chairman	The Chairman will: (i) call the matter to be considered; (ii) call for any declarations of interest; (iii) ask all parties to introduce themselves; (iv) summarise the procedure to be followed at the hearing; (v) will consider any request made by a party for another person to appear at the hearing; (v) will advise the parties of any maximum period of time in which it has to present its case (if a maximum is imposed this shall be equal for all parties).
2	Licensing Officer	Will introduce and summarise the application, highlighting areas of contention or dispute.
3	Committee Members	May ask questions of the Licensing Officer
4	Applicant	Will present his/her case, calling witnesses, as appropriate. <i>(If necessary, applicant will produce any notices required by law. Legal Adviser will draw attention to this if required.)</i>
5	Responsible Authorities (who have made representations)	Each in turn may ask <u>questions</u> of the applicant, by way of clarification.

6	Local residents (ie. defined as “interested parties”)	To be invited to ask <u>questions</u> of the applicant, by way of clarification. <i>It is normal practice for a spokesperson only to speak on behalf of a group of residents.</i>
7	Committee Members	Each in turn may ask <u>questions</u> of the applicant.
8	Applicant	May make a <u>statement</u> or ask his witnesses to clarify any matters which he feels are unclear, or may have been misunderstood.
9	Responsible Authorities	Will make their representations.
10	Applicant	Or his representative or witnesses to ask <u>questions</u> of Responsible Authorities represented at the meeting, by way of clarification.
11	Local residents (ie. defined as “interested parties”)	May ask <u>questions</u> of the Responsible Authorities represented at the meeting, by way of clarification. (Note: This is not the point at which local residents should be stating their objections.)
12	Committee Members	May ask <u>questions</u> of the Responsible Authorities represented at the meeting
13	Local residents (ie. defined as “interested parties”)	The local residents who are objecting to the application will be invited <u>to make observations on the application</u> and present the bases of their objections.
15	Applicant	Or his representative or witnesses may ask <u>questions</u> of the Local Residents, by way of clarification.
16	Committee Members	May ask <u>questions</u> of the Local Residents.
17	Chairman	To invite both Responsible Authorities and Local Residents to make their closing addresses.
18	Applicant	Or his representative will <u>briefly summarise the application</u> and comment on the observations and any suggested conditions.
19	Committee	<u>Will retire</u> to consider the application. The Committee may request the Legal Advisor to advise on legal issues.
20	Committee	Will return to <u>give its decision</u> , with reasons, which will be announced by the Chairman and subsequently confirmed in writing to the applicant and to all the parties that made representations.

		In cases where a decision cannot be given at the end of the hearing, parties will be advised of the decision within five working days.
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Notes

1. The hearing shall normally be held in public. There may be occasions on which the Committee find it necessary to exclude members of the press and public; any such decision will be taken on the basis that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing taking place in public.
2. The Chairman may require any person behaving in a disruptive manner to leave the hearing and may (a) refuse to permit that person to return, or (b) permit him/her to return only on such conditions as the authority may specify, but any such person may submit in writing any information which they would have been entitled to provide orally if they had not been required to leave.
3. Prior to the hearing each party shall have given notification and served documentation (eg statements of witnesses or reports of experts) as required. Late representations and evidence will only be considered with the agreement of all parties.
4. Anyone entitled to be heard may be represented by any person, whether or not that person is legally qualified.
5. Hearsay will be permitted but the Sub-Committee will be reminded to give it appropriate weight.
6. Due note shall be taken of the provisions of the Hearings Regulations 2005.
7. The Chair may, in the interests of expediency or convenience of the parties, vary the procedure from time to time, provided notice is given to the parties and the rules of natural justice are observed.

SUMMARY OF PROCEDURE

- 1 Chairman appointed (if this has not been done previously).
- 2 Chairman to call for declarations of interest and request that all parties introduce themselves.
- 3 Chairman summarises the procedure for the hearing
- 4 The Licensing Officer summarises the application
- 5 Applicant to present his/her case.
- 6 Applicant to be questioned by all parties (to clarify points only) following which, he/she can clarify any other matters which he/she feels may have been misunderstood when the application was presented.
- 7 Applicant to be questioned by the Committee.
- 8 Responsible Authorities to make their representations following which they can be questioned by all parties by way of clarification.
- 9 **Local residents** (defined as interested parties) will be invited to present the bases of their objections, following which they can be questioned by all parties by way of clarification.
- 10 The applicant will be invited to sum up his/her case
- 11 Committee/Sub-Committee withdraws to make its decision
- 12 Committee/Sub-Committee returns to announce its decision to all present.

LICENSING COMMITTEE

Date of meeting: Monday 8th February 2010
Report of: Vilma Robson Licensing Officer
Title: Review of Premise Licence
The Fox Inn, London Road Elworth CW11 3BF
LAPRE/0983/05.

1.0 Purpose of Report

- 1.1 The purpose of the report is to provide details of an application for the review of a Premise Licence under section 51 of the Licensing Act 2003 (**appendix A**). It outlines the current licence authorisations together with the evidence presented by the parties in relation to the review.

2.0 Decision Required

- 2.1 The Licensing Committee is requested to:

- 2.1.1 consider the review application and any relevant representations received; and
2.1.2 determine what steps, if any it considers are necessary for the promotion of the licensing objectives.

3.0 Financial Implications for Transition Costs

- 3.1 None

4.0 Financial Implications 2010 and beyond

- 4.1 None

5.0 Legal Implications

- 5.1 Where application for a review under section 51 is made, the Licensing Authority must hold a hearing within 20 working days to consider the application and any relevant representations received.

Section 52 of the Licensing Act 2003 provides that before determining the application, the authority must hold a hearing to consider it and any relevant representations.

The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

- a) to modify the conditions of the licence;
- b) to exclude a licensable activity from the scope of the licence;
- c) to remove the designated premises supervisor;
- d) to suspend the licence for a period not exceeding three months;
- e) to revoke the licence;

6.0 Risk Assessment

- 6.1 The Police made an application for review under section 51 of the Licensing Act 2003 on the grounds of the protection of children from harm. The Committee is requested to consider what steps (if any) are required to prevent future harm to the licensing objectives.

7.0 Background and Options

Background

- 7.1 The Fox Inn applied in 2005 to convert their existing licence to a premises licence under the Licensing Act 2003.
- 7.2 The licence authorises the following activities:

Supply of Alcohol
Performance of live music
Performance of recorded music

The times the certificate authorises the carrying out of those activities are:

Monday to Wednesday	10:00 – 23:00
Thursday to Saturday	10:00 – 00:00
Sunday	11:00 – 23:30
Friday, Saturday, Sunday, Monday of all Bank Holidays, Thursday of Easter Weekend, Christmas Eve and Boxing Day – one additional hour on the finish time.	

There are 2 relevant conditions on the licence under Annex 2 – Conditions consistent with the operating schedule as follows:

- 6. All children must be accompanied by an adult
- 7. No one under the age of 16 will be allowed to enter or remain on the premises after 20.30

It is an offence under section 145 of the Licensing Act 2003 to allow an unaccompanied child to be on premises in which they are not allowed.

A copy of the licence is attached to the report (**appendix B**)

- 7.3 The police received intelligence suggesting that underage sales were taking place at The Fox Inn, London Road, Elworth. They conducted a test purchase operation at the premises on Saturday 5th December 2009 shortly after 10pm. Two underage test purchasers were served with alcohol by a member of the bar staff. This was dealt with by way of issuing an £80 fixed penalty notice to the staff member.
- 7.4 The designated premises supervisor (responsible for the sales of alcohol) Mr Kenneth John Bailey was present at the time of the test purchase.
- 7.5 In order to promote the licensing objectives at the Fox Inn, the Police are seeking a condition to be attached to the premises licence that the proof of age scheme 'Challenge 25' is operated for all sales of alcohol and that the current Designated Premises Supervisor, Kenneth John Bailey, is removed from that position.

A representation from the current Designated Premises Supervisor has been received by the authority and is also included at the end of the report (**Appendix C**).

To date in relation to the review, the council has not received any further representation from interested parties or those living in the vicinity of the premises.

- 7.6 In reviewing the Premises licence and making its decision, the Licensing Committee must have regard to the evidence of the Police in relation to the application for review, representations made by the Premises Licence holder and any representations received from responsible authorities or interested parties. The Committee is required to take such steps (if any) as it considers necessary for the promotion of the licensing objectives.

8.0 Overview of Day One, Year One and Term One Issues

8.1 Not Applicable

9.0 Reasons for Recommendation

9.1 The Committee is required, by virtue of section 52 of the Licensing Act 2003, to determine the review application made under section 51.

For further information:

Officer: Mrs V Robson Licensing Officer
Tel No: (01270) 686618
Email: vilma.robson@cheshireeast.gov.uk

Background Documents:

None

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 this 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.
You may wish to keep a copy of the completed form for your records.

I David Smethurst, on behalf of the Chief Officer of Police,

(Insert name of applicant)

**apply for the review of a premises licence under section 51 of the Licensing
Act 2003 for the premises described in Part 1 below (delete as applicable)**

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Fox Inn London Road Elworth	
Post town Sandbach	Post code (if known) CW11 3BF

Name of premises licence holder or club holding club premises certificate (if known) Punch Taverns PLC
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Number of premises licence or club premises certificate (if known) LAPRE/0983/05
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Part 2 - Applicant details

I am

Please tick yes

1) an interested party (please complete (A) or (B) below)

- | | |
|--|--------------------------|
| a) a person living in the vicinity of the premises | <input type="checkbox"/> |
| b) a body representing persons living in the vicinity of the premises | <input type="checkbox"/> |
| c) a person involved in business in the vicinity of the premises | <input type="checkbox"/> |
| d) a body representing persons involved in business in the vicinity of the
premises | <input type="checkbox"/> |

2) a responsible authority (please complete (C) below)



5) a member of the club to which this application relates (if below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick

Mr

☐

Mrs

☐

Miss

☐

Ms

☐

Other title

(for example, Rev)

Surname

First names

Please tick yes

☐

I am 18 years old or over

**Current postal
address if
different from
premises
address**

Post town

Post Code

Daytime contact telephone number

**E-mail address
(optional)**

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

Name and address

David Smethurst (on behalf of the Chief Officer of Police)
 Sandbach Police Office
 Middlewich Road
 Sandbach
CW11 1HU

Telephone number (if any)

01244 613580

E-mail address (optional)

david.smethurst7541@cheshire.pnn.police.uk

This application to review relates to the following licensing objective(s)

Please tick one or more boxes

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

☐
☐
☐
☒

Please state the ground(s) for review (please read guidance note 1)

As a result of intelligence that underage purchases of alcohol had taken place at the Fox Inn, London Road, Elworth shortly after 10p.m. on Saturday 5th December 2009 an alcohol test purchase operation was conducted by police. Two underage female test purchasers entered the premises and were served with alcohol by a member of bar staff.

This matter has been dealt with by way of issuing an £80 fixed penalty notice to the staff member.

Present when the test purchase took place was the Designated Premises Supervisor, Kenneth John Bailey. Sgt Penny Jones formed the opinion that Bailey was drunk and his attitude was belligerent and aggressive towards her. He stated that the police could do what they liked, he would continue to operate the pub how he wanted and he said he would be gone in a few months anyway.

Please provide as much information as possible to support your application.
(please read guidance note 2)

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In order to promote the licensing objectives at the Fox Inn the Police are seeking a condition to be attached to the premises licence that the proof of age scheme 'Challenge 25' is operated for all sales of alcohol and that the current Designated Premises Supervisor, Kenneth John Bailey, is removed from that position.

Have you made an application for review relating to this premises before ☐

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If yes please state the date of that application

Day Month Year

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If you have made representations before relating to this premises please state what they were and when you made them

Please tick yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate ☒
- I understand that if I do not comply with the above requirements my application will be rejected ☒

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant's solicitor or other duly authorised agent
(See guidance note 4). If signing on behalf of the applicant please state in what capacity.

Signature

Date

31st December 2009

Capacity Police Licensing Officer

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

Schedule 12

Part A

Regulation 33,34

Premises Licence

Congleton Borough Council

Premises Licence Number

LAPRE/0983/05

Part 1 – Premises Details

Postal address of premises, or if none, ordnance survey map reference or description, including Post Town, Post Code

Fox Inn
London Road
Sandbach
Cheshire
CW11 3BF

Telephone number

01270 777777

Where the licence is time limited the dates

18.03.2009 –

Licensable activities authorised by the licence

Supply of Alcohol
Performance of Live Music
Performance of Recorded Music

Times the licence authorises the carrying out of licensable activities

All permitted licensable activities

Monday to Wednesday	10:00 - 23:00
Thursday to Saturday	10.00 - 00.00
Sunday	11.00 - 23.30

Friday, Saturday, Sunday, Monday, of all Bank Holidays, Thursday of Easter Weekend, Christmas Eve and Boxing Day - one additional hour on the finish time.

The opening hours of the premises

Monday	10:00 - 23:30
Tuesday	10:00 - 23:30
Wednesday	10:00 - 23:30
Thursday	10:00 - 00:00
Friday	10:00 - 00:00
Saturday	10:00 - 00:00
Sunday	11:00 - 23:30

Friday, Saturday, Sunday, Monday, of all Bank Holidays, Thursday of Easter Weekend, Christmas Eve and Boxing Day - one additional hour on the finish time.

Where the licence authorises supplies of alcohol whether these are on and / or off supplies
Alcohol is supplied for consumption both on and off the Premises

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

Punch Taverns PLC
Jubilee House
Second Avenue
Burton On Trent
Staffordshire
DE14 2WF

Phone 01283 501600

Registered number of holder, for example company number, charity number (where applicable)

Company No.

Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol

Mr Kenneth John Bailey

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

Personal Licence Reference: LAPER/0084/09

Licensing Authority: Congleton Borough Council

Annex 1 – Mandatory conditions

- 1 No supply of alcohol may be made under the premises licence: At times when there is no designated supervisor in respect of the licence, or at a time when the designated premises supervisor does not hold a personal licence, or their licence is suspended.
- 2 Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Annex 2 – Conditions consistent with the Operating Schedule

- 1 There must be a CCTV system in good working order on the premises at all times, covering the rear car park and entrance.
- 2 A staff member will regularly attend a local pubwatch scheme.
- 3 A security alarm is fitted throughout the premises.
- 4 Pub will adhere to the smoking charter
- 5 There will be a double door entry system.
- 6 All children must be accompanied by an adult.
- 7 No one under the age of 16 will be allowed to enter or remain on the premises after 20.30.
- 8 When live regulated entertainment is taking place all windows and doors will be kept shut.

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

None

Annex 4 – Plans

The Plan 0983/05 can be viewed at the Licensing Authority.

Premises Licence Summary
Congleton Borough Council

Premises Licence Number

LAPRE/0983/05

Part 1 – Premises Details

Postal address of premises, or if none, ordnance survey map reference or description, including Post Town, Post Code

Fox Inn
London Road
Sandbach
Cheshire
CW11 3BF

Telephone number 01270

Where the licence is time limited the dates

18.03.2009 -

Licensable activities authorised by the licence

Supply of Alcohol
Performance of Live Music
Performance of Recorded Music

Times the licence authorises the carrying out of licensable activities

All permitted licensable activities

Monday to Wednesday	10:00 - 23:00
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The opening hours of the premises

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Saturday	10:00 - 00:00
Sunday	11:00 - 23:30

Friday, Saturday, Sunday, Monday, of all Bank Holidays, Thursday of Easter Weekend, Christmas Eve and Boxing Day - one additional hour on the finish time.

Where the licence authorises supplies of alcohol whether these are on and / or off supplies

Alcohol is supplied for consumption both on and off the Premises

Name, (registered) address of holder of premises licence

Punch Taverns PLC
Jubilee House
Second Avenue
Burton On Trent
Staffordshire
DE14 2WF

Registered number of holder, for example company number, charity number (where applicable)

Company No.

Name of designated premises supervisor where the premises licence authorises for the supply of alcohol

Mr Kenneth John Bailey

State whether access to the premises by children is restricted or prohibited

Restricted

In November we regrettably failed a test purchase by serving one of two girls that was under age. This is not common practice and the person that served her is normally very contentious and alert. We do, and have taken more steps to prevent this from happening;

- Cameras were installed and 2 ways radios shortly after taking over the tenancy – this helped me to liaise with my bar staff to control any possible attempt at under age drinking and any other situations that might arise if not seen and acted upon promptly.
- Staff awareness; staff are asked to check for identification if they are unsure of someone's age.
- We are now part of 'Challenge 25' – which will hopefully help to prevent this kind of social problem occurring again.

I am slowly succeeding in turning The Fox Inn into a family pub and making great efforts towards the safety and the well being of children. ie. camera's, parent children notices, language control, and I encourage respectful behaviour throughout the premises.

The Fox Inn is not now known locally for this problem due to my efforts – for the first 12 to 16 weeks of my tenancy I was constantly refusing under age and sometimes unruly young customers so that The Fox Inn could once again be a family orientated pub.

The respect that I have built over the past 10 months with the locals is tangible and I feel that a replacement DPS could interfere with the progress that has been made for The Fox Inn to become once again a safe family public house.

Yours faithfully,

K. J. Bailey.