

**MUNICIPAL YEAR 2017/18 REPORT NO.**

**COMMITTEE:**  
Licensing Sub-Committee  
16 August 2017

**REPORT OF:**  
Principal Licensing Officer

**LEGISLATION:**  
Licensing Act 2003 & Gambling Act 2005

Agenda - Part	Item
<p><b>SUBJECT:</b> Review of Club Premises Certificate</p> <p><b>PREMISES:</b> Ponders End Smallholders Association, 82A Church Road, ENFIELD, EN3 4NU.</p> <p><b>WARD:</b> Ponders End</p>	

1 **LICENSING HISTORY & CURRENT POSITION:**

1.1 On 9 August 2005, an application (under the Licensing Act 2003) by the Ponders End Smallholders Association to convert an existing Justices Club Registration Certificate to a Club Premises Certificate, which was not subject to any representations, was granted by officers in accordance with delegated powers.

1.2 On 29 September 2016, an application (under the fast track remit Gambling Act 2005) by Ponders End Smallholders Association for a new Club Machine Permit, which was not subject to any representations, was granted by officers in accordance with delegated powers.

1.3 Ponders End Smallholders Association is a long-established allotments society registered members club, which places separate obligations on the club in terms of its club rules and constitution via the Financial Service Authority (FSA). Club premises certificates are only made available under the legislation to qualifying members clubs and the club activities may be carried on for club members, bona fide guests or associate club members and their guests. Unlike the system for premises licences, the legislation allows clubs to operate licensable club activities without a designated premises supervisor (DPS) or personal licence holder(s). No general public licensable activities may take place reliant on a club premises certificate as these would need to be authorised by means of a full premises licence or else temporary event notices.

1.4 This is the first review application received for LN/200600378.

1.5 The annual fee for the Club Premises Certificate was paid on 29 June 2017.

1.6 The current Club Premises Certificate permits:

1.6.1 Hours the premises are open to the public: 24 hours daily

1.6.2 Supply of alcohol (on and off supplies): Sunday 12:00 to 22:30, Monday to Saturday 10:00 to 23:00.

1.6.3 Recorded music (indoors): 24 hours daily.

1.6.4 Late Night Refreshment (Indoors only): 23:00 to 05:00 daily.

1.7 A copy of the Club Premises Certificate is attached as Annex 1.

1.8 A copy of the Club Rules is attached as Annex 2.

1.9 A copy of a location map of the premises is attached as Annex 3.

## **2 THIS APPLICATION:**

2.1 On 23 June 2017 an application was made by a Member of the club for the review of Club Premises Certificate LN/200600378, in accordance with Section 87(1)(c).

2.2 The review application relates to the prevention of crime and disorder licensing objective and is made because of allegations that the club is carrying on illegal financial activity.

2.3 Please note that originally, the review was also based on the public nuisance licensing objective but this claim has now been withdrawn therefore the focus at the hearing must be on the prevention of crime and disorder licensing objective.

- 2.4 The Member of the Club considers that it is now appropriate, for the promotion of the licensing objectives, to withdraw the club premises certificate in its entirety, although 3-month suspension was initially asked for in the review application.
- 2.5 Each of the Responsible Authorities were consulted in respect of the application.
- 2.6 A copy of the Member's review application is attached as Annex 4.
- 2.7 Additional Information, Part 1 is attached as Annex 5.
- 2.8 Additional Information, Part 2 is attached as Annex 6.
- 2.9 In response to the review application, the Committee of the Club Premises Certificate has provided information, which is attached as Annex 7.

### **3 RELEVANT REPRESENTATIONS:**

- 3.1 **Metropolitan Police:** Representations were received in respect of this review application, however, as the Police did not support the review, those representations have now been withdrawn.
- 3.2 **Licensing Authority:** Representations were received in support of this review application, based on the prevention of crime and disorder licensing objective, namely in relation to whether the club is established and conducted in 'good faith'.
- 3.3 A copy of the representation and supporting documentation is attached as Annex 8.
- 3.4 Additional Information provided by the Licensing Authority is attached as Annex 9.

### **4 RELEVANT LAW:**

#### **Licensing Act 2003**

- 4.1 A hearing is necessary to determine the review application following receipt of relevant representations which have not been withdrawn. The Licensing Authority must carry out its functions under the Act with a view to promoting the licensing objectives, which are:
- (a) the prevention of crime and disorder;
  - (b) public safety;
  - (c) the prevention of public nuisance; and
  - (d) the protection of children from harm
- 4.2 In carrying out its licensing functions, the Licensing Authority must have regard to its Statement of Licensing Policy published under section 5 of the Act, and any guidance issued by the Secretary of State under section 182.
- 4.3 Section 6 of the Guidance (April 2017 revision – 'Guidance') issued by the Secretary of State under section 182 of the Licensing Act 2003 refers to clubs. Club Premises Certificates can only be issued to qualifying clubs. A qualifying club must satisfy the conditions set out in

sections 62 and 64 of the Licensing Act 2003 namely:

#### 4.4 Section 62 – General conditions

Condition 1 – under the rules of the club persons may not be admitted to membership or be admitted, as candidates for membership, to any of the privileges of membership, without an interval of at least two days between their nomination or application for membership and their admission.

Conditions 2 – under the rules of the club, persons becoming members without prior nomination or application may not be admitted to the privileges of membership without an interval of at least two days between their becoming members and their admission.

Condition 3 – the club is established and conducted in good faith as a club.

Condition 4 – the club has at least 25 members.

Condition 5 – alcohol is not supplied or intended to be supplied to members on the premises otherwise than by or on behalf of the club.

#### 4.5 Section 64 – additional conditions for the supply of alcohol

Additional condition 1 – the purchase of alcohol for the club and the supply of alcohol by the club is managed by a committee whose members are:

- a) members of the club
- b) have attained the age of 18 years, and
- c) are elected by members of the club

Additional condition 2 – no arrangements are, or are intended to be, made for any person to receive at the expense of the club any commission, percentage or similar payment on, or with reference to, purchases of alcohol by the club

Additional condition 3 – no arrangements are, or are intended to be, made for any person directly or indirectly to derive any pecuniary benefit from the supply of alcohol by or on behalf of the club to members or guests apart from:

- a) any benefit accruing to the club as a whole, or
- b) any benefit which a person derives indirectly by reason of the supply giving rise or contributing to a general gain from the carrying on of the club

4.6 Where it appears to an authority that a club does not satisfy the conditions for being a qualifying club, Section 90 Licensing Act 2003 requires that the authority gives notice to the club withdrawing the certificate.

4.7 The notice withdrawing the certificate takes effect immediately unless the reason for withdrawing is that the club has less than 25 members. In this case the notice must contain a statement that it does not take effect for a period of three months and it will not take effect at the end of that period if the club has more than 25 members.

#### 4.8 Further Background Legislation Licensing Act 2003:

##### Section 61 - Qualifying clubs

(1) This section applies for determining for the purposes of this Part whether a club is a qualifying club in relation to a qualifying club activity.

(2) A club is a qualifying club in relation to the supply of alcohol to members or guests if it satisfies both—

- (a) the general conditions in section 62, and
- (b) the additional conditions in section 64.

(3) A club is a qualifying club in relation to the provision of regulated entertainment if it satisfies the general conditions in section 62.

Section 63 - Determining whether a club is established and conducted in good faith

(1) In determining for the purposes of condition 3 in subsection (4) of section 62 whether a club is established and conducted in good faith as a club, the matters to be taken into account are those specified in subsection (2).

(2) Those matters are—

(a) any arrangements restricting the club's freedom of purchase of alcohol;

(b) any provision in the rules, or arrangements, under which—

(i) money or property of the club, or

(ii) any gain arising from the carrying on of the club,

is or may be applied otherwise than for the benefit of the club as a whole or for charitable, benevolent or political purposes;

(c) the arrangements for giving members information about the finances of the club;

(d) the books of account and other records kept to ensure the accuracy of that information;

(e) the nature of the premises occupied by the club.

(3) If a licensing authority decides for any purpose of this Act that a club does not satisfy condition 3 in subsection (4) of section 62, the authority must give the club notice of the decision and of the reasons for it.

#### **4.9 Gambling Act 2005**

Section 18(1) If the holder of a Club Machine Permit ceases to be a members' club, the permit shall lapse.

#### **4.10 Guidance:**

4.10.1 Section 11.11 states that if the application for a review has been made by a person other than a responsible authority (for example, a local resident, residents' association, local business or trade association), before taking action the licensing authority must first consider whether the complaint being made is relevant, frivolous, vexatious or repetitious. Further guidance on determining whether a representation is frivolous or vexatious can be found in Chapter 9 of this Guidance (paragraphs 9.4 to 9.10)

4.10.2 Section 9.4 states that it is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

4.10.3 Section 11.24 states that a number of reviews may arise in connection with crime that is not directly connected with licensable activities. Licensing authorities do not

have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

4.10.3 Section 11.25 states that reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

### **Decision:**

4.11 As a matter of practice, the Sub-Committee should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas [Guid 9.36].

4.12 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the Sub-Committee must give appropriate weight to:

4.13 the steps that are appropriate to promote the licensing objectives;

4.13.1 the representations (including supporting information) presented by all the parties;

4.13.2 the guidance; and

4.13.3 its own statement of licensing policy [Guid 9.37].

4.14 Section 88 Licensing Act 2003: Determination of application for review

(3)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.

(4)The steps are—

(a)to modify the conditions of the certificate;

(b)to exclude a qualifying club activity from the scope of the certificate;

(c)to suspend the certificate for a period not exceeding three months;

(d)to withdraw the certificate;

and for this purpose the conditions of the certificate are modified if any of them is altered or omitted or any new condition is added.

14.15 Section 90: Withdrawal of certificates, Club ceasing to be a qualifying club

(1) Where—

(a) a club holds a club premises certificate, and

(b) it appears to the relevant licensing authority that the club does not satisfy the conditions for being a qualifying club in relation to a qualifying club activity to which the certificate relates (see section 61), the authority must give a notice to the club withdrawing the certificate, so far as relating to that activity.

**Background Papers:**

**None other than any identified within the report.**

**Contact Officer:**

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