

Representation following the Application for a New Premises Licence at The Old Bridge, South Petherton TA13 5JE

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Purpose of the Report

To inform members that an application has been received from William John Blake and Elizabeth Susan Blake for a premises licence to be granted under the Licensing Act 2003 at The Old Bridge, South Petherton, TA13 5JE.

Recommendation

To determine the granting of a premises licence under the Licensing Act 2003 and in accordance with the options detailed in this report at The Old Bridge, South Petherton, TA13 5JE.

Background

The Council is the authority responsible for the issue of Premises Licences issued under Section 18 of the Licensing Act 2003.

The Licensing Manager has delegated authority to determine a Premises Licence application, subject to no objections being received from a Responsible Authority or “Other Persons”. In this case, relevant representations were received from a Responsible Authority and 7 ‘Other Persons’ in opposition to the application with 15 ‘Other Persons’ in support of the application: it is therefore necessary to convene a hearing to determine the application.

Licensing Objectives

The licensing objectives are:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

The licensing objectives are to be considered paramount and the Council has a duty to promote them in its decision making process. An application will not be refused in whole or part or any conditions attached except those offered by the applicant or required by law except where appropriate to promote the licensing objectives.

Application

A copy of the application form is enclosed with the agenda.

The details of the application are summarised as follows:

- Applicants: William John Blake and Elizabeth Susan Blake

Licensable activity applied for:

Live Music (E) Indoors and Outdoors

Day	Start Time	Finish Time
Saturday	12:00	Midnight

Seasonal Variations: None
Non-Standard Timings: None

Recorded Music (F) Indoors and Outdoors

Day	Start Time	Finish Time
Saturday	19:00	Midnight

Seasonal Variations: None
Non-Standard Timings: None

Supply of Alcohol (J) – Consumption On The Premises Only

Day	Start Time	Finish Time
Saturday	12:00	Midnight

Seasonal Variations: None
Non-Standard Timings: None

Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children. **(K)**

No adult entertainment, services, activities etc. will be provided.

Hours premises open to the public (L) – Not a licensable activity, but shown as part of the application.

Day	Start Time	Finish Time
Saturday	11:00	00:00
Sunday	00:00	01:00

Seasonal Variations: None
Non-Standard Timings: None

Additional steps put forward by the applicant to comply with licensing objectives. Please see Section M (page 10) of the application form; these steps will be turned into conditions of the licence where possible, subject to the licence being granted, and are in addition to any further conditions imposed by the Licensing Committee).

Evidence that advertising/notice requirements have been complied with:

- The Licensing Enforcement Officer has confirmed that the notice(s) were on display at the time of his visit.
- Mr Blake has confirmed that notice(s) were displayed at premises for the requisite period. A notice was placed in the Western Gazette on 27 July 2017, however due to a printing error some of the text was cut off including the last date for representations so it was re-advertised in the Western Daily Press newspaper on 04 August 2017; it was

noticed too late to appear in the Western Gazette; The Western Daily Press does circulate in this area so the advertising requirements were met. We have a copy of the advert.

Representation – Responsible Authorities

A representation was received from Paul Sanders on behalf of the Environmental Protection team

Representations – Other Persons

The 7 persons in opposition to the application were concerned that the granting of the application would have an adverse effect on their lives due to noise emanating from the premises; they also advise that they have already experienced noise problems due to the submission of Temporary Event Notices for the premises.

The 15 persons in support of the application state that they are not disturbed by the music, with two persons advising that they sleep with their window open.

One representation was received in support of the application, which was received too late to be taken into consideration; they were advised accordingly.

Relevant Observations

15 Temporary Event Notices (T.E.N's), which spanned 18 days were received for the Old Bridge events between 20 May and 02 September 2017. The Licensing Act 2003 permits up to 15 T.E.N's to be submitted per defined premises for up to 21 days in a calendar year. The person that defines the premises is the person who submits the T.E.N.; this could be for a field, garden, house etc. or any combination.

Members need to be aware that if they are mindful to grant the application and impose any conditions on a premises licence which relate to live or recorded music, that they are suspended where the following conditions are met:

- at the time of the music entertainment, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption 'on' the premises;
- if the music is amplified, it takes place before an audience of no more than 500 people; and
- the music takes place between 08.00 and 23.00 on the same day.

Upon a review of a premises licence, members do have the power to attach conditions to a licence, which effectively negate the suspension i.e. that conditions will apply at any time of the day; however a statement that section 177A does not apply must be attached to any conditions.

Members are respectfully reminded that in relation to noise, the licensing objective to be promoted is the Prevention of Public Nuisance and not Statutory or Private Nuisance. Any powers granted to the Council and delegated to Environmental Protection Officers under other legislation such as the Environmental Protection Act 1990 as amended are not affected.

Environmental Protection Officers have investigated complaints on three occasions and no type of nuisance was established, however on one of these occasions, due to the weather conditions, more noise could be heard from the close by A303.

Public Nuisance

“That any nuisance is ‘public’ which materially affects the reasonable comfort and convenience of life of a class of Her Majesty’s subjects. The sphere of the nuisance may be described as ‘the neighbourhood’; but the question of whether the local community within that sphere comprises a sufficient number of persons to constitute a class of the public is a question of fact in every case. It is not necessary, in my judgment, to prove that every member of the class has been injuriously affected; it is sufficient to show that a representative cross-section of that class has been affected for an injunction to issue”.¹

“A public nuisance is a nuisance which is so widespread in its range or so indiscriminate in its effect that it would not be reasonable to expect one person to take proceedings on his own responsibility to put a stop to it, but that it should be taken on the responsibility of the community at large”.²

Both Denning LJ and Romer LJ, in the two passages that I have read (at pages 184 and 190-1) quite plainly conclude at the end of the day that what is a public nuisance is a question of fact, namely and in particular whether, by reference to Romer LJ, there is effect on a sufficiently large number of members of the public by reference to one act or a series of acts, or, by reference to Denning LJ, such effect was sufficiently widespread or indiscriminate.

In the light of the words of Romer LJ, and the lack of approval of Denning LJ by Lord Rodger in the House of Lords, I do not read Denning LJ’s words as meaning that the effect of the public nuisance must be very indiscriminate or very widespread. It simply needs to be sufficiently widespread and sufficiently indiscriminate to amount to something more than private nuisance³.

Further Information

In determining the application with a view to promoting the licensing objectives in the overall interests of the community, the Committee must have regard to and give appropriate weight to the following considerations:

- Any relevant and valid representation (including supporting documentation received)
- The Latest Guidance issued under s182 of the Act
- The Statement of Licensing Policy issued in January 2014.
- The steps appropriate to promote the licensing objectives as set out in s18(4)
- Human Rights considerations in particular Article 6, Article 8 and Article 1 of Protocol 1

Options

The options available to the committee are stated at section 18 of the Licensing Act 2003 are as follows:

- Grant the licence subject to such conditions which are consistent with the operating schedule modified to such extent as the Authority considers appropriate for the promotion of the Licensing Objectives and any condition, which must under s19-21, be included in the licence s18(4)(a)(i)(ii) together with the current mandatory conditions.
- Exclude from the scope of the licence any of the licensable activities to which the application relates s18(4)(b)

¹ DJ Zara in Crosby Homes Ltd v Birmingham Council and Nightingale Club [2008] relied on the case of R v Rimmington, R v Goldstein [2005] UKHL 63 which approved the comments of Romer LJ in the case of Attorney General v P.Y Quarries Ltd [1957] 2 QB 169

² The case of R v Rimmington, R v Goldstein [2005] UKHL 63 approved the comments of Denning LJ in the case of Attorney General v P.Y Quarries Ltd [1957] 2 QB 169

³ Ibid (as above)

- Refuse to specify a person in the licence as the premises supervisor s18(4)(c)
- Reject the application s18(4)(d).

Right of Appeal

Schedule 5 of the Licensing Act 2003 sets out the rights and procedures for making appeals against the decision of the Licensing Authority:

Where the Licensing Authority has rejected an application for a premises licence, the applicant may appeal to the Magistrates' Court against the decision to reject.

Where the Licensing Authority has granted the licence, the holder of the licence may appeal to the Magistrates Court against any decision to impose conditions on the licence that are consistent with the operating schedule or imposed where having regard to any relevant representations, are considered appropriate to promote the licensing objectives.

Where the Licensing Authority has granted the licence subject to the exclusion of any of the licensable activities or refused to specify a person as the premises supervisor, the holder of the licence may appeal to the Magistrates Court against the decision.

Where a person who made a relevant representation desires to contend that the licence ought not to have been granted, or that on granting the licence, the Licensing Authority ought to have imposed different or additional conditions, or ought to have taken a step to exclude a licensable activity or refused to have specified a person as the premises supervisor, he may appeal against the decision to the Magistrates Court.

The appellant commences the appeal by giving a notice of appeal to the designated officer for the Magistrates' court within 21 days beginning with the day on which the applicant was notified by the Licensing Authority of the decision appealed against.

On determining the appeal, the court may:

- Dismiss the appeal
- Substitute for the decision appealed against any other decision which could have been made by the Licensing Authority; or
- Remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court.

and may make such order as to costs as it thinks fit.

Background Papers

Licensing Act 2003

SI 2005 No. 44 Licensing Act 2003 (Hearings) (Regulations) 2005

SI 2005 No. 42 Licensing Act 2003 (Premises licences and club premises certificates)

Regulations 2005

SI 2010 No.860 Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010

The Latest Guidance issued under section 182 of the Licensing Act 2003.

The Statement of Licensing Policy for South Somerset District Council January 2014.