



PART A:	MATTERS DEALT WITH UNDER DELEGATED POWERS
REPORT TO:	LICENSING SUB COMMITTEE
DATE:	11th JANUARY 2023
REPORT OF THE:	ENVIRONMENTAL HEALTH SERVICES MANAGER ROBERT ROBINSON
TITLE OF REPORT:	APPLICATION FOR A PREMISES LICENCE FOR DOGH, WELBURN, NORTH YORKSHIRE, YO60 7DX
WARDS AFFECTED:	WELBURN WARD

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 The purpose of this report is to enable the Sub-Committee to consider an application from Stewart and Sarah Holt for a Premises Licence for Dogh, Welburn, Ryedale, North Yorkshire, YO60 7DX where relevant representations have been received. A copy of the application including plan is attached at Annex A.

2.0 RECOMMENDATION(S)

- 2.1 It is recommended that:

- (i) the application be determined taking into account the relevant representations received, amendments / conditions proposed, the four Licensing Objectives, the Licensing Act 2003, Government Guidance issued under section 182 of the Licensing Act 2003 and Ryedale District Councils Statement of Licensing Policy and after hearing from both the applicant and any objector(s).

3.0 REASON FOR RECOMMENDATION(S)

- 3.1 Relevant representations have been received and as officers do not have delegated powers to grant an application where a representation has been made the determination of the application now rests with the Licensing Sub-Committee.

4.0 SIGNIFICANT RISKS

- 4.1 The Licensing Authority must determine this application as prescribed by the Licensing Act 2003 and regulations made under this Act. The Licensing Authority would leave itself open to appeal or judicial review should it not comply with all legal requirements.

REPORT

5.0 PRELIMINARY ISSUE

- 5.1 As a preliminary issue the Sub-Committee will have to determine whether an error in relation to the advertisement of the application should lead to the matter being adjourned to allow for it to be re-advertised.
- 5.2 Both the blue premises notice and newspaper notice advertising the application clearly state the address of the licensing department including when and where the application can be inspected. The Licensing Act 2003 (Premises licence and club premises certificates) Regulations 2005 state at Regulation 26(c) that the notice must specify 'the postal address and, where applicable, the worldwide web address where the register of the relevant licensing authority is kept and where and when the record of the application may be inspected'. It should be noted that neither notice included the worldwide web address; however, they do not have to as Ryedale District Council does not have the register kept via the web. Officers can confirm that the premises notice was satisfactorily displayed at an unannounced visit to the premises on 6 December 2022. In addition, the newspaper notice published on 23 November 2022 was in-line with advertising requirements.
- 5.3 The error in advertising has been made by the Council. Regulation 26(b) states that the Licensing Authority shall advertise the application:
- a) For a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the Licensing Authority and
 - b) By publication of the notice on its website containing the information set out in Regulation 26(c).
- 5.4 The Council did include the notice on its website however not until 5 December 2022, when in accordance with the regulations the notice should have been posted on 12 November 2022. The website notice stipulated a date by which any representations should be received as 9 December 2022. There were no late representations received after this date and the website notice contained the correct information prescribed by law.
- 5.5 The preliminary issue to be determined is whether there would be substantial prejudice or injustice if the hearing goes ahead today. If there would, the matter should be adjourned to allow for the re-advertisement of the application. If there would not, then the hearing should proceed. Reasons should be given in making the preliminary determination.

6.0 APPLICATION

- 6.1 The application seeks to:
- a) Supply alcohol for consumption both on and off the premises each day between the hours of 08:00 and 18:00.
 - b) To extend the permitted hours outlined above until 22:30 on a maximum of 10 occasions per year to facilitate evening events.

- c) Open to the public each day between the hours of 08:00 and 18:00 with an extension until 22:30 when the hours for the supply of alcohol are extended.

6.2 The applicant has also volunteered the following conditions as part of their application:

1. Alcohol sold for consumption on the premises shall only be provided with table meals or light bites.
2. Alcohol sold for consumption off the premises shall be in sealed containers only.
3. No open containers shall be taken outside of the licensed area onto the pavement or highway.
4. Alcohol shall only be displayed behind the counter within the premises.
5. The permitted hours for the sale of alcohol may be extended until 22:30 on a maximum of 10 occasions per calendar year.
6. The premises shall operate a 'Challenge 25' Age Verification Policy.
7. Prominent, clear and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.
8. The premises shall adopt a glass clearing policy.
9. There shall be no adult entertainment at the premises.
10. A documented staff training programme shall be provided to all members of staff at the premises in respect of the:
 - retail sale of alcohol
 - age verification policy
 - conditions attached to the Premises Licence
 - permitted licensable activities
 - the licensing objectives; and
 - opening times for the venue

with such records being kept for a minimum of one year. [For the avoidance of doubt, the one-year period relates to each respective entry in the logbook and runs from the date of that particular entry];

11. A Refusal Register and an Incident Report Register shall be maintained within the premises. Such registers shall record incidents of staff refusals to underage or drunken people as well as incidents of any anti-social behaviour and ejections from the premises. Such Registers shall be kept for a minimum of one year. [For the avoidance of doubt, the one-year period relates to each respective entry in a Register and runs from the date of that particular entry in the Register].

6.3 As relevant representations have been received regarding this application, the decision on whether to grant the licence now rests with the Licensing Sub-

Committee.

7.0 RELEVANT REPRESENTATIONS

7.1 The Licensing Authority has received six representations from members of the public which are attached at Annex B, the representations are in line with the following licensing objectives:

- Prevention of public nuisance
- Public safety

7.2 The representations are summarised as follows:

- Strong objection to the sale of alcohol for consumption at the tables outside the front of the premises as this may result in:
 - Disturbance to neighbouring properties in the form of noise and cigarette smoke from customers.
 - Public safety being compromised due to the location of the premises and the mixing of staff, customers, and vehicles.
- That elements of the application contravene the planning permission in respect of the premises.
- Customers using the outdoor tables creates an unpleasant outlook for neighbouring properties, in addition to the customers being intimidating or at best unpleasant to pass through.
- That the sale of alcohol for consumption off the premises may increase the incidence of litter and compromise the privacy of neighbouring residents.
- That the disturbance already caused by customers gathering around the entrance to the premises may be further exacerbated.
- That the instances of inappropriate/obstructive vehicle parking may increase.
- That the use of the premises for evening events may lead to neighbouring properties being further disturbed.

7.3 Members should note that some of the grounds for the representations may not directly relate to the licensing objectives but have been included in the interests of openness and transparency.

8.0 LICENSING POLICY AND NATIONAL GUIDANCE

Ryedale`s Licensing Policy

8.1 Part 4.4 of the policy states that” The Licensing Authority shall expect every licence /certificate holder or event organiser to minimise the impact of their activities on the surrounding area and any anti-social behaviour created by their customers in and within the vicinity of their premises by taking appropriate measures and actions consistent with that responsibility. In addressing this matter, the Licensing Authority will primarily focus on the direct impact of the activities taking place at the licensed

premises on members of the public living, working or engaged in normal activity in the area concerned”.

- 8.2 Part 4.6 of the policy states that “The Licensing Authority, however, recognises that the licensing law is not the primary mechanism for the general control of nuisance, noise or anti-social behaviour particularly once individuals have left the vicinity of the licensed premises and therefore beyond the direct control of the individual, club or business holding the licence or certificate. However, licensing controls and targeted enforcement should have a positive impact on the immediate vicinity of the licensed premises and assist in the management of the evening and nighttime economy”. In addition, 4.7 states “The Policy is not intended to duplicate existing legislation and regulatory regimes that already place obligations on employers and operators, for example, the Gambling Act 2005, the Equality Act, The Clean Neighbourhoods and Environmental Act 2005, Health and Safety at Work, etc. Act 1974, Environmental Protection Act 1990, the Noise Act 1996 and the Regulatory Reform (Fire Safety) Order 2005, etc.”. Para 4.9 states ‘The Licensing Authority has a duty under Article 8 of the European Convention on Human Rights to protect the rights of its residents to privacy and family life. The Council also acknowledges the rights of businesses in its area to operate, but this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises’.
- 8.3 Section 21.1 states “The Operating Schedule is a key part of the application form whereby applicants may volunteer appropriate conditions to demonstrate compliance of the licensing objectives by describing the steps they intend to take to promote these objectives. These volunteered conditions will then form conditions on the Premises Licence or Certificate. In completing an Operating Schedule, applicants are expected to have regard to this policy”. Section 21.4 states that “In completing their Operating Schedule the Licensing Authority suggest an applicant consider the following and goes on to give a list of measures applicants may like to consider for all four of the licensing objectives when completing their operating schedules e.g., CCTV, door supervisors etc”. Finally, Section 21.5 states that “These lists (contained in 21.4) are not exhaustive and advice can be obtained from the relevant responsible authority. However, applicants are reminded again to contact the relevant Responsible Authority to seek their expert advice before an application is submitted to the Licensing Authority”.

National Guidance

- 8.4 **PUBLIC NUISANCE** Paragraph 2.15 of the Guidance states “The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this Licensing Objective, Licensing Authorities and Responsible Authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter”. Paragraph 2.16 adds “Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises”.

8.5 **PUBLIC SAFETY** Paragraph 2.7 of the Guidance states ‘Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person’s health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority’s powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene’.

9. OPTIONS

9.1 The Licensing Sub Committee has the following options:

- a) Reject the application.
- b) Grant the licence as per the application.
- c) Grant the licence as per the application with additional conditions.

10.0 DETERMINATION OF THE APPLICATION

10.1 Under section 17 of the Crime and Disorder Act 1998 (CDA), the Council has a duty to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it can to prevent, crime and disorder in its area. Members must also exercise their decision-making powers in accordance with the provisions of the Human Rights Act 1998, and the principles of natural justice. Members are invited to determine this application following consideration of the evidence presented to them. The procedure for this hearing is available on the Council’s website.

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Background Papers:

Licensing Act 2003
National Guidance issued under Section 182 of the Licensing Act 2003
Ryedale District Council Statement of Licensing Policy March 2019