

**Meeting of:** LICENSING ACT SUB-COMMITTEE

**Date:** 14TH AUGUST 2008

**Report of:** LICENSING MANAGER

**Reference:** SW

**Title:** THE BRITANNIA 101, ULLSWATER ROAD, LANCASTER  
APPLICATION FOR REVIEW OF PREMISES LICENCE

Members of the Sub-Committee have the following documents attached to this report:

1. Application for Review of Premises Licence (pages 10 - 13)
2. Representations from Interested Parties supporting the Application for a review of the Premises Licence (pages 14 - 25)
3. Representations from Interested Parties opposing the Application for a review of the Premises Licence (pages 26 - 36)
4. Representation from the Police (pages 37 - 41)
5. Copy of Premises Licence (pages 42 – 49)
6. Copy of notice of review posted on the premises (page 50)
7. Map showing premises and addresses of interested parties (page 51)
8. Notice of Hearing (pages 52 - 57)
9. Copies of supporting documentation from all parties (to be circulated separately)

#### **Details of Application**

Three residents (interested parties) have submitted an application for review of a premises licence under Section 51 of the Licensing Act 2003. The application relates to the Britannia 101, Ullswater Road, Lancaster. A copy of the application is at Document 1.

A copy of the premises licence for the Britannia 101 is attached at Document 5. This licence was granted to the premises October 2007 following submission of an application made under the Licensing Act 2003 for a variation of the existing premises licence.

The current premises licence contains the following conditions to control noise nuisance:-

1. The provision of off-sales to terminate at 23.00 hours
2. The consumption of alcohol in the beer gardens on Ullswater Road and on Park Road will cease at 2300 hours on Monday to Sunday inclusive
3. Automatic noise limiting device to be installed and calibrated to the satisfaction of the Head of Health and Strategic Housing
4. Rear doors to the lounge bar will not be used during the performance of live entertainment
5. Signs to be displayed in smoking area and beer garden requesting customers to respect local residents and avoid excessive noise
6. Suitable acoustic treatment to be applied to rear extract fan to prevent escape of excessive noise
7. Doors to front elevation of premises to be fitted with self closing mechanisms and not to be fixed 'open' whenever amplified music is being played
8. No nuisance shall be caused by noise coming from the premises or by vibration transmitted through the structure of the premises
9. All external doors and windows shall be kept closed when regulated entertainment is being provided except in the event of an emergency
10. The premises licence holder or his representative shall conduct regular assessments of the noise coming from the premises on every occasion the premises are used for regulated entertainment and shall take steps to reduce the level of noise where it is likely to cause a disturbance to local residents. A written record shall be made of those assessments in a log book kept for that purpose and shall include, the time and date of the checks, the person making them and the results including any remedial action
11. There shall be placed at all exits from the premises in a place where they can be seen and easily read by the public, (or member and their guests) notices requiring customers to leave the premises and the area quietly
12. Refuse such as bottles shall be disposed of from the premises at a time when it is not likely to cause a disturbance to residents in the vicinity of the premises

### **Legal background to Review Application**

Under Section 51 (1) of the Licensing Act 2003, a responsible authority or interested party may apply to the licensing authority for the review of a licence.

The grounds for review must relate to one or more of the licensing objectives and as Members will be aware, these are:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance and
- the protection of children from harm

An application for review must be copied to the premises licence holder and to the responsible authorities. Once such an application is received, the licensing authority must place a notice at the premises, and there is then a period of 28 days during which representations may be made to the licensing authority.

A copy of the notice which was displayed at the premises during the 28 day period is attached at Document 6. Licensing Enforcement Officers made occasional checks throughout the 28 day period to satisfy that the notice was still in place.

A representation in respect of the review application for the Britannia 101 has been received from the Lancashire Constabulary, a copy of which is attached as Document 4.

A total of 17 representations were received within the 28 day period from interested parties. Members are reminded that representations can either be in support of or against an application for review of a premises licence. In total 7 further representations were received supporting the application for a review of the premises licence (Document 2) and 10 representations were received opposing the application for a review (Document 3).

A plan showing the location of the Britannia 101, along with the addresses of the 19 interested parties is shown as Document 7.

Supporting documentation has been submitted by the applicants, the police and the premises licence holder. The supporting documentation will be circulated in a separate bundle.

### **Background information provided by Licensing Authority**

From May 2007 the Licensing Authority received an increasing number of complaints from local residents about noise and rowdy behaviour at the Britannia 101. These complaints were investigated in liaison with Police and Environmental Health Officers and resulted in a number of meetings to address the issues.

On the 29th August 2007 the Licensing Authority received an application to vary the premises licence to change the layout of the premises.

The change in layout was to allow access to a newly created beer garden on Park Road and the disabled access into the side beer garden on Ullswater Road.

In view of the history of complaints at the premises both the Police and an Environmental Health Officer raised the need for conditions to ensure that no noise nuisance resulted from the change in the layout. A mediation meeting was therefore held on the 12<sup>th</sup> October 2007, between all parties and resulted in the above conditions being agreed. On the 23<sup>rd</sup> October 2007 the variation was granted.

Unfortunately complaints continued to be received following the variation. One of the key areas of concern was the interpretation of the condition relating to the beer gardens. The premises licence holder understood the condition to apply to only two beer gardens (excluding the area to the front of the premises on Ullswater Road) whilst the Licensing Authority and the Police understood the condition to relate to all outside areas.

Following continual complaints from certain residents that the area in front of the premises was continued to be used after hours a meeting was held on 29<sup>th</sup> November 2007 with the concerned residents to discuss their complaints and, in response to their request for more action, to advise them of the options they had

under the Licensing Act 2003 , one of which was the residents' right to apply for a review of the licence.

### **Matter for Decision**

The Sub-Committee is requested to consider the Interested Parties application for review, the representations by the Responsible Authority, the representations by the other Interested Parties and any submissions made by the premises licence holder.

In accordance with Section 52 (3) and (4) of the Licensing Act 2003, the Sub-Committee must take such of the following steps 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

The matter for decision, therefore, is which, if any, of these steps should be taken.

### **Government Guidance under Section 182 of the Licensing Act 2003**

Members may wish to note that paragraph 2.33 of the Guidance issued by the Government under Section 182 of the Licensing Act 2003 states that public nuisance is "not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community".

### **Relevant Parts of the Council's Statement of Licensing Policy**

Members' attention is drawn to the Council's Statement of Licensing Policy with regard to opening hours, which provides as follows:

- 6.4 *The Licensing Authority recognises that longer licensing hours can contribute to easing disorder and other problems that often occur at late night food premises, taxi ranks, private hire offices and other transport sources.*
- 6.5 *However, a limitation on licensing hours may be imposed in relation to individual premises if representations are received from a responsible authority or interested party and the premises are identified as a focus for disorder and disturbance.*
- 6.6 *As stated, the Licensing Authority will deal with applications on their individual merits. However as far as premises in residential areas are concerned, where relevant representations are received, stricter controls may be imposed in respect of opening hours to ensure that disturbance to local residents is minimised.*

With regard to the prevention of public nuisance, the Policy provides as follows:

## **8. Prevention of public nuisance**

8.1 The most obvious aspect of public nuisance is noise. The primary source of noise is amplified music, either uncontained outdoors or emanating from premises, which do not have sufficient measures in place to contain the sound. Late at night or in the early hours of the morning, individuals shouting in the street or groups of people talking in an animated fashion generate a substantial level of noise and in some cases this is aggravated by offensive language.

8.2 As customers leave licensed premises, the sound of their conversation can disturb residents. Potentially greater problems arise when customers congregate or accumulate outside the licensed premises. However, it is clear that the person in control of the premises has a responsibility to ensure that disturbance to residents and businesses is kept to a minimum.

8.3 In considering licence applications where relevant representations are received, the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for nuisance and disorder having regard to all the circumstances of the application. When addressing public nuisance, the applicant should identify any particular issues which are likely to adversely affect the promotion of the objective to prevent public nuisance, taking account of the location, size and likely clientele of the premises, and the type of entertainment (if any) to be provided. Such steps as are required to deal with these issues should be included within the applicant's operating schedule, and may include:

- The steps the applicant has taken or proposes to prevent noise and vibration escaping from the premises, including music, noise from ventilation equipment and human voices. Such measures may include the installation of soundproofing, air conditioning, noise limitation devices and keeping windows closed during specified hours.
- The steps taken to ensure that all staff involved in the management of the premises have the capability, responsibility and training to supervise other staff and to ensure that the premises are operated in such a manner as to prevent public nuisance
- The steps the applicant has taken or proposes to prevent disturbance by patrons arriving at or leaving the premises, for example warning signs at exits, and warning announcements within the premises, and the use of door supervisors to pass on the message
- The steps the applicant has taken or proposes to prevent queuing, or if queuing is inevitable, to divert queues away from neighbouring premises, or otherwise manage and monitor the queue to prevent disturbance of obstruction, and to prevent patrons congregating outside the premises.
- The implementation of a last admission time, and how the last admission time relates to the closing time of the premises
- The steps the applicant has taken or proposes to take to manage queues so that patrons who will not gain admission before any last admission time are advised accordingly
- The steps the applicant has taken to reduce queuing outside the premises and to minimise the length of time people have to queue at the premises

- The steps the applicant has taken to advise patrons that they will not be admitted if they are causing a disturbance, and the steps taken to implement a procedure for banning patrons who continually leave or arrive at the premises in a manner which causes a public nuisance or disturbance.
- The arrangements made or proposed for parking by patrons and the effect of parking on local residents.
- The arrangements the applicant has made or proposes to make for security lighting at the premises, and the steps the applicant has taken or proposes to take to ensure that lighting will not cause a nuisance to residents.
- Whether there is sufficient provision for public transport for patrons, for example the provision of a free phone taxi service or other arrangements with taxi companies, and whether information is provided to patrons about the most appropriate routes to the nearest transport facilities.
- Whether taxis and private hire vehicles serving the premises or traffic flow from the premises are likely to disturb local residents.
- Whether routes to and from the premises pass residential premises.
- Whether other appropriate measures to prevent nuisance have been taken, such as the use of CCTV or the employment of an adequate number of licensed door supervisors.
- The measures proposed to prevent the consumption or supply of illegal drugs, including any search and disposal procedures.
- The procedures in place for ensuring that no customer leaves with bottles or glasses
- If the applicant has previously held a licence within the area of the Council, the history of any enforcement action arising from those premises.
- Whether the premises would result in increased refuse storage or disposal problems, or additional litter in the vicinity of the premises.
- The steps the applicant has taken or proposes to take in order to ensure that standards of public decency are maintained in any entertainment provided at the premises.
- If appropriate, whether music is played at a lower level towards the end of the evening in a “wind down period”.
- The applicant’s proposals for the length of time between the last sales of alcohol, and the closing of the premises
- The steps the applicant has taken to prevent noise and other public nuisance from occurring in any open air parts of the premises, beer gardens, smoking shelters or areas that are used on an ad-hoc basis by patrons with the management consent for smoking

The above list is not intended to be exhaustive, and the applicant should consider all aspects of the operation that may affect public nuisance.

With regard to the prevention of crime and disorder, the Policy provides as follows:

**9. The prevention of crime and disorder**

- 9.1 The central concerns of licensing in relation to law and order are acts of violence and vandalism brought about by consumption of alcohol and the use of licensed premises as part of a distribution network for illegal drugs.
- 9.2 It is not the function of licensing to impose good practice in the adoption of wider crime reduction measures, such as those for securing premises outside of trading hours. It is also not a purpose of licensing to require that measures be put in place to enhance the opportunities for gathering evidence in relation to crime of a general nature. However, the Licensing Authority recognises that CCTV cameras at premises have an important role in preventing crime and disorder.
- 9.4 The Licensing Authority's starting point is to seek a reduction in crime and disorder throughout the area, consistent with its statutory duty under section 17 of the Crime and Disorder Act 1998. Licences may be granted if applicants can demonstrate that a positive reduction in crime and disorder will result, or that it will not increase, as a result of the application being granted.
- 9.5 Where there are relevant representations, the Licensing Authority will generally not grant a licence where it is likely that the premises will be used for unlawful purposes or where it is considered that the use of the premises is likely to cause an increase in crime and disorder in the area or the premises and this cannot be prevented by the imposition of conditions. When addressing crime and disorder, the applicant should identify any particular issues which are likely to adversely affect the promotion of the objective to prevent crime and disorder, taking account the location, size and likely clientele of the premises, and the type of entertainment (if any) to be provided. Such steps as are required to deal with these issues should be included within the applicant's operating schedule, and may include:
- Use of CCTV inside and outside the premises. The Lancashire Constabulary has produced suggested minimum requirements for CCTV and these are available from the Lancashire Constabulary or from the Licensing Authority's administrative staff
  - Use of metal detection or other search equipment or procedures
  - Crime and disorder risk assessment in relation to the proposed activities
  - Measures to prevent the use or supply of illegal drugs and procedures for searching customers
  - Ensuring that all staff are appropriately trained
  - Ensuring that all staff involved in the management of the premises have the capability, responsibility and training to supervise other staff and to ensure that the premises are operated in such a manner as to prevent crime and disorder
  - Employment of sufficient security staff where appropriate, controlling admission, monitoring capacity within the premises as a whole and in separate rooms/levels and patrolling the interior and exterior of the premises (any such staff must be licensed by the Security Industry Authority). The Licensing Authority recognises that there is a greater need for security staff in some premises than in others. For example there will be a greater need for security staff in a town centre nightclub

than in a village pub. It will be for the applicant to consider the appropriate number of doorstaff required for the particular premises.

- Ensuring that a register of doorstaff and their working times is maintained
- Participation in Pub Watch, Best Bar None or other relevant schemes and using radio links/pages as a means of connecting to other licensed premises.
- Use of plastic or polycarbonate glasses and bottles, where appropriate, or toughened glass. Applicants are advised that the Government believes that a risk-based, rather than blanket, approach to requiring licensed premises to use safer alternatives is the best way to tackle the problem of glass-related injuries
- Wherever possible, agreed protocols with police and other organisations and a commitment to co-operate and provide such evidence as the Police require.
- Adopting the “Night Safe Initiative” and “Safer Clubbing Guide” as statements of best practice
- Following the trade codes of practice, for example BBPA and Portman Group, and not carrying out any irresponsible drinks promotions
- Providing a suitable environment for customers having regard to the activities going on in the premises, in particular appropriate levels of seating
- Ensuring that there are sufficient transport facilities available to ensure that customers can leave the premises safely and swiftly.
- Maintaining an incident log
- The steps the applicant has taken to prevent crime and disorder issues from occurring in any open air parts of the premises, beer gardens, smoking shelters or areas that are used on an ad-hoc basis by patrons with the management consent for smoking, due to location, control within and management of such areas.

It should be noted that this list is not intended to be exhaustive. It may be appropriate for the applicant to consider other steps. Equally, the Licensing Authority recognises that not all the items in the list will be applicable to all premises.

9.6 Following the receipt of relevant representations, the Licensing Authority will not normally allow a person to be specified as a designated premises supervisor where that is likely to undermine the prevention of crime and disorder by reason of that person’s known past conduct. A person is likely to be considered unsuitable if he has previous unspent convictions for a relevant offence, notwithstanding that he may have been granted a personal licence. However, each case would be considered on its own merits in the light of representations received.

Members will of course be mindful that the Policy covers all types of premises in all types of location, and that not all the measures referred to above will be relevant to all premises.

Members are reminded that they should consider each application on its merits, and in the light of all the written and oral information before them at the hearing.



### **Natural Justice and Human Rights**

Members are reminded that they must follow the rules of natural justice, and must also consider human rights implications.

In particular, in accordance with Article 6, all parties are entitled to a fair hearing.

Consideration also needs to be given to the right to respect for private and family life and home, contained within Article 8, although this is a qualified right, and interference is permitted where this is in accordance with the law, or is necessary in a democratic society in the interests of public safety or the prevention of crime and disorder, or for the protection of the rights and freedoms of others. Article 1 of the First Protocol provides that every person is entitled to the peaceful enjoyment of his possessions, although again this right is qualified in the public interest.

### **Conclusion**

Members should consider the application for review of the premises licence and any steps it considers necessary for the promotion of the licensing objectives.