

## BOROUGH OF KETTERING

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<b>Report Originator</b>	Russ Howell	Fwd Plan Ref No:	
<b>Wards Affected</b>	William Knibb	11 <sup>th</sup> August 2014	
<b>Title</b>	<b>Determination of application for review of a Licensing Act 2003 Premises Licence – Watercress Harrys, Market Street, Kettering</b>		

### 1. PURPOSE OF REPORT

To seek the Committee's decision on an application for review of a Licensing Act 2003 Premises Licence.

### 2. INFORMATION

- 2.1 An application for review of the premises licence for Watercress Harrys, Market Street, Kettering has been received from Alex Gratrix, Environmental Protection Team Leader at Kettering Borough Council. A copy of the review application is attached at Appendix 1.
- 2.2 A copy of the current premises licence is attached at Appendix 2.
- 2.3 Kettering Borough Council is a responsible authority for the purposes of Section 13 (4)(e) of the Licensing Act 2003, being the local authority by which statutory functions are exercisable in the area in which the premises are situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health, and may therefore legitimately call a review of a premises licence under Section 51 of Licensing Act 2003.
- 2.4 The grounds for the representation are that the premises holds frequent events hosted by specific DJs where the volume of the amplified recorded music is such that it is clearly heard in the habitable rooms of the nearest residential premises until 4 a.m. The volume of the music has consistently interfered with the sleep of the occupier of those premises, to the extent that a noise abatement notice has been served on Mr Norman Reynolds who is the Designated Premises Supervisor.
- 2.5 The licensable activities on the Premises Licence are currently as shown below:

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	<b>Mon</b>	<b>Tues</b>	<b>Wed</b>	<b>Thurs</b>	<b>Fri</b>	<b>Sat</b>	<b>Sun</b>
<b>Plays</b>	12.00 – 23.00	12.00 – 23.00	12.00 – 23.00	12.00 – 23.00	12.00 – 23.00	10.00 – 23.00	10.00 – 23.00
<b>Films</b>	12.00 – 23.00	12.00 – 23.00	12.00 – 23.00	12.00 – 23.00	12.00 – 23.00	10.00 – 23.00	10.00 – 23.00
<b>Outdoor sporting</b>	10.00 – 00.00	10.00 – 00.00	10.00 – 00.00	10.00 – 00.00	10.00 – 00.00	10.00 – 00.00	10.00 – 00.00
<b>Boxing, etc.</b>	10.00 – 23.00	10.00 – 23.00	10.00 – 23.00	10.00 – 23.00	10.00 – 23.00	10.00 – 01.00	10.00 – 23.00
<b>Live music</b>	10.00 – 23.30	10.00 – 23.30	10.00 – 23.30	10.00 – 23.30	10.00 – 23.30	10.00 – 23.30	10.00 – 23.30
<b>Recorded Music</b>	08.00 – 04.00	08.00 – 04.00	08.00 – 04.00	08.00 – 04.00	08.00 – 04.00	08.00 – 04.00	08.00 – 04.00
<b>Dance</b>	10.00 – 04.00	10.00 – 04.00	10.00 – 04.00	10.00 – 04.00	10.00 – 04.00	10.00 – 04.00	10.00 – 04.00
<b>Facilities for music &amp; dancing</b>	10.00 – 04.00	10.00 – 04.00	10.00 – 04.00	10.00 – 04.00	10.00 – 04.00	10.00 – 04.00	10.00 – 04.00
<b>Alcohol on &amp; off</b>	10.00 – 04.00	10.00 – 04.00	10.00 – 04.00	10.00 – 04.00	10.00 – 04.00	10.00 – 04.00	10.00 – 04.00
<b>Public opening hours</b>	08.00 – 04.30	08.00 – 04.30	08.00 – 04.30	08.00 – 04.30	08.00 – 04.30	08.00 – 04.30	10.00 – 04.30

### **3. CONSULTATION AND CUSTOMER IMPACT**

3.1 The Licensing Act 2003 requires that the responsible authorities are consulted in the event of a review application and the application is advertised outside the premises concerned for 28 days. The following were consulted:

Environmental Health	Review Application
Child Protection	No representation
Fire	No representation
Trading Standards	No representation
Customs and Excise	No representation
Police	No representation
Planning	No representation
Public Health	No representation
Public	No representation

3.2 There are no other representations.

### **4. POLICY IMPLICATIONS**

4.1 This section highlights the sections of the Authority's statement of licensing policy that are most relevant with respect to this application. This is not exhaustive and the policy should be looked at fully prior to making decisions with respect to applications. The paragraph numbers are as shown in the Statement of Licensing Policy:-

2.1 The Licensing Act 2003 makes it a duty for the local authority to carry out its functions under the Act with a view to promoting the four licensing objectives:

- The prevention of crime and disorder

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- Public safety
- The prevention of public nuisance, and
- The protection of children from harm

- 2.4 Licensing decisions will be made in accordance with the current legislation, case law, relevant guidance and in accordance with this policy.
- 2.5 No decision will be made which undermines the right of any individual to apply under the terms of the Act for a variety of permissions and to have any such application considered on its individual merits.
- 2.6 Authorised persons, interested parties and responsible authorities, as defined in the Act, will have the right to make representations to the Licensing Authority on any application or seek a review of a licence or certificate where provision has been made for them to do so in the Act. This Authority recognises that under the current licensing regime there is no provision for a Licensing Authority to make representations and in the absence of relevant representations will grant licenses on the terms sought.
- 2.7 Licensing is about regulating the provision of licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the Licensing Act 2003. The terms and conditions attached to various permissions will be focused on matters which are within the control of individual licensees and others granted relevant permissions. Accordingly, these matters will centre on the premises and places being used for licensable activities and the vicinity of those premises and places.
- 2.8 This 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. It must however be recognised that licensing legislation is not a mechanism for the general control of anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business holding the licence, certificate or permission concerned.
- 2.9 The Licensing Act 2003 is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from licensed premises and, therefore, beyond the control of the licence holder. Nonetheless, it is a key aspect of such control and licensing laws will always be part of the holistic approach to the management of the evening and night-time economy in town centres.
- 2.11 The objective of the licensing process is to allow for the carrying on of retail sales of alcohol and the prevention of public nuisance, prevention of crime and disorder, public safety and protection of children from harm. It is the Licensing Authority's wish to facilitate well run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents.
- 15.1 Applicants for licensable activities will be required to demonstrate the measures they have in place to prevent unnecessary noise and disturbance to local residents, as considered appropriate. This may include restrictions on the times when music or other licensable activities may take place and may include restrictions on sound levels at the premises. Measures may be imposed requiring licensees to display signs at all exits of premises reminding customers to leave premises quietly and to respect the rights of nearby residents.
- 19.13 This Licensing Authority in determining what action to take will seek to establish the causes of concern and any action taken will be directed at these causes. Any action taken to promote the licensing objectives will be necessary and proportionate.
- 4.2 The guidance issued under Section 182 of the Licensing Act 2003 gives the following advice about review decisions (paragraph numbers from guidance):

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11.18 *The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.*

11.19 *However, where responsible authorities like the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.*

11.20 *Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:*

- to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;*
- to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);*
- to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
- to suspend the licence for a period not exceeding three months;*
- to revoke the licence.*

11.21 *In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.*

4.3 Section 17 of the Crime and Disorder Act 1998 requires that local authorities and others must consider crime and disorder reduction while exercising all their duties.

4.3 Having considered the application and representations before it, the Committee may decide to take no further action or consider action as detailed in section 52 of the Act in relation to determination of reviews which may be as follows:

- (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;

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

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Where the authority takes a step mentioned in subsection (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

### 5. **FINANCIAL/RESOURCE IMPLICATIONS**

5.1 There are no financial or resource implications

### 6. **RECOMMENDATION**

The Committee's decision is requested

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#### Background Papers:

Title of Document:

Licensing Act 2003  
Section 182 Guidance to the Licensing Act 2003  
Kettering BC Statement of Licensing Policy

Date:  
Contact Officer: Russ Howell

#### Previous Reports/Minutes:

Ref: None

Date: